

# Hot Pursuit on Land: Execution *versus* Legitimacy

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## I. INTRODUCTION

There is a clearer authority when it comes to pursuit on the sea. The 1958 Geneva Convention codified authorities' right to pursue and apprehend ships that have violated a nation's laws and have escaped from a country's national waters into international waters. This principle is enshrined in Article 111 of the 1982 UN Convention on the Law of the Sea and in Article 23 of the 1958 Convention on the High Seas. In simple form, the doctrine generally pertains the ability of one state's navy to pursue a foreign ship that has violated laws and regulations in its territorial waters (twelve nautical miles from shore), even if the ship flees to the high seas.

## II. HOT PURSUIT ON LAND

Hot pursuit on land can be describes as the right to pursue and apprehend an opposing force on another state's land. International law experts say that there is a recognized right of hot pursuit to pursue ships escaping in international waters but there is no similar global legal authority that would allow one nation to violate another nation's border to pursue an opposing force on land. Thus, in enforcement it is evident in many cases that several leading states use hot pursuit on land in their military actions, especially by U.S. forces.

Moreover, it can be introduced as a trend that principle of hot pursuit on land is being enforced by many states wrapped as a 'right' by giving out several reasons such as self-defence. Thus, according to legal perspective, right to hot pursuit on land contributes in violation of state sovereignty and territorial integrity. On the other hand, yet it is debatable whether hot pursuit on land can be considered as a principle or not.

## III. METHODOLOGY

In order to find possible answers to afore discussed points, the research design of this paper is based on qualitative legal research methodology focussed on primary sources of applicable legal rules and case laws and secondary sources of media and internet in order to resolve the research problem to evaluate the legality of the principle of hot pursuit on land versus it's execution. Therefore, this paper is designed first to evaluate the execution of principle of hot pursuit on land from ancient history to

modern context and secondly to critically evaluate the legality of the principle. Ultimately, it is to evaluate the status of legality of the principle versus its enforcement.

## IV. EXECUTION

Hot pursuit on land is not a modern phenomenon. History is replete with examples of foreign agents or armies crossing another state's sovereign borders in pursuit of those suspected of committing crimes against another state. The legend of Rawana can be considered as the prime ancient example, due to the fact that Rama has pursued the opposing force of Rawana in Rawana's Lankapura.

## V. HOT PURSUIT ON LAND UNDER INTERNATIONAL LAW

Legal experts agree that the principle of 'hot pursuit' as it pertains to sovereign territories versus the high seas, remains unsettled. Temple University law professor and international law authority Peter J. Spiro said the hot-pursuit doctrine is well-established in criminal law. (Braun 2014) Hot pursuit on seas possesses a legal recognition whereas the legal credibility of hot pursuit on land is still debatable. However, there seems a trend of which veiling hot pursuit on land under the right of self-defence by states.

Article 51 of UN Charter deals with right to Self-defence of States. Accordingly, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security"

However, as per Braun (2014) United Nations Security Council has once authorized sea-to-land pursuit in Somalia.

## VI. HOT PURSUIT ON LAND BY U.S. FORCES

As the scope of this research is limited to study the principle of hot pursuit on land by U.S forces it seems essential to discuss on the historic incidents. One famous example is the pursuit of Pancho Villa by U.S. forces into Mexico in 1916. Another example was the 1960 seizure of Adolf Eichmann by Israeli agents in Argentina. Eichmann was a former high-ranking Nazi official wanted for war crimes. His capture was widely considered a violation of international law and Argentine sovereignty. Neither of the above cases involved ships on the high seas, nor did either of the states invoke the principle of 'hot pursuit' to justify their cross-border activities. Even without that precedent, numerous nations have repeatedly taken action across borders, including raids by U.S. troops in recent years pursuing militants from Afghanistan into Pakistan. (Braun 2014)

### *A. Right to Hot Pursuit and Right to Self-Defence*

This idea of 'hot pursuit' is just an attempt to twist the law of the sea doctrine into a self-defence idea. International law authorizes military action if a nation can show it is acting in self-defence. But even recognizing that nations have repeatedly invoked their self-interest in striking opposing forces across borders, legal experts said there is no governing international legal code that recognizes a reflexive right of hot pursuit on land. As per the words of US Secretary of State John Kerry, "'hot pursuit' is a little grounding principle in international law as a basis for attacks on the militants. And as a matter of right, if they're being attacked from outside their country, you have a right of hot pursuit. You have a right to be able to attack those people who are attacking you as a matter of self-defense" As a Swift Boat commander during the Vietnam War, Kerry practiced a version of hot pursuit on his own, beaching his boat to pursue Vietcong guerrillas firing from land. (Braun 2014)

Under International legal norms on state responsibility, and UN Security Council Resolution 1373, passed shortly after the events of 9/11, state responsibility implies a duty to control one's territory. That is, a government has an obligation not to allow its territory to be used by non-state actors or terrorist organizations to carry out armed attacks against its neighbours. In the case of Syria, the U.S. government could invoke UN Security Council Resolution 1373, which says that states have the responsibility to prevent the misuse of their territory by non-state actors like al-Qaeda. Syria must prevent its territory from being used as a safe haven for terrorists and patrol its border to prevent attackers from entering Iraq. Under UN Security Resolution 1373, states are obligated to "deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens" and "prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other states or their citizens." Failure to comply could prompt UN sanctions against Syria. But Damascus is not

directly responsible for the actions of these foreign jihadis unless it can be proven to exercise "effective control" over them, a high threshold to meet under international law. As per U.S. official estimate, most of the foreign-born insurgents in Iraq enter the country through the Syrian border. They have warned Syria to stop the flow of these suicide bombers but no avail. They argue that such a strike would be justified under international law and cite a principle known as "hot pursuit."

The United States could argue, as Israel has done to justify strikes against Hezbollah installations in southern Lebanon, that a limited strike against bases used by foreign jihadis in Syria would be justified under the principle of anticipatory self-defence, which some legal scholars say is upheld by Article 51 of the UN Charter.

Other experts point to the 1837 Caroline case, in which British and Canadian rebels crossed into U.S. territory and set the steamer Caroline ablaze, killing two Americans in the process. The Americans argued that the British claim of self-defence.

## VII. RESEARCH FINDINGS

Under research findings, four key points were revealed. First is that there is no governing international legal code that recognizes a reflexive right of hot pursuit on land. However, despite of the legality, world powers execute this concept as a practice. As for example, US hot pursuit in Syria. Also it was revealed that the Principle or doctrine of hot pursuit can only be found under law of the seas and not on land. Also, hot pursuit on land is being enforced by many states wrapped as a 'right' and it is almost used to call as Right to hot pursuit. As per the standpoint of international law experts, there is a recognized right of hot pursuit to pursue ships escaping in international waters but there is no similar global legal authority that would allow one nation to violate another nation's border to pursue an opposing force on land. However, as discussed earlier, it is evident in many cases that several leading states use hot pursuit on land in their military actions. In addition, by giving out several reasons such as self-defence of the state's hot pursuit on land has been used to veil certain military actions. International law authorizes military action if a nation can show it is acting in self-defence. But not by recognizing that nations have repeatedly invoked their self-interest in striking opposing forces across borders. This was evident during 1837 Caroline case. This further establishes the fact that unlike hot pursuit on sea which pursues on international seas, execution of hot pursuit on land absolutely violates the principles of state's sovereignty and territorial integrity.

## VIII. RECOMMENDATIONS

It is evident with afore discussed points that there is no legally recognized principle of hot pursuit on land even though many states such as U.S. is being implementing

such a practice in order to define their military actions. In this backdrop, it is well understood that the principle of hot pursuit on land and principle of right to self-defence of states are two different principles which cannot be shielded for the sake of another. On the other hand, execution of hot pursuit on land violates the state's sovereignty and territorial integrity. Therefore, it is recommended that since there is no internationally recognized right to hot pursuit on land it must be prohibited because this is being executed beyond the legality by the world powers. If not, it shall be granted a legal recognition similar as to hot pursuit on seas by world legal regime.

#### IX. CONCLUSION

In conclusion, it must be mentioned that principle of hot pursuit on land has become luxury coverage of military actions only to world powers. Therefore, it is necessary to prohibit the execution of principle of hot pursuit on land because uncertainty of permission to execute has already become a challenge for changing dynamics in the global environment.

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