

Applicability of the ‘Doctrine of Hot Pursuit’ to Hunt Rebels under International Law

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Abstract

The 'Doctrine of Hot Pursuit' was initially recognized as part of international maritime law. Since the 2000s the doctrine has been, albeit sparingly, used to hunt terrorists and rebels that cause trouble in one country, but then cross over in another country. Pakistan has a right to defend itself under international law. This includes preemptive self-defense against active insurgents and rebels. Going by this right and historical antecedents a case could be made for Pakistan to conduct operations in Afghanistan in an attempt to mitigate the threat that Pakistan faces. However, although hot pursuit on land has been exercised by countries in the past, the legality of it remains questionable.

Key Words: Hot Pursuit, International Law, Self-defense, TTP, Pakistan

I) 'Doctrine of Hot Pursuit' Under International Law

The 'Doctrine of Hot Pursuit' was initially recognized as part of international maritime law. International law recognizes 'The Doctrine of Hot Pursuit' as a state's legal right. It was first enshrined in Article 23 of the 1958 Convention on the High Seas and later ratified by Article 111 of the 1982 United Nations Convention on the Law of the Seas ("UNCLOS"). Article 111 states, "The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State." Hence, this serves as a limitation to the right to unrestricted navigation on the high seas, that all vessels enjoy as a fundamental principle of maritime law.

II) Extension of the Applicability of 'Doctrine of Hot Pursuit'

Since the 2000s the doctrine has been, albeit sparingly, used to hunt terrorists and rebels that cause trouble in one country, but then cross over in another country. Countries have, in the past, pursued rebels across geographical borders, relying on the 'Doctrine of Hot Pursuit'. Although the doctrine is a recognized principle of customary international maritime law, this extension of its applicability on land has caused significant debate amongst the international legal community. Some notable international incidents dealing with this doctrine on land are outlined below.

III) Historical Examples of 'Doctrine of Hot Pursuit' on Land

International law has not explicitly allowed for the operation of this doctrine on land. However, in the past, there have been instances where one country's forces have pursued a criminal, wanted in their territory, into another country.

Pursuit by the United States Forces into Mexico

One famous example is the pursuit of Pancho Villa by the United States forces into Mexico in 1916. The doctrine of hot pursuit was activated as part of a military operation conducted by the United States Army against the paramilitary forces of Mexican revolutionary Francisco "Pancho" Villa, during the Mexican Revolution of 1910–1920. The expedition was launched in retaliation for Villa's attack on the town of Columbus, New Mexico in the United States. Villa crossed over to Mexico. As a result, the then President of the United States, Woodrow Wilson, authorized his pursuit into Mexico. However, defining the parameters of the United States actions, Wilson stated,

An adequate force will be sent at once in pursuit of Villa with the single object of capturing him and putting a stop to his forays. This can and will be done in entirely friendly aid to the constituted authorities in Mexico and with scrupulous respect for the sovereignty of that Republic.

Pursuit by Israel into Argentina

Another example was the 1960 international pursuit and capture of former high-ranking Nazi official Adolf Eichmann by Israeli agents in Argentina. Eichmann was apparently apprehended in Argentina, where he was living under a disguise, by special agents of the Israeli authorities. Argentina lodged an official complaint with the United Nations Security Council, stating that the forcible abduction of Adolph Eichmann was a clear violation of international law and an invasion of its sovereignty. However, after Israel made its apology, the matter was declared closed in a joint communique issued by the two nations on August 3, 1960. The failure of the United Nations and Argentina to insist upon Eichmann's return thus seemed technically to cure the illegality of the capture.

Pursuit by the United States Forces into Syria

Soon after the invasion of Iraq in March 2003, it was suspected that the majority of the foreign-born insurgents showing up in Iraq were entering the country through the Syrian border. Warnings were issued to the Assad government to stop the flow of

these suicide bombers, but it was not taken seriously. Experts called on the U.S. military to increase pressure on Damascus by conducting cross-border raids by Special Forces or targeted air attacks to hunt down jihadis on Syrian soil, arguing that such a strike would be justified under international law and the principle known as “hot pursuit.”

Pursuit by Turkey into Syria

In 1998, Syria and Turkey signed the “Adana Agreement,” a secret treaty to end long standing conflicts between the two neighbors following Damascus’s handover of Kurdish separatist leader, Abdullah Ocalan. According to the Agreement, Syria was to give up the province of Hatay and agree to allow the Turkish military to engage in “hot pursuit” missions against Kurdish separatist rebels up to five kilometers inside Syria without seeking prior permission from the Syrian authorities.

Pursuit by Indian Forces into Pakistan

In 2019, Indian jets crossed over into Pakistani airspace, twelve days after a suicide bomber with a truck laden with explosives rammed into a bus carrying Indian paramilitary soldiers. They continued on for nearly seventy kilometers before releasing their payload in the town of Balakot. In response, Pakistan shot down at least one aircraft and captured an Indian pilot in a dogfight the following day. India declared that it was an established practice of the United States that hunting terrorists sometimes requires hopping, skipping, and ignoring the sovereign borders. If terrorist organization Jaish-e-Mohammad, which deploys militant means for independence for the disputed territory of Kashmir, had sponsored the bombing, then pursuing them into Pakistan was fair game.

IV) Right to Hot Pursuit as Right to Self-Defence

From the above, it is clear that the 'Doctrine of Hot Pursuit' has been practiced by states since a long time, even if the action was not defined as 'hot pursuit' at the time. This brings us to the question of the basis of this doctrine under international law.

It can be said that 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 the United States 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 are 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."

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. For instance, there was debate in the international community that, in the case of Syria, the United States 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. In the case of United States raids into Syria in pursuit of foreign fighters, the burden was on the government of the United States to prove that the Syrian government had failed in this duty by failing to prevent these foreign actors from crossing into Iraq and carrying out attacks against United States troops. In response to this failure, it was argued that the United States then had the legal right to "pursue" these foreign jihadis, even if they flee back into Syrian territory.

The idea is that states must prevent its territory from being used as a safe haven for terrorists and patrol its border to prevent attackers from entering. Under UN Security Council 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. However, the state to which the terrorist flees is not directly responsible for the actions of these foreign rebels unless it can be proven to exercise "effective control" over them, a high threshold to meet under international law.

V) Pakistan's Right to Hot Pursuit

The Tehrik-e-Taliban Pakistan ("TTP") have been responsible for conducting terrorist activities and unrest in Pakistan. The TTP is responsible for the rising security threats in Pakistan, including to foreign nationals' present in the country. This also impacts the inflow of foreign investment in Pakistan. The Pakistani military have conducted extensive tactical operations against the TTP, but they still continue to remain an active threat for the population of Pakistan. It is a known fact that some high ranking members of the TTP have crossed over into Afghanistan. This begs the question of whether that gives Pakistan a right to pursue these individuals across the border and in Afghan territory.

Pakistan has a right to defend itself under international law. This includes preemptive self defense against active insurgents and rebels. Going by this right and historical antecedents a case could be made for Pakistan to conduct operations in Afghanistan in an attempt to mitigate the threat that Pakistan faces. However, such a case would be legally untenable.

VI) Recommendation

However, although hot pursuit on land has been exercised by countries in the past, the legality of it remains questionable. This is because the sanctity of a country's territorial sovereignty is a cardinal principle of international law and any digression

from it, especially through a unilateral measure, is very difficult to support. In the past, countries have explicitly allowed a foreign government to conduct hot pursuit of rebels in their territory. Without such a permission, there is a high likelihood that the crossing of jurisdictional boundaries will be seen as an act of aggression, as was the case between Pakistan and India in 2019.

Moreover, since there is no international law backing the doctrine, the states who have managed to get away with it in the past, have had strong political and international support for their actions. Short of international support, such a breach of another country's sovereignty will not be a wise decision.