

ILIYES BOUZIDI¹

“Good Reasons to Believe” as a Justification for Hot Pursuit Against Vessels in the Law of the Sea²

Submitted: 23.06.2025. Accepted: 11.07.2025

Abstract

International law of the sea recognises the principle of hot pursuit, which applies when the authorities of a coastal state have good reasons to believe that a foreign vessel has violated that state’s laws and regulations. It is clear that hot pursuit constitutes an exception to the fundamental principle of freedom of navigation on the high seas and must therefore be exercised with great caution.

Certain procedures must be followed in accordance with international legal standards to ensure a lawful maritime hot pursuit. The numerous technological advances that have occurred since the entry into force of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) have changed the practice of the law of the sea so dramatically that formulating specific conditions for its application presents a major challenge for coastal states.

Keywords: hot pursuit, coastal state, territorial sea, vessel, illegal fishing.

¹ Prof. Ilies Bouzidi – University Centre of Maghnia (Algeria), e-mail: i.bouzidi@cu-maghnia.dz; ORCID: 0009-0008-2869-0978.

² The research in this article has not been supported financially by any institution.

ILIYES BOUZIDI

„Uzasadnione powody do przypuszczeń” jako uzasadnienie prawa do pościgu w prawie morza³

Streszczenie

W międzynarodowym prawie morza uznaje się zasadę prawa do pościgu, która ma zastosowanie, gdy władze państwa nadbrzeżnego mają uzasadnione powody, by sądzić, że obcy statek naruszył prawa i przepisy tego państwa. Jest to oczywiste, że pościg stanowi wyjątek od fundamentalnej zasady wolności żeglugi na pełnym morzu, a zatem rozwiązanie to musi być stosowane z najwyższą ostrożnością.

Określone procedury muszą być stosowane zgodnie z międzynarodowymi standardami, aby pościg morski mógł zostać uznany za zgodny z prawem. Liczne postępy technologiczne, które nastąpiły od czasu wejścia w życie Konwencji Narodów Zjednoczonych o prawie morza z 1982 r. (UNCLOS), zmieniły praktykę prawa morza w tak znaczący sposób, że sformułowanie precyzyjnych warunków jego stosowania stanowi poważne wyzwanie dla państw nadbrzeżnych.

Słowa kluczowe: pościg, państwo nadbrzeżne, morze terytorialne, statek, nielegalne połowy.

³ Badania opisane w tym artykule nie były wspierane finansowo przez żadną instytucję.

Introduction

The territory of a state includes, in addition to its land and airspace, the maritime areas over which its sovereignty extends and within which it alone exercises full rights, either exclusively or jointly with other states.⁴

Moreover, the maritime domain serves as the interface through which a state opens itself to the outside world. Historically – and still today – this interface has been a source of concern and security risks originating from abroad.⁵

Given that the sea constitutes the centre of multiple interactions, the rules governing it are based partly on private law, represented by maritime law – that is, the set of legal rules regulating private relationships arising from the operation of ships engaged in maritime navigation – and partly on public international law, represented by the international law of the sea, which governs international maritime relations in both peace and wartime. The latter covers matters such as the freedom of navigation, the territorial sea, the continental shelf, the high seas, and other maritime zones, as well as the organisation of maritime transport and the regulation of maritime resources and incidents.⁶

The normative framework that constitutes the law of the sea is a complex mosaic, resulting from numerous contributions from diverse legal sources. However, a particularly prominent place is played by the United Nations Convention on the Law of the Sea, signed at Montego Bay, Jamaica, on 10 April 1982 and entering into force on 16 November 1994, which sought to provide a comprehensive legal order for the seas and oceans.

Some legal scholars and commentators⁷ hold that beyond the military activities that can take place at sea, the marine environment constitutes an essential setting for two principal activities – navigation and fishing.

Consequently, as states endeavour to secure their maritime domains against all forms of attack and security threat, in order to affirm the sovereignty of coastal

⁴ B. Khaled, *The legal system of state sovereignty over its maritime territory* (Master's thesis). Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, Algeria 2014, p. 1.

⁵ B.S. Ali, *Mechanisms for settling international maritime disputes in accordance with the Convention on the Law of the Sea*, "Algerian Journal of Maritime and Transport Law" 2018, 5(1), p. 115.

⁶ F.T. Jassim, *Principles of maritime law* (1st ed.). Amjad Publishing and Distribution House, Amman, Jordan, 2017, p. 9.

⁷ L. Lucchini, *Sea Dalloz de droit international*, No. 10, Dalloz, Paris 1998.

states over the various maritime zones within their jurisdiction – and in light of the international community's growing awareness of maritime criminal activities – these factors have provided an effective impetus for developing a range of measures aimed primarily at maintaining maritime security.

Among these measures is the right of hot pursuit, which has played – and continues to play – a significant role in promoting international efforts to combat maritime crime and in upholding the right of coastal states to enforce their laws within their maritime domains.⁸

The right of hot pursuit enables a coastal state to pursue a foreign ship from its own waters onto the high seas, provided that the ship has violated its laws and regulations, under the conditions laid down in the 1982 United Convention on the Law of the Sea.⁹

The right to pursue a vessel on the high seas is an exception to two fundamental principles of international law: freedom of navigation on the high seas and the rule that a vessel is subject to the exclusive jurisdiction of the state whose flag it flies. Consequently, the scope of the right has expanded only modestly since its initial formulation, at a time when the principles of freedom of navigation and flag-state exclusivity were paramount.

Since then, however, the marine environment regulated by the Law of the Sea has undergone profound transformations, stemming from the emergence of numerous new issues and challenges to be confronted by the international community. For example, it is now widely acknowledged that illegal, unreported, and unregulated (IUU) fishing is depleting the world's fish stocks – once considered inexhaustible – and that coastal states face an increasingly difficult struggle to protect their marine resources effectively.¹⁰

Moreover, the rapid technological advances that have taken place since the entry into force of the 1982 Convention have so significantly altered the practical realities of maritime law that applying the right of hot pursuit has become a major challenge for coastal states.

The central question, therefore, is whether the existing legal controls governing the right of hot pursuit are capable of adapting to new technologies and the evolving realities of the law of the sea.

Following the adoption of the 1982 United Nations Convention on the Law of the Sea, which defined the maritime zones of coastal states – including the territorial

⁸ M. Wasila, *The legal framework of the right of pursuit on the high seas and the reality of its application*, "Algerian Review of Maritime and Transport Law" 2015, 1(1), p. 9.

⁹ L. Lucchini, *op. cit.*, p. 167.

¹⁰ R. Walker, *International law of the sea: Applying the doctrine of hot pursuit in the 21st century*, "Auckland University Law Review" 2011, 17, p. 194.

sea, contiguous zone, exclusive economic zone, and continental shelf – Article 111 of the same Convention authorised the pursuit and arrest of any foreign vessel violating the sovereignty or laws of a coastal state.

Although the concept of hot pursuit is relatively straightforward, it is subject to a number of conditions specified by the 1982 Jamaica Convention, all of which must be satisfied concurrently. The absence of any one condition invalidates the right of pursuit.

Good Reasons to Believe that Coastal State Laws and Regulations Have Been Violated

If hot pursuit refers to the pursuit of foreign vessels by the naval or enforcement authorities of a coastal state that have violated that state’s laws or regulations – with the aim of stopping, detaining, and investigating them – then there must exist good reason to believe that those laws and regulations have indeed been violated. According to Article 111(1) of the 1982 United Nations Convention on the Law of the Sea (Jamaica Convention), “A foreign vessel may be pursued when the competent authorities of the coastal State have reasonable grounds to believe that the vessel has violated the laws and regulations of that State.”

Thus, the competent authority of a coastal state must have good reason to believe that a vessel has infringed its laws and regulations. A distinction must therefore be drawn here between mere suspicion that a vessel has committed an offence and certainty of its occurrence. The standard requires more than suspicion, though not full knowledge of the violation.¹¹

Consequently, good reason to believe must be based on solid, substantial and objective evidence, not on conjecture or speculation. For example, the flight of a vessel onto the high seas after an encounter with coastal authorities may itself constitute sufficient grounds (i.e. good reason) to believe that a violation has occurred, thereby justifying pursuit and enforcement action.¹²

The expression “good reason to believe” was elaborated upon by the International Law Commission (ILC) in 1956, which emphasised that a distinction must be drawn between a state’s certainty that a violation has occurred within its waters

¹¹ R. Walker, *op. cit.*, p. 202.

¹² W. Allam, *Legal aspects of the right to hot pursuit in the Emirati legal system*, “Police Thought” 2008, 27(2), pp. 232–233.

and mere suspicion of such an event. The Commission agreed that “good reasons” must rest upon a reasonable degree of certainty rather than doubt or assumption.¹³

Some scholars argue¹⁴ that deciding whether the grounds for pursuit are justified lies within the discretion of the coastal state, yet such discretion is not unlimited. The basis for pursuit must always be interpreted in a reasonable manner, taking into account the surrounding factual circumstances.

Despite the International Law Commission’s clarification provided in 1956, according to which “good reasons to believe” must rely on certainty rather than suspicion, practical difficulties persist.¹⁵ What constitutes such reasons in concrete terms? Does it require that the vessel be observed engaging in illegal fishing within the exclusive economic zone (EEZ), or would the presence of fish on deck suffice to infer a violation of coastal state laws?

Some claim¹⁶ that the Convention should have established clearer and more reliable criteria for initiating pursuit. Without such guidance, the provision could potentially allow coastal states to pursue foreign vessels arbitrarily, without adequate proof of a breach. Conversely, the absence of clarity might also serve as a loophole through which foreign vessels could evade enforcement.

It is also argued¹⁷ that Articles 23 and 111 of the 1958 Geneva Convention and the 1982 Jamaica Convention both employ the term “justified reasons” without further elaboration. This raises interpretive questions: does the phrase refer only to serious violations of national law, and if so, how might foreign vessels distinguish between minor and grave breaches?

In an effort to clarify the concept of “good reasons to believe,” some states have sought to conclude bilateral agreements providing more detailed definitions. A notable example is the agreement between the Government of the French Republic and the Government of Australia concerning cooperation in the implementation of legislation relating to fishing in the maritime zones adjacent to the French Southern and Antarctic Territories, as well as Heard Island and the McDonald Islands, signed in Paris on 8 January 2007 and entering into force on 7 January 2011¹⁸.

¹³ A.G. Bossena, A.G., *The presumption of good reasons as a motive for the coastal State to carry out the pursuit operation at sea*, “Journal of Human Sciences” 2019, 51, p. 418.

¹⁴ I.M. Al-Anani, *The Law of the Sea*, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 1985, p. 128.

¹⁵ A.G.S. Fakhoury, *The right of pursuit at sea, the clarity of international law and the difficulties of application*, “Sharia and Law Journal” 2012, 49, p. 309.

¹⁶ A. Saïda, *The distinctive legal system of the exclusive economic zone* (Master’s thesis). Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, Algeria 2016, p. 136.

¹⁷ H. Khattabi, *The right of pursuit on the high seas, a study in the light of the United Nations Convention on the Law of the Sea in 1982*, doctoral thesis in law, Hassan I University, Rabat, Morocco, 2010, pp. 138–139.

¹⁸ Decree No. 2011-481 of 2 May 2011 publishing the agreement between the government of the French Republic and the government of Australia relating to cooperation in the application of legislation relating to fishing in maritime zones adjacent to the French Southern and Antarctic lands, Heard Island

Under Article 4(2) of that agreement, the right of pursuit may be exercised when the authorities of a contracting state have good reason to believe that a fishing vessel or one of its boats has violated the relevant legislation in the maritime area where the vessel was observed. Such belief may be founded on two elements:

- ❑ Direct visual observation of the foreign fishing vessel or one of its boats by authorised enforcement vessels; or
- ❑ Evidence obtained by or on behalf of an authorised vessel through reasonably reliable technical means.

Technical means include radar, satellite, and aerial surveillance.¹⁹ The agreement in question thus explicitly recognises the role of modern technologies in substantiating “good reasons to believe.”

However, there are some commentators who note that these two elements²⁰ are illustrative rather than exhaustive, which means that other forms of evidence may also justify pursuit. It is equally important to see that the Franco-Australian agreement confines cooperation to the authorities of the contracting states and limits the right of pursuit to foreign fishing vessels only.

The agreement also provides a detailed framework for fisheries law enforcement operations, including boarding, inspection, pursuit, arrest, and investigation, carried out jointly by the parties against vessels suspected of violating applicable fishing legislation.²¹

Applying the Notion of “Good Reason to Believe” in International Practice

One of the most notable cases illustrating the interpretation of the “good reason to believe” standard is the *M/V SAIGA (No. 2)* case, brought before the International Tribunal for the Law of the Sea (ITLOS) under the procedure for immediate release.²²

and the McDonald Islands, signed in Paris on 8 January 2007 (this agreement entered into force on 7 January 2011).

¹⁹ R. Baird, *Arrests in a cold climate (Part 2) – Shaping hot pursuit through state practice*, “ASOLP Occasional Papers” 2009, p. 8.

²⁰ P.-A. Vaillancourt, *Hot pursuit: outdated means to ensure compliance with standards in the waters of a coastal state?* “Quebec Review of International Law” 2014, 27(1), pp. 146–147.

²¹ F. Coulée, H. Picot, *French practice of international law – 2009*, [in:] *French directory of international law* (Vol. 55), 2009, p. 786.

²² The *M/V «Saïga»(N°2)* (Saint Vincent and the Grenadines v. Guinea), Judgment (Ilots case no. 2), international tribunal for the law of the sea, July 1, 1999.

The facts of this case were as follows.²³ The supply vessel “SAIGA” was an oil tanker registered under the flag of Saint Vincent and the Grenadines and chartered at the time of the incident by a Swiss-based maritime company. The vessel was engaged in supplying fuel to fishing and other vessels off the coast of Guinea, West Africa.

Early in the morning of 27 October 1997, SAIGA crossed the maritime boundary between Guinea and Guinea-Bissau, entering Guinea’s exclusive economic zone (EEZ), approximately 32 nautical miles from the Guinean island of Alcatraz. Later that same day, between approximately 4:00 a.m. and 2:00 p.m., three fishing vessels received diesel fuel “throughout the area adjacent to Guinea”. These activities were detected by Guinean radar at about 4:00 a.m. the following morning, 28 October 1997, and SAIGA was subsequently intercepted and arrested by Guinean customs patrol officers after a chase which ended south of the maritime boundary of Guinea’s EEZ.

Guinea sought to justify the arrest – conducted outside its exclusive economic zone – on the grounds that the refuelling had taken place in an adjacent zone, in breach of its customs legislation, and that the arrest was therefore a lawful exercise of its right of hot pursuit.

During the operation, two crew members were injured, and the vessel was escorted to Conakry, where both the ship and its crew were detained. The injured seamen were later released, and the cargo was offloaded at the order of the local authorities. Importantly, no bond or financial security was demanded or provided by Saint Vincent and the Grenadines for the vessel’s release.

On 13 November 1997, instituted proceedings against Guinea under Article 292 of the United Nations Convention on the Law of the Sea (UNCLOS), seeking the immediate release of the vessel, its cargo, and its crew. On 4 December 1997, the Tribunal ordered the immediate release of the SAIGA and its crew upon the posting of a bond of USD 400,000, in addition to the return of the offloaded cargo. Some legal commentators²⁴ emphasised that the requirement of “good reasons to believe” was a key issue in the SAIGA case. The Tribunal found that the Guinean authorities acted only on mere suspicion, not on substantial evidence, and therefore failed to meet the required standard of reasonable belief that a violation had actually occurred. The Tribunal stated that a state invoking its right of pursuit must rely on objective information available at the time to determine whether “good reasons to believe” genuinely exist. It concluded that Guinea’s position was based on doubts rather than evidence, which could not justify the detention of SAIGA.

²³ Referenced to: Asian-African Legal Consultative Organization Secretariat, *Law of the sea* (pp. 23–24), Diplomatic Enclave, Chanakyapuri, New Delhi, India 2018.

²⁴ R. Walker, *op. cit.*, pp. 202–203.

Furthermore, the Tribunal held that all conditions laid down in Article 111 of UNCLOS must be satisfied for hot pursuit to be considered lawful. Several of these requirements were not met in this instance. Most importantly, the Tribunal found that SAIGA had not violated any Guinean laws or regulations, rendering the pursuit unlawful. Accordingly, the Tribunal recognised the right of Saint Vincent and the Grenadines to compensation for damage resulting from Guinea’s unlawful actions.²⁵

This case has led some scholars to argue²⁶ that the Convention should have provided clearer, more objective criteria for initiating pursuit. The lack of precision, they contend, risks allowing coastal states to pursue foreign vessels arbitrarily, without sufficient proof of a violation. Conversely, this same ambiguity could serve as a loophole for foreign ships to evade liability, as arguably occurred in the SAIGA incident.

A similar tension appears in the case of the ship *Viarca*,²⁷ which became one of the longest pursuits in history. On 7 August 2003, an Australian customs and fisheries patrol spotted the Uruguayan-flagged vessel *Viarca* in Australian territorial waters near Heard Island, suspected of engaging in illegal fishing for Patagonian toothfish. Despite orders to stop, the vessel fled, prompting a pursuit that lasted three weeks and covered nearly 2,000 nautical miles, ending southwest of Cape Town (South Africa) in the Atlantic Ocean.

Defence counsel later challenged the actions of the Australian authorities, arguing that they had not actually observed the vessel fishing within Australia’s jurisdiction and that the charges were based on inaccurate and speculative evidence. Ultimately, after nearly two years of legal proceedings, the crew members commanding the *Viarca* were acquitted, even though over 97 tonnes of toothfish were found on board.

In this regard, the case highlighted the evidentiary challenges inherent in applying the principle of hot pursuit. The weak factual basis for Australia’s claims demonstrated that a prosecution based on insufficient evidence could ultimately turn against the pursuing state, potentially giving rise to claims for compensation for loss or damage resulting from an unlawful pursuit, as contemplated by Article 111(8) of UNCLOS.

At a subsequent UN General Assembly meeting on fisheries sustainability, the Australian delegation noted that the pursuit of *Viarca* was the longest pursuit in recorded history, spanning two oceans and the waters surrounding Antarctica.

²⁵ H. Khattabi, *op. cit.*, p. 131.

²⁶ A. Saida, *op. cit.*, p. 136.

²⁷ L. Blakely, *The end of the Viarsa Saga and the legality of Australia’s vessel forfeiture penalty for illegal fishing in its Exclusive Economic Zone (Comment)*, “Pacific Rim Law & Policy Journal” 2008, 17(3), 677–678. Available from: <https://digitalcommons.law.uw.edu/wilj/vol17/iss3/5/>.

Nonetheless, Australia affirmed that the operation was intended to send a clear message that illegal, unreported, and unregulated fishing must be actively deterred and prosecuted²⁸.

Conclusions

The mechanism of hot pursuit has entered the twenty-first century largely unchanged from its original formulation. Yet the traditional concept of hot pursuit, as articulated in Article 111 of the United Nations Convention on the Law of the Sea (UNCLOS), was conceived in an era when the seas were governed by a largely laissez-faire regime and when most states maintained territorial seas of only three nautical miles, with fishing activity confined mainly to local waters.

It remains uncertain, however, whether Article 111 of UNCLOS is sufficiently robust to meet the requirements of contemporary maritime law enforcement. Questions arise, for example, as to whether said Article allows a coastal state to rely on satellite or other remote-sensing technologies to identify an offending vessel before it comes within visual range.

Similarly, it is unclear whether Article 111 authorises a coastal state to use radio or satellite communications to issue the required signal to stop to an offending vessel. These ambiguities illustrate the tension between the technological realities of modern enforcement and the textual limits of the Convention as drafted in 1982.

It is therefore proposed that Article 111 of the 1982 Convention should be interpreted in a broad and purposive manner, ensuring its continuing effectiveness and relevance in the modern era. Such an interpretation should not be viewed as an encroachment of coastal state jurisdiction at the expense of the freedom of the high seas, but rather as a necessary adaptation of international law to evolving state practice and technological development. At the same time, it will fall to the judges of the International Tribunal for the Law of the Sea (ITLOS) to demonstrate both foresight and flexibility when called upon to adjudicate such matters, thereby allowing the law to evolve pragmatically and ensuring that the right of hot pursuit can be exercised effectively in the twenty-first century.

²⁸ 24th plenary meeting, fifty-eighth session, General Assembly, United Nations, New York, 24 November 2003, p. 11.

References

- Al-Anani I.M., *The Law of the Sea*, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 1985.
- Ali B.S., *Mebvwu 2chanisms for settling international maritime disputes in accordance with the Convention on the Law of the Sea*, “Algerian Journal of Maritime and Transport Law” 2018, 5(1).
- Allam W., *Legal aspects of the right to hot pursuit in the Emirati legal system*, “Police Thought” 2008, 27(2), pp. 232–233.
- Asian-African Legal Consultative Organization Secretariat, *Law of the sea* (pp. 23–24), Diplomatic Enclave, Chanakyapuri, New Delhi, India 2018.
- Baird R., *Arrests in a cold climate (Part 2) – Shaping hot pursuit through state practice*, “ASOLP Occasional Papers” 2009.
- Blakely L., *The end of the Viarsa Saga and the legality of Australia’s vessel forfeiture penalty for illegal fishing in its Exclusive Economic Zone (Comment)*, “Pacific Rim Law & Policy Journal” 2008, 17(3), pp. 677–678. Available from: <https://digitalcommons.law.uw.edu/wilj/vol17/iss3/5/>
- Bossena, A.G., *The presumption of good reasons as a motive for the coastal State to carry out the pursuit operation at sea*, “Journal of Human Sciences” 2019, 51.
- Coulée F., Picot H., *French practice of international law – 2009*, [in:] *French directory of international law* (Vol. 55), 2009. <https://doi.org/10.3406/afdi.2009.4102>
- Fakhoury A.G.S., *The right of pursuit at sea, the clarity of international law and the difficulties of application*, “Sharia and Law Journal” 2012, 49.
- Jassim, F.T., *Principles of maritime law* (1st ed.), Amjad Publishing and Distribution House, Amman, Jordan, 2017.
- Khaled B., *The legal system of state sovereignty over its maritime territory* (Master’s thesis). Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, Algeria 2014.
- Khattabi H., *The right of pursuit on the high seas, a study in the light of the United Nations Convention on the Law of the Sea in 1982*, doctoral thesis in law, Hassan I University, Rabat, Morocco, 2010.
- Lucchini L., *Sea Dalloz de droit international*, nr 10, Dalloz, Paris 1998.
- Saida A., *The distinctive legal system of the exclusive economic zone* (Master’s thesis). Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, Algeria 2016.
- Vaillancourt P.-A., *Hot pursuit: outdated means to ensure compliance with standards in the waters of a coastal state?* “Quebec Review of International Law” 2014, 27(1).
- Walker R., *International law of the sea: Applying the doctrine of hot pursuit in the 21st century*, “Auckland University Law Review” 2011, 17.
- Wasila M., *The legal framework of the right of pursuit on the high seas and the reality of its application*, “Algerian Review of Maritime and Transport Law” 2015, 1(1).