# Egypt’s Court of Cassation affirms jurisdiction beyond territorial waters on the basis of hot pursuit.

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*Appeal No. 11024 of Judicial Year 88.*
*Court of Cassation.*
*Judgment of 13 January 2021*

On 13 January 2021, the Court of Cassation upheld the conviction of five defendants arrested outside Egypt’s territorial waters for importing and possessing narcotic substances for the purpose of trafficking, **affirming that Egyptian criminal jurisdiction may extend extraterritorially in situations of lawful hot pursuit in accordance with the United Nations Convention on the Law of the Sea (UNCLOS).**

Based on intelligence gathered by the Border Guard Intelligence Office in Sallum, the accused were suspected of importing of 2,100 kilograms of hashish and 88,000 Captagon tablets into Egypt by sea, having sourced the shipment from Lebanon. Surveillance revealed telephone communications between one of the accused located on land in Matrouh and individuals aboard a maritime vessel positioned off the Egyptian coast, concerning the delivery of the narcotics.

Acting on this information, an Egyptian naval unit detected the suspect vessel at approximately 11 nautical miles from the Egyptian coast. The vessel, flying the Lebanese flag, attempted to flee upon the approach of Egyptian naval forces and crossed beyond Egypt’s territorial waters. Despite repeated orders to stop, it continued to evade interception, inducing Egyptian authorities to initiate an uninterrupted hot pursuit that extended beyond the territorial sea, until the vessel was stopped at approximately 74 nautical miles from the Egyptian coast. The vessel was then boarded and searched pursuant to the powers conferred by law. The search resulted in the seizure of substantial quantities of narcotic substances, along with communication devices and cash. The accused admitted possession of the seized items and stated that the shipment had been collected off the Lebanese coast for delivery to a recipient on the coast of Tobruk (Libya)

The Criminal Court convicted the first four defendants in their presence and the fifth *in absentia* pursuant to Articles 1, 2, 3, 7(1) (first paragraph, subparagraph A), and 42(1) of Law on Combating Narcotics and Regulating Their Use and Trafficking No. 182 of 1960 (as amended), and Item No.

56 of Section II of Schedule No. 1 annexed thereto, applying also Articles 17 and 32 of the Penal Code promulgated by Law No. 58 of 1937 (as amended) .

On appeal, the Court of Cassation addressed the accused's plea of nullity of the arrest and search, based on the contention that the seizure occurred while the vessel was outside Egyptian territorial waters, stating that

> Whereas Article (1) of the Egyptian Penal Code provides that: The provisions of this Code shall apply to every person who commits, within the territory of the Arab Republic of Egypt, an act constituting one of the crimes stipulated therein, this necessarily entails, as a matter of principle, that **Egyptian criminal legislation alone applies to any person who commits, within the State's territory, an act deemed criminal under its provisions, regardless of the offender's nationality. This rule flows from the State's sovereignty over its territory and constitutes the means of securing rights worthy of criminal protection. The territory of the State is deemed to include the land bounded by its political frontiers, together with its rivers, lakes, canals, ports, and, in addition, its territorial waters. No exception to this principle is admitted except for those required by the rules of international law, namely the exemption of foreign heads of state, their diplomatic representatives, and foreign military personnel from the territorial jurisdiction of courts.**
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> **The territorial criminal jurisdiction of courts further extends to foreign commercial vessels anchored in ports, within the limits established by the Geneva Convention of 1958**, which recognized the right of the State to intervene with respect to foreign commercial vessels passing through ports or territorial waters in certain cases, including where such intervention is necessary to suppress illicit trafficking in narcotic substances. **This principle was subsequently reaffirmed by the United Nations Convention on the Law of the Sea … ratified by Presidential Decree No. 145 of 1983 issued on 30 April 1983 … which provides in Article 27 that**: 1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the followingcases(a)..(b)...(c)...(d)if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.
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> **Article 111 of the same Convention further stipulates that the right of hot pursuit authorizes the pursuit of a foreign vessel when the competent authorities of the coastal State have reasonable basis to believe that the vessel has violated the laws or regulations of that State. Such pursuit must commence while the foreign vessel or**

**one of its boats is within the internal waters, archipelagic waters, territorial sea, or contiguous zone of the pursuing State, and may not be continued beyond the territorial sea or contiguous zone unless the pursuit has not been interrupted**.

Therefore, the Court rejected the plea that the arrest and search were null. It held that the interception resulted from a lawful and uninterrupted hot pursuit that commenced within territorial waters at 11 nautical miles from the Egyptian coast and continued until the vessel was seized at 74 nautical miles from the coast.

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