The Doctrine of Hot Pursuit in Tanzania

By

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"Pirates often operate along territorial borders because they know there is no right of pursuit across territorial waters."

Captain Pottengal Mukundan.[3]

Abstract

By recalling that under the law of the sea, if a vessel enters into the territorial sea of a third country while conducting hot pursuit, that hot pursuit must be broken off unless the consent of the coastal state is received, thereby formation of agreement which allows an extended legitimate hot pursuit becomes important. This article, of course by invoking doctrinal approach, intends to capitalise this crucial point in the war against illegal, unregulated, and unreported fishing, which takes most of our resources in the Indian Ocean (IO). Although it has been overemphasized by other writers that these private arrangements are of importance, the country is yet to have one with other littoral states surrounding IO. In the course of stating practical significances, it has been recommended for the country to conclude multilateral or bilateral treaties with the neighboring countries in as far as prevention of illegal, unreported, and unregulated fishing through the undertaking of hot pursuit in the IO is concerned.

Key words: Hot Pursuit, Maritime Zone, Pursuit Sparking Offences

1.0 Introduction

At the beginning of brainstorming of what to write, is when we remembered the old told story to the effect that, parents in a certain village bought clothes for their own two children. The two children, one of nine and the other of twenty years old, never had suitable clothes before. Forgetfulness or otherwise of the parents made them buy the same sized pairs of the clothes. All clothes befitted the elder brother. Lack of knowledge on the part of the parents as to the possibility of shaping clothes to the size of their nine years boy child, necessitated him to continue wearing oversized clothes. In forcing it fit with him, the nine years old boy child started using ropes instead of belt because it was all that his parents could afford. At the end and because of the regular usage of ropes in tightening his clothes the younger child began to develop skin problems around his waist and legs. His parents, however, refused to take him for medical attention on the belief that the usage of ropes has never been the reason for the skin problem. Due to the prolonged delay and reluctance of the parents in seeking appropriate medical solution, the skin problem penetrated into the other parts of the body. Eventually, lack of knowledge and reluctance of the parents affected wellbeing of the family, at least, and that of the little boy, at most. From that end, this article explores the doctrine of hot pursuit by first of all describing various items, such as hot pursuit, internal waters and territorial sea, as known in the law of the sea, what amounts to valid hot pursuit, agreement on the extended hot pursuit, the validity of such agreements, and their feasibility.

2.0 Hot Pursuit and Related Concepts

The right of hot pursuit is generally conceptualised in the law of the sea. This makes it necessary for the Article to extensively describe it by firstly stating the meaning of each maritime zone. From the internal waters to the high seas the descriptions are:

2.1 Internal Waters

It is an uncontested fact that this area covers all waters on the landward side of the baseline. Internal waters are considered part of the state's territory, and in that sense not a maritime zone. The coastal state exercises full sovereignty in internal waters, sovereignty which is applied over seabed, water column and air space, and postulates that foreign vessels and states are deprived of all of the high seas freedoms. There is no point where jurisdiction over the internal waters has been uncertain. The waters in this area differ from territorial sea primarily in that they are part of the territory, and they are fully within the unrestricted jurisdiction of the coastal state. The coastal state in this regard has jurisdiction to try a person who has committed wrong whilst laboring at the, bays, [4]roadsteads, creeks, river mouths, estuaries, ports or harbor of that state.[5] Legal back up of this assertion is to be found in the old case of ***Wildenhus***[6], where the United

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3 International Maritime Bureau (IMB) Director, Available at https://www.crosswalk.com (Accessed on 23th October, 2019) at 12:46am.

4 O'Connell, D.P., 1983 The International Law of the Sea, Clarendon Press, London, p. 385.

5 Kasoulides, G.C., 1993 Port State Control and Jurisdiction Evolution of the Port State Regime. Martinus Nijhoff Publishers, Leiden, p. 2.

6 120 US 1 (1887).

States of America Supreme Court held that the American Courts had jurisdiction to try a Belgian crew member who murdered another Belgian national in a Belgian vessel when the ship was docked in the United States America port in New Jersey in New York.

2.2 Territorial Sea

It is essential with bias to Tanzania to describe the concept of territorial sea in as far as this writing is concerned. By recalling one of the essentials of the right of hot pursuit that it must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted, it becomes prudent to let the meaning of territorial sea be understood. In a simple meaning, territorial sea is an extended sovereignty of the coastal states over the sea to the limit of twelve nautical miles. However, history dictates that before 1982 the area of the territorial sea was measured by the range of a cannon shot. The cannon shot rule accounted approximately for only three nautical miles. This rule was however not universal. Some countries such as France, United Kingdom and the United States of America adhered to it while others did not. All, Scandinavian countries for example, considered the area which gave rise to four nautical miles to be a territorial sea of the coastal states Portugal, Spain, Uruguay, Italy and Russia on the other hand claimed from six to twelve nautical miles. This brought disagreement at the Hague Conference of 1930.[7] The disagreement on distance of territorial sea was more eminent at the Geneva Law of the Sea Conference of 1958,[8]where Chile, Costa Rica, El Salvador and Peru wanted a two hundred (200) nautical mile territorial waters.[9]

Because of this non-universality of the distance of territorial waters from the base line, the President of Tanganyika, after independence, issued proclamation in 1963[10] which stipulated a territorial sea of 12 nautical miles. This was followed by another Proclamation by the President after the union of the United Republic of Tanzania in 1967[11] which maintained territorial sea distance of 12 nautical miles from base line. No wonder Tanzania chose to claim a territorial sea of 12 nautical miles for the reason of being a true disciple of socialism championed by the then Russian government which, as it has been stated, refused to align with France, United Kingdom, as well as the United States of America in establishing the area of exercising its sovereignty over the sea by invoking the cannon shot rule.

Another Proclamation was made in 1973[12] which established territorial sea of fifty nautical miles. This happened when the country stated detaching itself from the influence of the then Russian government. These three varying decisions prove the take of this article regarding the claim of 12 nautical miles as the country's territorial sea.

7 The Conference of Codification of International Law, 1930, The Hague.

8 The Convention on Territorial Sea and Contiguous Zone enacted on 29th April 1958 and entered into force on 10th September 1964.

9 Bendera, I.M., Admiralty and Maritime Law in Tanzania, Law Africa Publishing (K) Ltd, Dar es Salaam, 2017.

10 G.N. No. 353 of 1963, the Proclamation was made on 10th July 1963.

11 G.N. No. 137 of 1967, the Proclamation was made on 24th August 1967.

12 G.N. No. 209 of 1973, the Proclamation was made on 10th July 1973.

In terms of square kilometers the country has 64,000of its territorial sea.

2.3 Contiguous Zone

The idea of contiguous zone as an area bordering upon territorial sea has been claimed by Great Britain way back in 1736.[13]Other countries like United States of America, France and others followed suit. French writer A. Gidel is attributed to have written about it in the 1930s and the same appeared in the Convention on the Territorial Seas, 1958 under Article 24. Thus Contiguous zones were clearly differentiated from territorial seas. Territorial sea is automatically attached to the land territory of a state which has full sovereignty over it. Contiguous zone is referred to as part of the high seas and a coastal state can only exercise particular rights. Contiguous zones, however, were limited to a maximum of 12 nautical miles from the baseline from which the territorial sea is measured.[14] As of now, contiguous zone is limited to 24nm.

Article 3, under section 4 to the schedule of the Territorial Sea and Exclusive Economic Zone,[15] that embeds the Law of the Sea Convention of 1982, regarding the purpose served by contiguous zone, has it that the coastal state may exercise the control necessary to, (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea, and (b) punish infringement of the foregoing designed laws and regulations committed within its territory or territorial sea.[16] To simply put, all coastal and archipelagic states are sanctioned to the exercise of power in relation to the prevention and protection of the laws to the extent limited by the widely acceptable 1982 Convention.

The Coastal state retains the power of preventing and punishing jurisdiction in relation to an outbound foreign vessel that has breached (in that coastal state's national waters), or is suspected to be intending to breach (inbound into those national waters), a relevant coastal state fiscal, immigration, sanitary or custom laws. Beyond 24 nautical miles, however, these powers cease (unless valid hot pursuit has commenced).[17]Ideally, protection of own interests invites the use of various techniques. The techniques vary from the technological background of the coastal states. Patrolling in developing countries is not that effective compared to the patrolling executed by the developed states. Indian Ocean particularly to the waters claimed by Tanzania mainland, immigration is not that critical compared to the immigration from the Mediterranean to the Atlantic Oceanic states.[18] For the purposes of securing or conserving fishing stocks in a particular area, or to enable a state to have exclusive rights to the resources of the proclaimed area, arrest of the foreign vessels that operate illegally can be one of the mechanisms.

Arrest of the ship is defined by the International Convention Relating to the Arrest of Sea-Going Ships of 1952,[19] and

13 Andreyev, E.P, *et al.,* 1988 The International Law of the Sea, Moscow, Progress Publishers, p. 41.

14 Bendera, I.M.,Admiralty and Maritime Law in Tanzania, Law Africa Publishing (K) Ltd, Dar es Salaam, 2017, p. 60-1.

15 Cap 238 R.E 2002.

16 Dec. 10, 1982, 1822 U.N.T.S. 397.

17 McLaughlin, R., *Authorizations for Maritime Law Enforcement Operations*, International Review of the Red Cross, 2016,Vol.98, Issue No.2, pp.465-490,p.478.

18 Giovanna De Maio., Italy and Immigration: Europe's Achilles ' heel, *The Brookings*, Monday, January 14, 2019, Available at https://www.brookings.edu [Accessed on 17/06/2019], at 8:42am.

19 Brussels, 10th May 1952.

that of the International Convention on the Arrest of Ships, 1999[20]as the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment. Under Article 1, damage caused by a ship either in collision or otherwise, loss of life or personal injury caused by any ship or occurring in connection with the operation of the ship, and construction, repair, or equipment of any ship or dock charges and dues, are the circumstances that confer the coastal state with the power of arresting the ship in exercise of the power in contiguous zone.

Additionally, the contiguous zone can also be used to control traffic in archeological and historical objects found at sea, in terms of Article 303(2) of the 1982 Convention.[21]Sanitarily, coastal states are capacitated to enforce laws that control the deposit of wastes there.[22]

2.4 Exclusive Economic Zone

In absence of the international convention covering this area, the European Fisheries Convention, 1964 provided exclusive fisheries rights to coastal States on a six mile zone, in addition to the three mile territorial sea. In 1973 Iceland claimed 50 nautical miles exclusive fishing zone producing prolonged exchange with the United Kingdom and Germany resulting in the Fisheries Jurisdiction cases[23] and at the same pace Tanzania did claim it to the extent of 50 nautical miles in 1973.[24]After 1982 this area has been referred to as an exclusive economic zone within which the coastal or archipelagic states may exercise various activities other than fishing. Principally the exclusive economic zone as it stands by now reaches to 200 in term of total coverage in nautical miles form. For the purposes of being precise, a Square kilometers of the exclusive economic zone in Tanzania is 223,000.

2.5 Archipelagic Waters

Archipelago is a group of islands forming a single political unit. For an area to be considered archipelago the same must be "mid ocean". What probably makes the Convention on the Law of the Sea referred to as the constitution of the international legal orders of the sea is its coverage of almost everything oceanic. Archipelagic waters did not remain unguided as it was before the year 1982.[25] Archipelagic areas are regulated comprehensively under Part IV of the Convention. Article 111 on hot pursuit mentions archipelagic areas as the areas in which pursuit of IUU may start, and or legally required to be terminated. Tanzania mainland is not an archipelagic state but Zanzibar is.[26]

2.6 Continental Shelf

This is a seaward projecting land.[27]The modern concept of the continental shelf in international law of the sea can be traced to the 1945 Proclamation by President Harry Truman of the United States of America. In this Proclamation, President Truman declared that, having concern for the urgency

20 Geneva, 12th March 1999.
21 Verma, S.K., 1998 An Introduction to Public International Law, Prentice-Hall of India Private Limited, New Delhi.
22 Article 33(a) of the Schedule to the Territorial Sea and Exclusive Economic Zone Act.
23 ICJ Reports, 1974.
24 G.N. No. 209 of 7th September 1973.
25 Verma, S.K., 1998 An Introduction to Public International Law, Prentice-Hall of India Private Limited, New Delhi.
26 Because Zanzibar is made up by two Islands: Unguja and Pemba.
27 Carrera, G., *A Method for the Delimitation of an Equidistant Boundary between Coastal States on the Surface of a Geodetic Ellip-soid*, International Hydrographic Review, 1987, LXIV (1): pp. 147-159.

of conserving and prudently utilizing its natural resources, the Government of the United States of America regards natural resources of the sea bed and subsoil of the continental shelf beneath the high seas but contiguous to the Coast of the United States of America as appertaining to it, subject to its jurisdiction and control.[28] In a subsequent Proclamation issued in respect to coastal fisheries he stated that, in view of the pressing need for conservation and protection of fishery resources, the Government of the United States of America regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States of America wherein fishing activities have been or in the future may be developed and maintained on substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States of America regarded it as proper to establish explicitly bounded conservation zones in which fishing activities would be subject to the regulation and control of it. From reading the above Proclamations it is clear that these claims were, as well, motivated by the post WWII social and economic needs. It was in the quest to address economic challenges in the post war period which prompted states to embark on claiming to expand their sovereign rights over the sea resources.

Consequently, after the Truman Declaration, other states made declarations reaffirming their sovereign claims to vast areas of water and seabed on the basis of sovereignty and economic needs.[29] For example in June 1947, Chile became the first country to claim 200 nautical miles (nm) when it proclaimed national sovereignty over the continental shelf off its coasts and island and over the seas above the shelf to a distance of 200nm. Subsequently Peru proclaimed its sovereignty on its 200nm in August of the same year. Examining the reasons that underpinned these declarations by both countries it is evident that both were motivated by the desire to promote their commercial interests in the adjacent seas. For example Chile wanted to protect its new offshore whaling operations, while Peru was keen to protect fishing in its shore from neighbors as well as from other states that could undertake fishing from afar.[30]

The 1958 Convention on the Continental Shelf was the first international instrument codifying the continental shelf claims by states. This Convention was significant in different aspects but chiefly, it recognised the fact that coastal states had legitimate claims on their continental shelf.[31]It took step to clarify what constituted continental shelf. The later aspect was important because due to technological advancement, states were making unilateral claims that solely advanced their economic interests without due regard to the interests of other states especially landlocked countries.[32]

Article 1 of the Convention provided that the term continental shelf refers to the sea bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters

28 Majinge, C.R., *The Submission for Extension of the Continental Shelf by the United Republic of Tanzania to the United Nations and the Reaction of Zanzibar*, Zanzibar Yearbook of Law, 2011, Vol. 1, p.370.
29 Verma, S.K., 1998 An Introduction to Public International Law, Prentice-Hall of India Private Limited, New Delhi, p.311.
30 *Ibid.*
31 Crawford, J & Rothwell, D.R. (Eds) (1995)*The Law of the Sea in the Asian Pacific Region: Development and Prospects*. Leiden: Martinus Nijhoff Publishers, p. 14.
32 Libya/Malta Case [1985] ICJ Rep 1985, para 39.

or, beyond that limit, to where the depth of the superjacent waters admit of the exploitation of the natural resources of the said area.[33]This position is reaffirmed by the International Court of Justice in its decision on the ***North Sea Continental Shelf Cases***.[34] In these cases the court noted that, the rights of the coastal state, in respect of the area of continental shelf which constitutes a natural prolongation of its land territory into and under the sea, exist *ipso facto* and *ab initio* by virtue of its sovereignty over the land and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. To date the same 200nm has been maintained by the Convention on the Law of the Sea.[35]

2.7 High Seas

According to section 17 of the Written (Amendments) (Act No.2) of 2010 which amended and substituted section 6 of the Penal Code, high seas means the open seas of the world outside the jurisdiction of any state.[36]The closed sea concept proclaimed by Spain and Portugal in the 15th and 16th centuries, and supported by the Papal Bulls of 1493 and 1506 dividing the seas of the World between two of the by then super powers was replaced by the notion of open seas, a concomitant to the freedom of the high seas during the 18th century. The high sea was further articulated as the area which the state was eligible to put it under its jurisdiction.[37] High Seas Convention of 1958 ruled that, the open seas rule is that no state may acquire sovereignty over parts of the high seas.[38] However the question remained as to where the high seas began. The Cobweb in regard to where is the starting point of the high seas came to be clarified further in 1982 under the so called UNCLOS III. High seas started, officially, to be known as the areas immediately after Exclusive Economic Zone which consumes 200 nautical miles from the baseline.[39] This question attracted occasional answers to the same extent as it was with other maritime zone. Marking of these areas as *res communis* was deliberate. The policy projected was designed to foster transportation and communication free of restrictions by the State for the purposes of restricting commercial gain to it, and to promote equality of access to fisheries free of comparable claims to monopoly.[40] However this zone was and is currently not without restrictions. Restrictions have been placed in order to have the resources exploited sustainably. In the case of ***Behring Sea Fur Seals***, the tribunal curtained the unrestricted freedom and provided for solutions to the existing problems of conservation, for the freedom of fishing was not absolute but had to be regulated to take reasonable account of the interests of other states. ***Icelandic Fisheries Case***,[41] in this the ICJ upheld the right of fishing on the high seas but emphasised on the obligation of reasonable use in connection with conservation and preferential rights of the coastal states.

33 The Convention on the Continental Shelf, 1958.
34 The case between Germany and Denmark and Germany and Netherlands.
35 See Article 76 of the Convention.
36 Act No.11 of 2010.
37 Akyoo, F.L., *The Concept of High Seas and the Legal Principles Governing Jurisdiction Over Ships Exercising the Freedom of the High Seas*, Tuma Law Review, 2012, Vol. 1, No. 1, p. 209.

38 Churchill, R.R, and Lowe, A.V., 1999 *The Law of the Sea*, 3rd Ed, Manchester University Press, Manchester, p. 204.
39 See, Article 86, to The United Nations Convention on the Law of the Sea, 1982.
40 MacDougal, M.S., The Hydrogen Bomb Tests and the International Law of the Sea, *Faculty Scholarship Series Paper*, 1955, Series Paper No.2467retrieved from, http://digitalcommons.law
41 ICJ Rep, 1974.

2.8 Hot Pursuit

This is defined as the right of the coastal State to continue, outside the territorial sea, the contiguous zone, or certain adjacent areas, the pursuit of a foreign vessel which while within the internal waters, the archipelagic waters, the territorial sea, the contiguous zone, the exclusive economic zone, or the continental shelf of the pursuing State has violated the laws and regulations of this State,[42] provided, however, that the pursuit should have commenced immediately after the offense and should not have been interrupted.[43] This implies that the right of hot pursuit is an extension of the criminal jurisdiction of the pursuing state.[44] As such, its exercise is recognized as an exception to the freedom of the high seas though it ends the moment that vessel enters into the territorial sea of another State. Out of Article 111 of the Convention on the Law of the Sea, almost all maritime zones have been mentioned.

3.0 Adoption of the Doctrine

When resorted to come out with what is a constitutional treaty of the international legal order of the oceans,[45] how illegal, unregulated, and uncontrolled fishing ought to be prevented by the coastal states was considered. There is high possibility that this might have touched the interest of all coastal states considering how potential marine resources are to the economy. It was also in the knowledge of all coastal states that enforcement of marine laws involves prevention of the culprits from harnessing such resources. To undertake prevention pursuant to the requirements of the law, the deliberating states decided to reproduce the right of hot pursuit from article 23 of the Convention on the High Seas of 1958.[46] For, therefore, the hot pursuit to be legitimate the requirements of article 111 of the United Nations Convention on the Law of the Sea[47] must unexceptionally be fulfilled by the pursuing state.

4.0 Legitimacy of Pursuit

The right only exists for violations that have occurred within one of the coastal state's maritime zones. For the pursuit to be legitimate it is the requirement of Article 111 of the United Nations Convention on the Law of the Sea that: 1) The competent authorities of the coastal State must have good reason to believe that a foreign ship has violated the laws and regulations of that State. 2) The pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State. 3) The pursuit can only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. 4) The pursuit can only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship. 5) The pursuit can only be exercised by warships or military aircraft,

42 See Article 111(1) and (2) of the United Nations on the Law of the Sea of 1982.
43 Espenilla, J.J.F., *Expanding the Right of Hot Pursuit: Challenges for Cooperative Maritime Law Enforcement between the Philippines and Indonesia*, International Journal of Maritime Affairs and Fisheries, 2017, Vol.9, Issue No.1, pp.01-018, pp.5-6.
44 *Ibid*.
45 Bendera, I.M., 2017 Admiralty and Maritime Law in Tanzania, Law Africa Publishing (K) Ltd, Dar es Salaam, p.45.

46 Done at Geneva on 29 April 1958. Entered into force on 30 September 1962. United Nations, Treaty Series, Vol. 450, p. 11, p. 82.
47 General Assembly, Draft Final Act of the Third United Nations Conference on the Law of the Sea (October 21, 1982), A/CONF.62/121, Reprinted in 21 I.L.M. 1245 (1982).

or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect. 6) The pursuit initially commenced by an aircraft can be transferred to pursuit by a ship providing that the foreign ship was ordered to stop and the pursuit has been carried out without interruption. The International Tribunal for the Law of the Sea (ITLOS) ruled in M/V *Saiga Case*[48]that the above conditions are intended to be cumulative – each must be satisfied for the pursuit to be legitimate under the Convention of the Law of the Sea.

5.0 Pursuit -Sparking Offences

The types of offenses giving rise to the right of hot pursuit depend on the competence of the coastal state to enact laws and regulations in relation to various maritime zones.[49]Offences that may prompt foreign vessels to be boarded and inspected under the ambit of hot pursuit are drawn more specifically from the domestic legislation governing the domination of the coastal states over the sea. Principally, therefore, in Tanzania, such offences are found under the Territorial Sea and Exclusive Economic Zone Act, and the Penal Code. As amended by the Written Laws (Miscellaneous Amendments) (No.17) Act, 2009[50] under section 19, the Territorial Sea and Exclusive Economic Zone Act[51]establishes some acts commission of which confers the right of hot pursuit to the country provided that they have been committed while the foreign vessel was within the four corners of its maritime zones. For ease of reference, the

48 Case No.1 and 2.
49 Walker, R., *International Law of the Sea: Applying the Doctrine of Hot Pursuit in the 21st Century*, Auckland University Law Review, 2011, Vol.17, Issue No.1, pp.194-218, p.200.
50 Act No.17 of 2009.
51 Cap 283 R.E 2002.

provisions of section 17(1) (a)-(f) of the Act provides that any person who:

(a) *Assaults, resists, obstructs or intimidates an authorised officer or any person, assisting him in the execution of his duty;*
(b) *Uses indecent, abusive or insulting language to an authorised officer in the execution of his duty;*
(c) *Interferes with or hinders an authorised officer in the execution of his duty;*
(d) *By any gratuity, bribe, promise or other inducement, prevents an authorised officer from carrying out his duty;*
(e) *Without the authority of an authorised parts with any articles ceased;*
(f) *Contravenes any provision of the Act for which no penalty is provided or the regulations,*

commits an offence and is liable upon conviction to a fine not less than one hundred thousand US dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and, in addition the court may order the forfeiture of any vessel, structure, equipment, device or thing in connection with which the offence was committed.

These offences that may prompt the undertaking of the hot pursuit are, as general rule, triable by the High Court in terms of section 17(2) of the Territorial Sea and Exclusive Economic Zone Act.[52] In the direction of the Director of Public Prosecutions these offences may be tried by the subordinate courts. By annexing some parts of the United Nations Convention on

52 [Cap 283 R.E 2002].

the Law of the Sea to the Act, the country has directly given effect to its jurisdiction in the contiguous zone.

By recalling the fact that if the foreign ship is within a contiguous zone, as defined under Article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established,[53]the country may start pursuing the suspected foreign vessel as the means necessary to prevent and, punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea as it has been exemplified.

6.0 Agreement on Pursuit

Practical difficulties brought by the manner in which legitimacy of the hot pursuit becomes into being has prompted many states to deliberate and conclude bilateral treaties for the purposes of seriously preventing illegal fishing, and or violation of the laws of the coastal states. The distinct modality of pursuing ships which is usually set bilaterally or multilaterally is one of the ways through which coastal states apprehend foreign fishing vessels which operate illegally.

7.0 Concluded Agreements on Pursuit

Deviation from the provisions that principally guide legitimacy of the hot pursuit is demonstrated by three examples. Firstly, in 2005, a bilateral agreement was concluded between Australia and France which established a framework for cooperation in the surveillance of fishing vessels and in fisheries-related scientific research within the adjoining waters of

53 See Article 111(1) of the United Nations Convention of the Law of the Sea.

Australia's Heard Island and McDonald Island fishery and the French territories on the Kerguelen Plateau.[54]

The subsequent agreement which took effect in 2011 enhanced these arrangements by enabling enforcement personnel from each party to deploy on the other's vessel patrols and to undertake cooperative enforcement activities such as apprehension, boarding and hot pursuit.[55]Armed with these agreements, Australia and France can continue undertaking the hot pursuit through each other's territorial sea. However, this sub-sector is threatened by illegal, unreported and unregulated (IUU) fishing, which manifests in various forms. One of these is foreign industrial fishing ships trespassing in Benin's territorial waters.

According to local fishermen, IUU ships that operated in the coastal strip (5 nautical miles from the coast) reserved for artisanal fishing continue to operate unlawfully, but in more distant zones where the military patrol boats rarely go.[56] In reaction to the numerous pirate attacks on ships in their maritime areas, Benin and Nigeria signed an agreement on 28 September 2011 to jointly combat piracy. The initiative, dubbed 'Operation Prosperity', consisted of organising joint maritime patrols at their common border over six months.[57] Benin

54 *Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands,* done at Canberra 24 November 2003, entered into force 1 February 2005, [2005] ATS 6.
55 *Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands,* done at Paris 8 January 2007, entered into force 7 January 2011, [2011] ATS 1; Department of the Environment, *Submission* 15, pp 4-5.
56 ISS., *Benin's Maritime Security Challenges in the Gulf of Guinea*, West Africa Report, 2015, Issue No.12, p.3.
57 *Ibid*, p.4.

had operational command over the patrols while Nigeria exercised tactical command.[58]

8.0 Outcome of Illegitimate Pursuit

It has been stated more often that, under Article 111 of the United Nations Convention on the Law of the Sea, if the pursued vessel enters the territorial sea of another state, the hot pursuit is taken to be discontinued and the pursuing party loses the right to board the pursued vessel. If it, however, does the pursued vessel is entitled to compensation. Entitlement to compensation as relief depends on the boarding manner of the pursuing states. Proof of the use of unreasonable forces, in apprehending the suspected IUU vessels, maximizes opportunity of the owners of the pursued vessels of being compensated. Both Article 111(8) and 304 of the United Nations Convention on the Law of the Sea provide basis of the relief for the interception occurring beyond one's maritime zones. Under Article 111(8), where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained. The loss or damage sustained is not necessary physical. Loss of time may also be compensated if so proved. The possibility, on the other hand, of claiming compensation by evidencing violation of the provision(s) of the Convention on part of the pursuing state lies with Article 304.[59]

9.0 A Way Forward

Tanzania as an independent, sovereign, coastal state is found between latitudes 1'00' and 11'45' south of the Equator and longitudes 29'15' and 41'00 east of the Greenwich meridian. It is bordered by the Republics of Kenya and Uganda to the north, Rwanda and Burundi to the northwest, Democratic Republic of Congo to the west, Republic of Zambia to the southwest, Republic of Malawi and the Republic of Mozambique to the south. It also shares the waters of the Indian Ocean with the Republics of the Seychelles and Comoros to the east and southeast, respectively. Further, the coastline of the country extends approximately 1,400km in a north-south direction from the Tanzania-Kenya boarder to the Tanzania-Mozambique border to the south.[60]

By recalling that under the law of the sea, if a vessel enters into the territorial sea of a third country while conducting hot pursuit, that hot pursuit must be broken off unless the consent of the coastal state is received,[61] formation of agreement that allows extended legitimate hot pursuit is of utmost importance. Appealing to the fact that illegal fishing multiplies in expense of Tanzanians, [62] this Article urges for the country to be aggressive in concluding bilateral or multilateral agreements with its neighboring states as one of the mechanisms of inhibiting illegal, unreported, and unregulated fishing by way of continuing pursuing IUU Vessels even if arrived at another state's territorial waters.

58 Gullett, W., *Legislative Implementation of the Law of the Sea Convention in Australia*, The University of Tasmania Law Review, 2013, Vol. 32, No 2, p.8-9.

59 General Assembly, Draft Final Act of the Third United Nations Conference on the Law of the Sea (October 21, 1982), A/CONF.62/121, Reprinted in 21 I.L.M. 1245 (1982).

60 URT-DOC-001-18-01-2012.

61 Commonwealth of Australia, Official Committee Hansard, Joint Committee on Treaties, Treaties Tabled in May and June 2003, Monday, 26 July 2004, p.9.

62 Hotuba ya Msemaji Mkuu wa Kambi Rasmi ya Upinzani Bungeni kwa Wizara ya Mifugo na Uvuvi, Mheshimiwa DR. Sware I. Semesi (MB), Kuhusu Utekelezaji wa Bajeti ya Ofisi hiyo Kwa Mwaka wa Fedha 2018/19 na Mpango wa Bajeti kwa Mwaka wa Fedha 2019/20, Yanatolewa chini ya Kanuni ya 99(9) ya Kanuni za Bunge, Toleo la Januari, 2016, p.17,

In substantiating this recommendation, legality of the agreements of this nature that the country is urged to take and feasibility of these agreements must be described as herein below:

9.1 Legality of the Agreements

The act of concluding agreements which aim at diverging from being bound by the requirements, especially that which illegalizes the IUU vessels to be pursued soon after entering the territorial sea of its own State or in that of the third party, for legitimate hot pursuit as provided for under Article 111 of the United Nations Convention on the Law of the Sea is legally acceptable. The legality of these agreements, of course with reference to Tanzania and Mozambique and Seychelles, is drawn from the United Nations Convention on the Law of the Sea, the Constitutive Act of the African Union,[63] and the Treaty of the Southern African Development Community.[64] Being members of the African Union and the Treaty of the Southern African Development Community, Tanzania, Mozambique, Seychelles, and Kenya agreed, to be cooperating in various areas for the best interests of their people.[65] So, one of the areas that Tanzania can potentially deploy the wordings of the Act, and the treaty for the interest of its people, is by entering into bilateral agreement with Mozambique, or Kenya, or Seychelles, in order to curb the problem of illegal fishing which the country experiences. Or alternatively persuade these three countries for the sake of architecting a comprehensive multilateral treaty of a similar focus. Something special with what the country can legally craft a bilateral treaty with Kenya is that both belong to the East African Community (EAC). The Treaty for its establishment[66] encourages cooperation among its members.[67]

Therefore the country is able to execute the required legally. Previous agreements between Tanzania and these countries in relation to the law of the sea are: Agreement between the United Republic of Tanzania and the Republic of Kenya on the delimitation of the maritime boundary of the exclusive economic zone and the continental shelf, 23 June 2009,[68] Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Seychelles on the Delimitation of the Maritime Boundary of the Exclusive Economic Zone and Continental Shelf of 23rd January, 2002(1),[69] and Agreement between the Government of the United Republic of Tanzania and the Government of the People's Republic of Mozambique regarding the Tanzania/Mozambique Boundary of 28 December, 1988.[70] Furthermore, nothing prevents the coastal state to authorise the pursuing state from continuing its hot pursuit. Such authorisation can be given on an *ad hoc* basis, but also more permanently as part of a bilateral or multilateral agreement.[71]

63 Adopted by the Thirty-Sixth Ordinary Session of the Assembly of the Heads of State and Government, 11 July, 2000, Lome-TOGO.

64 Signed by the Heads of State or Government of the Majority Ruled Southern African States on 17 August, 1992, Windhoek, Republic of Namibia.

65 See Article 3 (a) and (k) of the Constitutive Act of the Union, and Article 24 of the Treaty of the Southern African Development Community.

66 (As amended on 14th December, 2006and 20th August, 2007).

67 See Act 5(1) of the Treaty.

68 The Agreement between Tanzania and Kenya registered with the Secretariat of the United Nations on 30 July 2009. Registration number: I-46308. Entry into force: 23 June 2009, Accessed from https://www.un.org.depts.los on 10th October, 2019 at 2:42pm.

69 Accessed from https://www.un.org.depts.los on 10th October, 2019 at 2:43pm.

70 Accessed from https://www.un.org.depts.los on 10th October, 2019 at 2:44pm.

71 Molenaar, E.J., *Multilateral Hot Pursuit and Illegal Fishing in the Southern Ocean: The Pursuits of the Viarsa 1 and the South Tomi*, The International Journal of Marine and Coastal Law, 2004, Vol.19, Issue No.1, pp.19-43, p.29, as quoted

9.2 Feasibility of the Agreements

It is a fact that the World's fisheries are under pressure from overfishing with the growing demand for fishery products and the global overcapacity in the fishing industry, the increasing incidence of illegal fishing has become a matter of great concern to all countries that wish to fish responsibly and sustainably.[72]The Australian Financial Markets Association (AFMA) indicated that since these agreements entered into force, AFMA and Australia Customs and Border Protection Service (ACBPS) officers had been routinely deployed on French patrols, which took place on average four times per year. This had enabled cooperative enforcement to be undertaken including the apprehension of an IUU vessel from the Republic of Korea fishing in France's EEZ in 2013.[73] The same is expected to prove useful to the country.

10.0 Conclusion

It is the effects of sincerity to the provisions governing the undertaking of the hot pursuit that prompted the writing of this article. Its implication to the interest of improving the sustainability of marine resources is really what mattered. Agreements that have already been entered for the purposes of obviating the enshrined requirements of undertaking the hot pursuit have proved feasible. As littoral state, it has been recommended for Tanzania to conclude multilateral or bilateral treaties with the neighboring countries in as far as prevention of illegal, unreported, and unregulated fishing through the undertaking of hot pursuit in the Indian Ocean is concerned.

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from Allen, C.H., *Doctrine of Hot Pursuit: A Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technologies and Practices*, Ocean Development and International Law, 1989, Vol.20, Issue No.1, pp. 309–341, at p. 320.

72 Accessed from https://www.aph.gov.au on 16 November, 2019 at 21:30pm.

73 Accessed from https://www.aph.gov.au on 16 November, 2019 at 16:00pm.