

**DOCTRINE OF HOT PURSUIT UNDER MARITIME LAW:
AN ANALYSIS OF INTERNATIONAL LEGAL FRAMEWORK**

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ABSTRACT –

The doctrine of hot pursuit under maritime law is a key legal mechanism employed by States to combat transnational crimes at sea, such as piracy, drug trafficking, and illegal fishing. This research article provides a comprehensive analysis of the international legal framework surrounding the doctrine of hot pursuit. By examining the origins, evolution, and principles of hot pursuit, as well as its relationship with State sovereignty, the study aims to shed light on the justifications and challenges associated with this doctrine. The United Nations Convention on the Law of the Sea (UNCLOS) and other international agreements pertaining to hot chase are examined, along with the customary international law concepts that underpin hot pursuit. Variations and harmonization efforts across various marine zones are highlighted as regional approaches to hot pursuit are also taken into consideration.

Additionally, this research examines the interplay between hot pursuit and human rights law, considering potential implications and challenges that arise in this context. It explores the impact of hot pursuit on law enforcement agencies and naval forces, considering the complexities associated with coordination and cooperation among states. Lastly, this study offers recommendations and potential reforms for enhancing the effectiveness of the doctrine of hot pursuit in combating maritime crimes. It identifies areas for further research and concludes with a reflection on the contribution of this analysis to the development of maritime law.

Overall, it also provides a comprehensive analysis of the international legal framework surrounding the doctrine of hot pursuit, shedding light on its varied principles, challenges, and practical implications. It serves as a valuable resource for legal practitioners, policymakers, and scholars interested in understanding and improving the implementation of hot pursuit in the maritime domain.

Keywords: Hot Pursuit, UNCLOS, transnational crimes, international law, maritime law

Introduction:

The Doctrine of Hot Pursuit is of significant importance under maritime law, serving as a crucial tool in the enforcement of law and order on the high seas. This doctrine provides legal justification for a state to undertake pursuits beyond its territory into international waters, seeking to apprehend

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vessels that have violated laws or regulations. The principle behind the Doctrine of Hot Pursuit is centered on preserving maritime security, promoting global cooperation, and ensuring justice in the face of transnational crimes. To fully grasp the essence and implications of this doctrine, it is essential to explore its historical development, underlying principles,³ and the legal framework that supports its application. The evolution of hot pursuit in maritime law has been influenced by historical developments, international agreements, and the changing nature of transnational crimes at sea. The concept of hot pursuit has its roots in ancient maritime customary law. Historically, coastal states had the right to pursue and capture vessels that violated their laws or engaged in piracy. With the development of international law, the principles and procedures surrounding hot pursuit began to take shape. Various treaties and agreements established the framework for the exercise of this doctrine. The Convention of the High Seas in 1958 recognized the right of hot pursuit, providing a legal basis for states to engage in pursuing vessels beyond their territorial waters. This convention emphasized the need for states to act in accordance with international law, resorting to hot pursuit only when necessary and proportionate.

United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, elucidated the rights and responsibilities of States in their respective maritime zones. Article 111 of UNCLOS codified the concept of hot pursuit by outlining the requirements and conditions under which it can be conducted. It clarified that hot pursuit may only be initiated after a violation of the coastal state's laws occurred in its territorial sea, contiguous zone,⁴ or exclusive economic zone (EEZ). Some regions have developed additional agreements and arrangements to address hot pursuit within their areas of jurisdiction. Examples include the Agreement on Co-operation against Illicit Maritime Activity in Asia (ReCAAP) and the Djibouti Code of Conduct, which aim to enhance regional cooperation in combating piracy and other maritime crimes.

As the enforcement of hot pursuit involves the potential infringement of human rights, there has been a growing recognition of the need to balance security concerns with respect for human rights. The evolving nature of transnational crimes at sea has resulted in numerous cases where the doctrine of hot pursuit has been invoked and analyzed by international tribunals and courts. These cases contribute to the development of jurisprudence and the refinement of the legal framework surrounding hot pursuit.

1. Hot Pursuit under Maritime Law

³ The Condition for Initiating, Maintaining, and Purpose of Hot Pursuit under International Maritime Law: Recommended Reforms for the 21st Century. *Captain N PradeepRathnayake RWP RSP PscM Maritime Pol, Head Of Training Team (Naval Wing), Defence Services Command and Staff College, Sapugaskanda.*

⁴ Convention on the Territorial Sea and the Contiguous Zone, opened for signature 29 April 1958, 516 UNTS 205 (entered into force 10 September 1964) art 24 ('TSC Convention').

The contiguous zone is defined in UNCLOS art 33, which reiterates its first codification in the 1958 Convention on the Territorial Sea and Contiguous Zone ('TSC Convention')¹⁰ and reflects customary international law.

It is very evident that the rule of hot pursuit is an exception to the fundamental principles of freedom on the high seas and hence should be exercised with utmost caution⁵. The Doctrine of Hot Pursuit under maritime law refers to the legal principle that allows a pursuing State's authorities or law enforcement vessels to continue their pursuit of a vessel beyond the territorial waters of their own state and into international waters. This pursuit is permitted when the pursued vessel has committed a crime or violation of the laws of the pursuing State or when there is a reasonable belief that such a violation has occurred.

The origins of the Doctrine of Hot Pursuit can be traced back to customary international law, which has gradually evolved over centuries to address the challenges of maintaining law and order on the high seas. Its roots can be found in the practices of early maritime nations, including ancient civilizations such as the Phoenicians and later major maritime powers like England.

Throughout history, the Doctrine of Hot Pursuit has been shaped through a series of international agreements and judicial precedents. One notable milestone is the 1958 Convention⁶ on the High Seas, which codified certain principles of customary international law. Article 23 of this convention specifically recognizes the right of hot pursuit, provided that certain conditions are met. Hot pursuit is exclusively a coastal state right.⁷

The United Nations Convention on the Law of the Sea (UNCLOS) of 1982 comprehensively addressed the doctrine and further defined its parameters. UNCLOS provides a legal framework for the application of hot pursuit, establishing conditions that must be met to undertake such pursuit and the limitations on the actions that can be taken during the pursuit.

The Doctrine of Hot Pursuit has emerged as a critical tool for maintaining maritime security and enforcing international laws on the high seas. It has evolved through historical practices, customary international law, and established international conventions, ensuring that pursuing States can effectively address and respond to maritime crimes and violations that occur beyond their own jurisdiction. Understanding the evolution of hot pursuit in maritime law provides insight into the gradual development of legal principles and practices that govern its application.

1.1. The Right and Justification of Hot Pursuit⁸

⁵ Damini M, "Doctrine of Hot pursuit: International law", (2022), Legal service India e-journal. <https://www.legalserviceindia.com/legal/article-10013-doctrine-of-hot-pursuit-international-law.html#:~:text=Hot%20pursuit%20doctrine&text=All%20vessels%20have%20the%20right,rules%20governing%20freedom%20at%20sea.>

⁶ Article 111 is almost identical to Article 23, except that it allowed the right of hot pursuit from the EEZ as well as the continental shelf. Article 23 of the Geneva Convention did not address hot pursuit from the EEZ or the continental shelf, and as such, a right of hot pursuit from these areas did not exist under customary international law at that time.

⁷ Isanga, Joseph M., "Countering Persistent Contemporary Sea Piracy: Expanding Jurisdictional Regimes", American University Law Review 59, no.5, June 2010, 1267-1319.

⁸ Prमित Bhattacharya & Abhijit Prabhat, The concept of hot Pursuit: An Analysis under International Law, (NILS India Blog, 1 October 2016) accessed 19 December 2023.

The States right of hot pursuit is mostly derived from the customary principles of International law and is considered an exception to the principle of exclusive flag jurisdiction on the high seas. The doctrine also represents an encroachment upon the sovereignty of a foreign state as the offending vessel can be pursued even beyond the maritime zones.

The right of hot pursuit is significant in maintaining harmony between the principles of free navigation on the high seas and the interest of the States in the efficient governance of their coastal borders. The right also aids in promoting and upholding public order by minimizing conflicts. Even though the exercise of the right of hot pursuit interferes with the principle of free navigation, it is only exercised against a vessel which has violated the coastal laws of a different State and there is a very sound reason to believe that there has indeed been a violation. In the long term, hot pursuit does not pose any great threat to the principle of free navigation as it is scarcely used by the States.

1.2. Requisites of Hot Pursuit

To exercise the right of Hot Pursuit, certain procedures are required to be followed in accordance with the norms laid down in International laws. One of the basic elements which are required is that the pursuit should be *immediate*. The phrase implies that the pursuit should be commenced as soon as the offence is committed by the foreign vessel. *Article 111 of the UNCLOS* also lays down certain conditions which need to be fulfilled to exercise the right validly.

- The State which is exercising its right under the doctrine must have sufficient and valid reason to believe that the foreign vessel has transgressed the law of the State.
- The pursuit must be started when the foreign vessel is within the internal waters, territorial sea, archipelagic waters, contiguous zone or Exclusive Economic Zone of the State.
- The pursuit can be commenced only after the foreign vessel has been given an auditory or visual signal to stop, which has been heard or seen by the foreign vessel.
- The right can be exercised only by authorized government vessels or warships which are identifiable and clearly marked.
- There should be no interruption in the pursuit
- The right comes to an end when the offending vessel enters the territorial sea of its own jurisdiction or any third State.

2. International Legal Framework related to Hot Pursuit

Customary International law plays a significant role in the development and application of the Doctrine of Hot Pursuit under maritime law. It refers to legal principles and practices that have been consistently and uniformly followed by States over time, eventually gaining recognition as binding norms. Hot pursuit is a concept under maritime law that allows a State law enforcement vessel to pursue a foreign vessel into the territorial waters of another State, under specific

conditions. It was first enshrined in Article 23 of the 1958 Geneva Convention⁹ and later ratified by Article 111 of the 1982 United Nations Convention on the Law of the Seas (UNCLOS).

The international legal framework related to hot pursuit primarily consists of the following key instruments and principles:

- 2.1.1. **United Nations Convention on the Law of the Sea (UNCLOS)¹⁰:** UNCLOS is the primary International treaty that defines the rights and responsibilities of States in the world's oceans. It sets out provisions regarding the concept of hot pursuit in Article 111. According to UNCLOS, hot pursuit is permissible when a vessel has engaged in piracy, drug trafficking, unauthorized broadcasting, or related offenses.
- 2.1.2. **Customary International Law:** Besides UNCLOS, customary international law also recognizes the concept of hot pursuit. Customary law consists of unwritten norms and practices that are accepted as legally binding by States. The principle of hot pursuit has developed through State practice and the consent of States over time.¹¹
- 2.1.3. **United Nations Security Council Resolutions:** The UN Security Council has passed several resolutions relevant to hot pursuit situations, particularly related to countering piracy and drug trafficking at sea. These resolutions authorize States to take necessary actions, including hot pursuit, to combat these illegal activities.
- 2.1.4. **Bilateral or Regional Agreements:** Some States may enter into bilateral or regional agreements that provide specific arrangements for hot pursuit within their respective waters. Such agreements outline the procedural requirements, limitations, and responsibilities of the pursuing State and the State into whose waters the pursuit is conducted.

It's essential to note that the specific legal requirements and conditions for hot pursuit may vary depending on the particular international instrument, customary law, or bilateral agreement that applies in a given situation. It's crucial for States to adhere to these legal frameworks to ensure that hot pursuit is conducted lawfully and in accordance with international norms and principles.

3. Relevant case laws related to Hot Pursuit

Prominent case that is often cited as an example related to hot pursuit is the famous case *Anna*¹² Lord Stowell relied on aspects of Bynkershoek's much earlier commentary, indicating that a vessel

⁹ Geneva Convention on the High Seas (1958) (opened for signature 29 April 1958) 450 UNTS 82, entry into force 30 November 1962.

¹⁰ <https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx>

¹¹ Craig H. Allen, "Doctrine of hot pursuit: A functional interpretation adaptable to emerging maritime law enforcement technologies and practices", *Ocean Development & International Law*, Taylor & Francis Online (1989), 20:4, 309-341, DOI: [10.1080/00908328909545899](https://doi.org/10.1080/00908328909545899)

¹² (1805) 5 High Court of Admiralty, 5 C Rob 373.

could be seized after a hot pursuit under limited circumstances.¹³ In *Araunha*¹⁴ In addition to being one of the first instances of constructive presence, this case shows how Hot Pursuit has been accepted on a much larger scale. In the most famous case *The I'm Alone*¹⁵ both Canada and US had recognized Hot Pursuit as an international customary law. *The Lotus Case*¹⁶The Lotus Case is significant in clarifying the principles of jurisdiction and hot pursuit under maritime law. It established that States can exercise jurisdiction over their territorial waters, but hot pursuit may be used in certain cases to pursue a foreign vessel into another State's waters, provided there are reasonable grounds and absence of objections from the violated State. While *Itata*¹⁷ is another case in which hot pursuit was not specifically addressed, the judgment found that any legitimate pursuit would be terminated upon entry to another State's territorial waters.

4. Challenges and Gaps in the International Legal Framework

While the international legal framework does provide guidance on the doctrine of hot pursuit under maritime law, there are still some challenges and gaps that need to be addressed. The following are the concerns:

- There is a lack of universal acceptance. Not all countries have ratified or acceded to the relevant international agreements and conventions that govern hot pursuit. This can create inconsistencies in the application and enforcement of the doctrine, as different States may have different interpretations or limitations on hot pursuit.
- The definitions of crimes or offenses that can trigger hot pursuit in international agreements can be vague. This ambiguity may lead to differing interpretations and potential conflicts during enforcement operations.
- Hot pursuit raises sovereignty concerns for coastal States. There can be disputes over the extent to which a pursuing State can enter the territorial waters of another State without its consent. Striking a balance between the need for law enforcement and respecting territorial sovereignty can be a challenge.¹⁸
- The international legal framework often lacks detailed procedures for conducting hot pursuit. This can lead to uncertainty regarding the rights and obligations of the pursuing State, the coastal State, and the suspected vessel.
- Clear guidelines on matters such as notification, authorization, and the use of force are necessary to ensure proper implementation. Hot pursuit primarily deals with State vessels

¹³ Caroline Tutty Coombs, *The Doctrine of Hot Pursuit under International Law*, [University of Western Australia, 2016]

https://api.researchrepository.uwa.edu.au/ws/portalfiles/portal/20466444/THESIS_DOCTOR_OF_PHILOSOPHY_COOMBS_Caroline_2016.pdf

¹⁴ (1888) I Moore 824

¹⁵ *The I Am Alone Case*, 7 I.L.R. 203 (1935), U.S./Canadian A.R.B. Commission

¹⁶ (*France v. Turkey*, 1927)

¹⁷ (1892) 3 Moore 3067.

¹⁸ Nicholas M. Poulantzas, University of Piraeus, Athens, Greece, *The Right of Hot Pursuit in International Law*, (2nd edn, Kluwer Law International 2002) ISBN 90-411-1786-5.

pursuing suspected criminal vessels. However, challenges arise when dealing with non-state actors, such as pirates or illegal fishing vessels.¹⁹

The lack of a clear legal framework to address non-state actors engaged in criminal activities complicates effective enforcement. Effective implementation of the doctrine relies on cooperative enforcement efforts between States. However, coordination and cooperation between States can be challenging due to differing priorities, limited resources, and political complexities.

Addressing these challenges and filling the gaps in the international legal framework requires continued dialogue, cooperation, and potential amendments to existing agreements. Consensus-building among States is crucial to ensure effective enforcement of the doctrine of hot pursuit while respecting the principles of sovereignty and maintaining security at Sea.

4.1. Challenges in Implementing the Doctrine of Hot Pursuit

Implementing the doctrine of Hot Pursuit under Maritime Law can come with several challenges. Determining the jurisdiction under which the pursuit takes place can be complex. Maritime boundaries and the reach of each country's jurisdiction differ, which can lead to disputes regarding the legality of pursuing vessels in certain areas. It can be challenging to identify and communicate with the vessel being pursued, especially in cases where the pursued vessel deliberately tries to evade detection or ignores communication attempts. Language barriers and technological limitations can exacerbate this issue. Law enforcement or naval authorities must make quick decisions regarding the initiation and continuation of Hot Pursuit. Balancing the need for immediate action with ensuring that pursuit remains authorized under international law is crucial and can be stressful.

Pursuits can be dangerous for both the pursuing vessel and the pursued vessel. High-speed chases or risky maneuvers may endanger the lives of crew members, as well as innocent parties in the vicinity. Authorities must continuously assess the risks and consider alternative measures to avoid unnecessary harm. Respecting the sovereignty of other states and maintaining diplomatic relationships is important while conducting Hot Pursuit. Authorities must ensure compliance with international law and avoid infringing upon the rights of other nations while aiming to prevent illegal activities. Establishing clear guidelines and a legal framework for Hot Pursuit operations can be challenging. Harmonizing international laws and agreements to provide a comprehensive protocol for pursuing vessels across different jurisdictions requires ongoing collaboration and negotiation among nations. Addressing these challenges requires collaboration among nations, effective communication, and adherence to international legal principles. Implementing mechanisms for information sharing, training law enforcement and naval personnel, and promoting

¹⁹ ZHOU Zhonghai, "On the Connotation and Practice of the Right of Hot Pursuit", *China Oceans Law Review*, Vol. 2006 No. 1.

dialogue and cooperation can contribute to better implementation of the doctrine of Hot Pursuit under Maritime Law.²⁰

5. Potential Reforms and Recommendations

To address the challenges in implementing the doctrine of Hot Pursuit under Maritime Law, there are several potential reforms and recommendations:

- 5.1. Encourage international cooperation to harmonize laws and agreements related to Hot Pursuit. This includes developing standardized protocols that outline the procedures, limitations, and jurisdictional aspects of pursuit operations.
- 5.2. Improve communication and information sharing between maritime law enforcement agencies of different countries. This can involve establishing dedicated communication channels, sharing intelligence, and enhancing technological capabilities for real-time information exchange.
- 5.3. Provide specialized training programs for law enforcement and naval personnel involved in Hot Pursuit operations. These programs should focus on legal aspects, decision-making under pressure, vessel identification techniques, and safe pursuit tactics.
- 5.4. Invest in advanced surveillance technologies to aid in vessel identification, tracking, and monitoring. Enhanced radar systems, satellite imagery, and maritime domain awareness tools can provide valuable information to authorities conducting Hot Pursuit.
- 5.5. Develop comprehensive risk assessment frameworks to aid in decision-making during pursuit operations. This includes considering alternatives to hot pursuit, such as coordinated interception, diplomatic channels, or sharing intelligence to apprehend suspects once they enter another jurisdiction.
- 5.6. Strengthen bilateral and multilateral agreements among nations to facilitate Hot Pursuit operations. This includes agreements regarding jurisdictional coordination, facilitated extradition processes, and mutual legal assistance to ensure a coordinated and streamlined approach to addressing maritime crimes.
- 5.7. Implement a system of regular review and evaluation of Hot Pursuit operations to identify areas for improvement. This can be done through assessing the effectiveness of procedures, evaluating the outcomes, and incorporating lessons learned into future operations.

²⁰ Philipp Eschenhagen & Max Jürgens, “Protective Jurisdiction in the Contiguous Zone And The Right of Hot Pursuit: Rethinking Coastal States’ Jurisdictional” *Melbourne Journal of International Law*, Vol 19, 2018.

By implementing these reforms and recommendations, the international community can work towards a more coordinated, effective, and lawful implementation of the doctrine of Hot Pursuit under Maritime Law.

Conclusion

Hot Pursuit under Maritime Law allows a State to exercise law enforcement actions against a vessel that has committed a crime within its jurisdiction. In conclusion, this concept is vital for maintaining maritime security and upholding international law. However, several future directions can be explored to enhance the effectiveness of Hot Pursuit. Efforts should be made to encourage more States to enter into multilateral agreements on Hot Pursuit. This will ensure consistent standards and cooperation among nations, making it easier to pursue and apprehend suspects across borders. It is crucial to invest in training programs to enhance the skill sets of law enforcement officers involved in maritime operations. Developing specialized training courses on tactics, international law, and interagency coordination will better prepare them for successful Hot Pursuit initiatives. Future directions should also consider the potential environmental impacts that Hot Pursuit operations can have. Ensuring that law enforcement actions consider environmental preservation measures will help strike a balance between security and sustainability.

In summary, the future of Hot Pursuit under Maritime Law relies on multilateral agreements, leveraging technology, capacity building, improving legal frameworks, fostering cooperation, and considering environmental concerns. Addressing these aspects will enhance maritime security and enable more effective responses against transnational maritime crimes.