Nova et Vetera Iuris Gentium

THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW

SECOND EDITION

BY

NICHOLAS M. POULANTZAS

MARTINUS NIJHOFF PUBLISHERS

International law has been traditionally handicapped by, among other things, an abusive use of certain of its institutions and by the invocation of these institutions in irrelevant cases with a view to covering under handy terms situations which have had very little to do with justice and order. This state of affairs has contributed to the confusion regarding the limits of various rights of international law, to say nothing of the harm done to this law. This book attempts to correct this situation insofar as the doctrine of hot pursuit is concerned. It proposes a general theory of the right of hot pursuit in international law and places this right within its proper legal confines.

In three Parts the author examines the right of hot pursuit on land, in the international law of the sea, and in international air law. He critically analyzes the development of the right, its present status and position in the future. Hence, solutions are proposed to present problems of international law in connection with the right of hot pursuit, as well as to problems which may arise in the future. Thus, the doctrine of hot pursuit is placed within the framework of modern international law and examined in the light of recent developments. These extensively discussed developments include not only consideration of the right of hot pursuit in connection with guerilla warfare techniques and conflicts not amounting to war, but also all recent evolutions in the international law of the sea, including, *inter alia*, problems appertaining to fisheries, exploration and exploitation of the continental shelf, pirate radiostations, and pollution of the sea. In addition, the right of hot pursuit in international air law is examined in connection with all modern situations, for instance, recent interception techniques of intruding aircraft, contiguous air space limits, hi-jacking of aircraft and air piracy.

This work is an extended and updated edition of the book first published in 1969.

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Second edition

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To the memory of my father,
Michael Poulantzas,
Judge of the Court of Appeals in Greece

FOREWORD TO THE SECOND EDITION

When Dr. Nicholas Poulantzas' *The Right of Hot Pursuit in International Law* was first published in 1969, it was instantly regarded as the definitive work on the subject, providing a comprehensive analysis of the right of hot pursuit both on land, in the air and at sea.

Since then, further developments have taken place, in particular relating to the exercise of the right of hot pursuit at sea. State practice in the area of hot pursuit developed, both during and after the Third United Nations Conference on the Law of the Sea, which started shortly after the publication of the book and resulted in 1982 in the UN Convention on the Law of the Sea. The provisions on hot pursuit, as included in Article 111 of the Convention, essentially reproduced those of Article 23 of the 1958 Geneva Convention on the High Seas. However, they now took into account the rights generated by the establishment of the new jurisdictional zones of the continental shelf and the exclusive economic zone. Technological developments also had, and still continue to have, an impact on the way hot pursuit may be effected in practice.

The book has been out of print since many years, but demand for it continued and it is therefore appropriate that the publisher decided to issue a second edition. This edition consists of a reprint of the first edition preceded by a brief update on state practice relating to hot pursuit at sea. This update is based on an article Professor Poulantzas published in 1997 in the *Revue de droit international.* It is a great pleasure for me to introduce the second edition here to the reader.

The author originally completed the book while a research associate at the Utrecht Institute of Public International Law; it earned him a doctorate in law at Utrecht University. Since then he has published widely and had a distinguished career in Canada and his native Greece. In Canada he served as the Director of the Canadian Institute for International Order in Ottawa, and taught at various universities and other institutions. In Greece he was associated with the Department of Maritime Studies at the University of Piraeus.

Utrecht, 27 August 2002

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RECENT DEVELOPMENTS RELATING TO HOT PURSUIT AT SEA*

1. GENERAL

Since my treatise on *The Right of Hot Pursuit in International Law*[1] appeared in 1969, international law has witnessed several developments relating to this right at sea.[2] These developments have not changed the terms and conditions for the exercise of this right at sea nor in general the notion of it, but they have had some modifications regarding only the area of hot pursuit. Accordingly, this writer hopes that the present study could fill the gap between 1969 and today by making an effort to point out and underline the changes which have occurred in the above field, the new cases during the previously mentioned period, and draw up conclusions with respect to these developments.

The most significant event between 1969 and today was the adoption on April 30, 1982, and the signing by 159 states and other entities at Montego Bay, Jamaica, on December 10, 1982, of the United Nations Convention on the Law of the Sea.[3] The signing of the Convention followed preparatory work which had started within the framework of the United Nations by the Third Law of the Sea Conference (LOS III) in 1973. Although the United States has not signed the Convention, these and some other countries, like Turkey, have already applied or relied upon the provisions of this international instrument.[4]

The Convention has already entered into force on November 16, 1994, namely, 12 months after the date of deposit of the sixtieth instrument of ratification, according to Article 308 of this international instrument.[5] The United Kingdom, Germany, Canada, and some other states, have deposited instruments of accession to the Convention – according to Article 307 – with the Secretary-General of the United Nations.

The UNConv. (1982) sanctioned the claims of several states, especially developing states, for an extension of sovereignty and exclusive jurisdiction upon the high seas,[6] despite the original reaction of the traditional maritime powers. Thus, it extended the breadth of territorial waters and the contiguous zone to 12 and 24 miles respectively, and recognized the establishment of an Exclusive Economic Zone (EEZ) of 200

* An earlier version of some parts of this Section of the book were previously published in *Revue de droit international* 75(2) 1997, pp. 189-226.

nautical miles, which several states had already done. Moreover, the Convention further extended the continental shelf upon the high seas and established, for the exploitation of mineral resources and deep-sea mining, the novel notion of the "Area", which means the sea-bed, ocean floor and their subsoil beyond the limits of national jurisdiction.

These changes[7] resulted in the need for an upgrading of the enforcement measures by coastal states in the new areas of sovereignty and exclusive jurisdiction, and the modernization of their infrastructure.[8] The right of hot pursuit, as one of the main instruments of enforcement measures by coastal states, has seen a new growth. Cases of hot pursuit have drastically increased in recent years.[9]

2. THE U.N. CONVENTION ON THE LAW OF THE SEA (1982) AND THE RIGHT OF HOT PURSUIT

Article 111 of the UNConv. (1982) is entitled "Right of Hot Pursuit".[10] It contains eight paragraphs, as compared to seven paragraphs of Article 23 of the Geneva Convention on the High Seas (1958), which deals with the right of hot pursuit.[11] This is due to the fact that a new paragraph 2 was inserted between paragraphs 1 and 3 of the older Article 23. Paragraph 2 reflects the new developments in the international law of the sea. It reads:

> "2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones".

The drafting of this paragraph was finished off early during the sessions of LOS III. Thus, the "Informal Composite Negotiating Text" (ICNT)[12] of July 15, 1977, in Article 111 entitled "Right of Hot Pursuit" included paragraph 2 with an almost identical wording. During successive biannual sessions of LOS III in New York and Geneva, the original wording was modified by adding after the words "continental shelf" the sentence "including safety zones around continental shelf installations" and by changing the order of the sentence in the article. These changes were in accordance with suggestions and proposals made in 1969 by this writer in his aforementioned work.[13]

At an early stage during the codification and progressive development of the international law of the sea by LOS III, the participating states had agreed upon the right of coastal states to establish an Exclusive Economic Zone (EEZ) of 200 miles. Thus, Article 44 of the "Revised Single Negotiating Text" (RSNT), which incorporated the provisions on which agreement had been reached during the Fourth Session of LOS III in May 1976, provided, in part, in paragraph one as follows:

> "1. In an area beyond and adjacent to its territorial sea, described as the exclusive economic zone, the coastal State has: (a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the bed and subsoil and the superjacent waters;"[14]

Furthermore. Article 45 of the RSNT provided that the EEZ "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured".[15]

In a study concluded in May 1977 and published during the same year,[16] the present writer proposed that coastal states should be able to take enforcement measures, including the right of hot pursuit, in the EEZ.[17] The ICNT of July 15, 1977, in Part V, entitled "Exclusive Economic Zone", included Articles 55-75 dealing with the EEZ. Article 73 dealt with the enforcement of laws and regulations of the coastal state.[18] Moreover, as previously said, paragraph 2 of Article 111 clearly accepted the right of hot pursuit from the EEZ. These articles on the EEZ, with the same numbers, but with minor modifications, were finally included in Part V of the UNConv. (1982).

Article 111, para. 2, of the UNConv. (1982) states that "the right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal state applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones".

The wording of this paragraph clearly suggests that hot pursuit may even commence –according to Article 76, para. 5, of the UNConv. (1982)– for states to which this provision applies – from within 350 miles from the baselines from which the breadth of the territorial sea is measured, or from within 100 miles from the 2.500 metre isobath, which is a line connecting the depth of 2.500 metres.

Moreover, patrol boats of the coastal state, when giving the order to stop to an infringing vessel, may be outside the limit of 200 miles of the EEZ or even of the maximum limit of 350 miles of the continental shelf, as the case may be. This is clear when parts of paragraphs 1 and 2 of Article 111 of the UNConv. (1982) are read together: "It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone". The same also applies *mutatis mutandis* to violations in the Exclusive Economic Zone or on the continental shelf.

3. STYLISTIC AND SUBSTANTIAL CHANGES OF ARTICLE 111

Article 111 of the UNConv. (1982) includes some changes as compared with Article 23 of the High Seas Convention (1958). A few of these changes are simply stylistic. Thus, in para. 3, line two, the word "State" is substituted for the word "country". The purpose of this change, which simply repeats twice the word "State" in the same line, is not clear to the present writer.

In para. 4, line four, the verb "is" replaces the verb "are". It is submitted that "are" is correct. Unless if the drafters of the article had placed the sentence, "or one of its boats or other craft working as a team and using the ship pursued as a mother ship", between commas, dashes, or a parenthesis, which is not the case. On the contrary, the commas which were added between the words "or, as the case may be," in the same para. 4, are correct.

Other changes have been necessary because of different enumeration of the articles of the UNConv. (1982). Thus, in para. 1 of Article 111, the words "in article 33" have been substituted for the sentence "Article 24 of the Convention on the Territorial Sea and the Contiguous Zone". In para. 6(a) of Article 111 the words "paragraphs 1 to 4" were substituted for "paragraphs 1 to 3" of Article 23. In para. 6(b) the word "another" was added before "aircraft of the coastal state", which reads better. In the same paragraph 6(b) the words "to justify an arrest outside the territorial sea" were substituted for "to justify an arrest on the high seas" of Article 23, that is in accordance with the new developments in the international law of the sea.

Besides, in para. 7 of Article 111 the words "of the exclusive economic zone or" were added before the words "of the high seas" of Article 23.

In para. 8 of Article 111 the words "or arrested outside the territorial sea" were substituted for "or arrested on the high seas" of Article 23. In this same paragraph of Article 111, the mistake occurring in Article 23, namely, "of the rights of hot pursuit" was with reason corrected to "of the right of hot pursuit".

The drafters of the UNConv. (1982) have also introduced in Article 111 substantial changes. These changes reflect the new developments in the international law of the sea. Thus, in para. 1, line five, the words "the archipelagic waters" were added after the words "the internal waters". Articles 46 to 54 of the UNConv. (1982) assimilate archipelagic waters to the territorial sea of states, subject to the limitations of Article 53, which deals with archipelagic sea lanes passage. Therefore, hot pursuit may commence in these waters as well. As main examples of archipelagic states, one may mention Indonesia and The Philippines.

Finally, in addition to a new paragraph 2, as previously mentioned, and in accordance with this paragraph, the words "or the exclusive economic zone or above the continental shelf" were added in para. 4 of the article. In para. 5, the words "clearly marked and identifiable as being" on government service were added with good reason.[19] The word "specially" before authorized was dropped and replaced by the conjunctive "and". The termination of hot pursuit, when the pursued vessel enters the territorial waters of its own country or of a third State, has not changed in Article 111 of the UNConv. (1982).[20]

4. FISHERIES INCIDENTS AND THE RIGHT OF HOT PURSUIT

Since the appearance of our treatise on *The Right of Hot Pursuit*, several cases of hot pursuit have taken place in various countries. The majority of these cases regard fisheries violations within the territorial waters of coastal states or within adjacent or contiguous zones established for the protection of fisheries. With the introduction of the 200-mile EEZ, or of fisheries zones extending to 200 miles upon the high seas, such incidents –as was expected– have multiplied. A few cases concerning hot pursuit of vessels for illegally smuggling dutiable goods or drugs –and illegal immigrants as well– have also been reported.[21]

It should also be mentioned that the Conference on the Environment of the West and Central African States, which created the 1981 Abidjan Convention, recommended that a right of hot pursuit be granted against all vessels caught red-handed polluting the waters under the jurisdiction

of the participating states (see *International Legal Materials*, 1981, p. 738).[21a]

The question of the right of hot pursuit in the Exclusive Economic Zone was also discussed between Senegal and Gambia. Multilateral discussions were also held, by the states of the area, for a joint surveillance system in the Regional Fisheries Committee for the Gulf of Guinea, as well as within the framework of the Sub-regional Fisheries Commission. Thus, the terms and conditions for the exercise of the right of hot pursuit in the E.E.Z. were discussed in detail. (see *FAO Fisheries Report No. 406, Fisheries Management,* at p. 1376).

In another region, the Committee for Eastern Central Atlantic Fisheries (CECAF) examined the implications of the U.N. Conv. (1982) for fisheries management and development. In the area north of the CECAF region, the Sub-Regional Commission on Fisheries has decided "to establish a regional register of fishing vessels similar to that used by the South Pacific Forum Fishery Agency." What is more important, the Commission adopted the text of a "regional convention on hot pursuit to establish joint surveillance operations". This regional convention also provides that a Contracting State, in whose territorial waters a pursued ship takes refuge, "has a duty to arrest the vessel and escort it to the pursuing patrol boat" (see *The Law of the Sea, Annual Review of Ocean Affairs, Law and Policy, Law of the Sea Overview,* United Nations, 1993, pp. 21-22.

i) *The Lamut and the Kolyvan Case*

A serious incident occurred in the evening of January 17 to 18, 1972, near St.Matthew Island in the Bering Sea. The 362-foot Soviet factory ship *The Lamut*, the flagship of an 80-vessel Soviet herring fleet, and the trawler *The Kolyvan* were arrested by the U.S. Coast Guard icebreaker The Storis while fishing within the U.S. contiguous fisheries zone of 12 miles.[22] At the moment of the arrest the vessels were 9.4 miles off Cape Upright, near St.Matthew Island, which lies about 250 miles off the Alaska mainland.

Prize crews from *The Storis* went aboard both Soviet ships and started them back toward Alaska. However, later the skipper of *The Lamut* claimed that the capture was illegal, because the ships were not fishing, but they were forced into the U.S. contiguous fisheries zone of 12 miles –at that time– by bad weather. Therefore, he reared his vessel out to sea –with the U.S. boarding party on board– and *The Storis* in hot pursuit.

After it had started a hot pursuit from within the U.S. contiguous fisheries zone, *The Storis* notified Coast Guard headquarters in Washington, D.C., and her skipper was given permission to fire warning shots across

the bow of the pursued Soviet vessel, as it crossed the U.S. fisheries zone and was heading towards the high seas. At the same time, the U.S. State Department notified the Embassy of the USSR in Washington, D.C., of developments regarding the arrest of the Soviet trawlers.[23]

During the pursuit, the skipper of the Coast Guard icebreaker *The Storis* radioed a warning to the fleeing Soviet ship *The Lamut* that he was ready to fire across the pursued vessel's bow. The order he radioed was: "Stop or be fired on". However, during the chase, which continued for two hours, no shots were fired. It should be also mentioned that the U.S. prize crew aboard *The Lamut* was never in danger during the pursuit.

Finally, the Soviet commander Vladimir Artemov surrendered for a second time. Yet, both *The Lamut* and *The Kolyvan* refused U.S. orders to sail for Adac in the Aleutian. As the Coast Guard vessel *The Storis* was unable to force them to move to Adac, another larger U.S. icebreaker *The Balsam* sailed from Adac to the scene.[24] It could either tow both Soviet vessels to Adac, or release the ships while arresting and bringing the Soviet officers (only the captains and chief engineers of both vessels) to U.S. territory. A spokesman for the Embassy of the USSR in Washington, D.C., said that there was no reason for the U.S. Coast Guard to bring the Russian vessels to Adac, as they were forced into U.S. fisheries waters by bad weather and had not fished within the U.S. 12-mile contiguous fisheries zone.[25]

The penalties imposed by the U.S. Court of Adac upon the masters and first officers of the two Soviet vessels amounted to $250,000. It is interesting to note in this case that the arguments of the defendants –namely, the Soviet captain of *The Lamut* and the Embassy of the USSR in Washington, D.C.– were extenuating circumstances based on bad weather conditions, or distress amounting to *force majeure*. According to the defendants, it had been bad weather conditions which forced the two Soviet ships within the U.S. 12-mile contiguous fisheries zone.[26]

Otherwise, it is praiseworthy that the U.S. side strictly followed the provisions of international law regarding the exercise of the right of hot pursuit at sea. Moreover, the U.S. Coast Guard vessel did not exceed the use of force permitted by international law in order to force the fleeing Soviet vessel to stop. Under the circumstances surrounding this case, when the Soviet vessel fled upon the high seas –following arrest– with a U.S. boarding party aboard, the pursuing U.S. Coast Guard vessel, *The Storis*, would have been entitled (according to international law) to use reasonable force in order to oblige the pursued vessel to stop.[27] The international responsibility of the U.S. Government could not have been

involved, had reasonable force been applied. All the more so as the U.S. Government had immediately notified the Embassy of the USSR in Washington, D.C., and, following that, had given permission to *The Storis* to use moderate force in order to stop the fleeing vessels.[27a]

ii) The *Koyo Maru No. 2 case*

The Koyo Maru No. 2 was a Japanese factory ship of approximately 1,450 tons. The vessel was arrested –following hot pursuit– for fishing inside the fishing protection line of Canada, contrary to the provisions of Sections 3(1) and 3(2) of the Coastal Fisheries Protection Act. The master of the Japanese fishing vessel Tatsuya Itoh was found guilty pursuant to Section 7(a) (i) of the same Canadian Act.

The trial court of British Columbia convicted the master of the Japanese vessel on two counts: First, that being the master of the fishing vessel he entered unlawfully Canadian fisheries waters without authority and contrary to Section 7(a)(i) of the Coastal Fisheries Protection Act; and Second, that as a person on board and a master of a foreign fishing vessel he fished in Canadian fisheries waters without proper authorization, contrary to Section 3(2)(a) of the same Act.

Tatsuya Itoh was fined on conviction to 5,000 Canadian dollars for the first infringement and 10,000 Canadian dollars for the second infringement, i.e., a total fine of 15,000 Canadian dollars for both convictions. In addition to these fines, the sentencing judge ordered that the fish found aboard the vessel be forfeited.

On appeal, the Court of Appeal of British Columbia also dealt with this case.[28] Judge Carrothers –who delivered the first judgement– said, *inter alia:* "...the *'Koyo Maru'* was in fact inside the fishing protection line on the day in question.[29] As to the conflicting evidence given by the master and first officer of the fishing vessel as to where the ship was at the times in question, it appears that the discrepancies are in all probability, attributable to less dependable navigation methods at that time employed by the officers of that vessel".[30]

As to the criminal intent of the master and the first officer of the fishing vessel to fish illegally in Canadian fisheries waters the Judge said:

> "Regarding the question of *mens rea*, this legislation is intended for the protection of fisheries and not necessarily to establish a new crime, and the liability is in this case strict and absolute and the establishment of *mens rea* not necessary".[31]

This statement by Judge J.A. Carrothers is definitely not correct, as the guilty knowledge, or the criminal intent, of the responsible officers of a foreign fishing vessel plays an important role in the prosecution of the person responsible according to the Coastal Fisheries Protection Act.[32]

Therefore, Judge McFarlane, of the same Court, hastened to correct indirectly this statement by referring to the opinion of the trial judge:

> "The trial judge, correctly in my opinion, . ..came to the conclusion that *mens rea* is not an essential ingredient of the charge under either of these counts. He added that *mens rea*, in his view, might be found due to the absence of the requisite 'due care, attention and preparation in navigating the vessel so close' to the protected waters. I merely wish to point out as a caveat that proposition. There is no finding, and indeed the evidence does not possibly justify a finding, of reckless or wilful disregard of the vessel's position".[33]

Finally, as to the sentencing, the appelant took no issue with the fines totalling 15,000 Canadian dollars, but only with the forfeiture of the fish found on the vessel at the time of the arrest. The appelant submitted that the forfeiture of the fish was excessive, as it amounted to approximately 165,000 Canadian dollars. The appelant also pointed out that before *The Koyo Maru* fished in Canadian waters, she had been fishing legally, for some weeks, in Alaskan waters. Therefore, only part of the fish found on the vessel had been caught illegally in Canadian fishing waters.

Judge Bull, of the same Court of Appeal, who dealt with the question of the sentence, said, *inter alia*:

> "I point out that the penalty sections of the statutes in question provided that where a person is convicted of an offence under the Act, the judge may, in addition to any other penalty, order the vessel itself seized: and any goods aboard the fishing vessel, 'including fish, tackle, rigging, apparel, furniture, stores and cargo', sold and the proceeds forfeited to the Crown.
>
> I mention that because in this case there was no order of forfeiture against the vessel, or the tackle, or anything else, other than the cargo of fish.
>
> We are unable, however, to say how much of the cargo was caught in Canadian waters or outside. In any event, I do not think that under the circumstances of this case it makes much difference. The ship was a large one and what is called a factory ship, and she was clearly fishing improperly in Canadian waters, and I do not think that we should be inclined to split a hair as to

how much of the forfeited cargo was actually taken out of Canadian waters. In my mind, the amount of the forfeiture, although perhaps a little on the high side, is not untoward or excessive in connection with the nature of the offence".[34]

The other two judges of the Appeal Court of British Columbia agreed with their colleague that, under the circumstances, the Court should not interfere with the forfeiture order in the trial Court. Therefore, the appeal was dismissed.

iii) *The F/V Taiyo Maru No. 28 case*

This case was widely reported and discussed in the past.[35] We report it briefly in order to criticize certain erroneous conclusions of the judgement of the court in this case.

On September 5, 1974, the Japanese fishing vessel *F/V Taiyo Maru 28* was sighted by an aircraft, which was chartered by the U.S. National Marine Fisheries Service, at a point approximately 16.25 miles off the coast of Maine or 10.5 miles off Monhegan Island. At that time, the ship was engaged in fishing for tuna and shark within the U.S. contiguous fisheries zone of 12 miles. This act was in violation of the Bartlett Act (1964), which barred foreign vessels from fishing in U.S. territorial waters, or other waters in which the United States exercised jurisdiction, except only when fishing was permitted by treaty.[36]

A Coast Guard aircraft was summoned which, after sighting the infringing vessel and establishing its position within the U.S. fisheries zone, ordered it by visual (flashing light) and auditory (radio) signals to heave to. Instead of complying with the order, the master of the vessel –named Kawaguchi– abandoned the fishing nets and tried to flee beyond the U.S. fisheries zone. The aircraft lawfully started the pursuit of *The Taiyo Maru* and summoned the Coast Guard cutter *The Yankton*, which continued the pursuit without interruption.

Finally, after seven hours of continuous pursuit The *F/V Taiyo Maru* was arrested by *The Decisive*, a larger Coast Guard vessel –which succeeded *The Yangton* in the pursuit– and at a point approximately 67.9 miles off the mainland coast of the United States.[37]

The main legal issue before Judge Edward T. Gignoux, of the District Court for the District of Maine, who dealt with this case, was the following: Can hot pursuit lawfully commence from within a contiguous zone for fisheries set up by the U.S. Contiguous Fisheries Zone Act of 1966?[38]

The defendant moved to dismiss the case for want of jurisdiction, as Article 23 of the High Seas Convention (1958), read together with Article 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958), warranted the right of hot pursuit from the contiguous zone only if there had been a violation of the rights for the protection of which the zone was established. Fishing rights are not protected in the contiguous zone of Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (1958).[39]

Judge Gignoux, it seems, was carried away by the arguments of the defendant and he denied the motion for want of jurisdiction but –it is submitted– that the legal basis of his decision was in part not correct. Thus, instead of basing his reasoning regarding hot pursuit from an adjacent or contiguous zone for fisheries –set up by the U.S. Contiguous Fisheries Zone Act (1966)– solely on general international law, he tried to explain it both on the basis of the two Geneva Conventions of 1958, previously mentioned, and on customary international law. The result was that his legal reasoning was partly incorrect. Judge Gignoux said in part:

> "Article 23 does not in terms deny a coastal State the right to commence hot pursuit from a contiguous zone established for a purpose other than one of the purposes listed in Article 24. Nor does Article 24 in terms prohibit the establishment of a contiguous zone for a purpose other than one of those specified in the Article. The language of Article 24, relating to the purposes for which a contiguous zone may be established, is permissive, rather than restrictive. It provides that a coastal State 'may' establish a contiguous zone for the purposes of enforcing its customs, fiscal, immigration or sanitary regulations..."

The last part of Judge Gignoux' statement is incorrect. The purposes for which a contiguous zone of Article 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone may be established are restrictive indeed.[40]

Article 24 does not say that "a coastal State 'may' establish a contiguous zone for the purposes of enforcing its customs, fiscal, immigration or sanitary regulations..." It clearly states:

> "In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to: (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;...".[41]