



## **Sahel Region Capacity-Building Working Group**

### **Good Practices on Regional Border Security Issues Related to Terrorism and Other Transnational Crime Suspects in the Sahel Region**

#### **I. Introduction**

The Sahel region is noteworthy for its vast, sometimes ill-defined, and lightly patrolled land borders. Terrorists exploit this geographical feature by planning attacks in one State, committing them in another, and returning to the first State or traveling to a third State. Terrorist groups also take advantage of weak border controls to plan and execute the kidnappings for ransom that are now an established and significant source of funding for terrorist training and recruitment. Additionally, criminal actors whose activities may intersect with and enable those of terrorist groups—including weapons, drugs, and human smugglers—exploit weak border controls.

The UN Charter, relevant international conventions, and other relevant international law provide the legal basis for States to cooperate to protect their national sovereignty and territorial integrity and to take measures to combat and eliminate acts of terrorism. Within the GCTF, the Sahel Region Capacity-Building Working Group (SWG) identified border security as a priority. The UN Secretary General-appointed assessment mission to the Sahel recommended that the UN support and strengthen the SWG's border security efforts.

During the SWG's Technical-Expert Level Meeting on Border Security in May 2012 in Niamey, hot pursuit was identified as one way some states in the Sahel have sought to deal with the complex challenge of pursuing terrorists across open borders or ungoverned spaces. Simply stated, "hot pursuit" on land involves authorities from one state crossing into the territory of another state—*under an explicit agreement* with the second state—to continue the pursuit of a suspect or group of suspects begun immediately after the commission of an offense. Even when such agreements are in place, "hot pursuit" is generally regarded as the preferred response only when the second state is not in a position to pick up the pursuit once the suspects enter its territory.

A number of international actors have identified the need to strengthen border security efforts including "hot pursuit" authorities and practices in the Sahel region given the vast distances between settlements in border regions and the existence of transnational terrorist and criminal organizations. A special assessment mission to the Sahel region appointed by the UN Secretary-General in 2011 noted that application of "hot pursuit" varies throughout the region, and recommended that such application be based on bilateral agreements.<sup>1</sup>

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<sup>1</sup> United Nations, S/2012/42, 18 January 2012.

Accordingly, the United States, in partnership with Niger, organized the first Sahel Cross-Border Workshop in Niamey in October 2013 to identify challenges and good practices in “hot pursuit.” The border security practitioners from the Sahel region who participated in this workshop emphasized that bilateral and sub-regional agreements are the foundation of “hot pursuit.” They further noted that the absence of bilateral agreements in the region, except in a few cases, makes “hot pursuit” risky for the pursuing state and creates a potential flashpoint between States. Finally, they stressed that a regional framework of principles and good practices could provide the tools and political impetus for states to establish and refine such agreements, and to develop standard operating procedures for “hot pursuit” accordingly. A second GCTF workshop took place in Dakar, Senegal, in March 2014, where participants encouraged the development of a comprehensive, regional approach to border security in the Sahel, specifically in the realm of cross-border “hot pursuit” of suspected terrorists and other criminals. Specifically, participants sought to build on the series of meetings by developing a set of good practices designed to serve as a foundation or starting point for countries to design bilateral agreements and associated law enforcement procedures.

## **II. General Principles and Good Practices**

The following non-binding good practices provide recommendations for states in the Sahel region to develop and refine existing bilateral agreements on border security issues, in particular “hot pursuit” and, as appropriate, to develop standard operating procedures (SOP) based on such agreements.<sup>2</sup>

It should be noted, that bilateral or regional agreements between and among concerned states are the foundation for lawfully engaging in hot pursuit. In the absence of such agreements, “hot pursuit” measures are likely to be considered as violations of the basic principles of non-interference in other State’s internal affairs, and respect of territorial integrity and sovereignty of States, as reflected in the UN Charter.

Each State remains fully sovereign in its decision to participate in any regional policy on “hot pursuit” of terrorism and other transnational crime suspects, with respect of its constitution and internal legislation concerning the use of its police or armed forces outside its borders. Finally, “hot pursuit” should be viewed as an exception that would come into play only in the context of urgent cases (as accepted or not objected to by neighboring states) if a terrorist or other transnational criminal offense is in progress or has just been committed, has caused serious harm in the first State, and runs the risk of being continued in a second or third State.

### **A. Improving bilateral and regional cooperation on border security**

*Good Practice #1 – Employ a risk assessment framework in developing and implementing border security measures.* Given the geographic expanse of the Sahel, a

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<sup>2</sup> The non-binding good practices and other considerations presented in this document address the Sahel and neither framed nor intended to have applicability outside of this region.

risk-based approach to border security can help allocate appropriate and sufficient resources to minimize the likelihood that “hot pursuit” will be necessary. Development of effective risk assessments requires a regular exchange of information among the information services of the border countries. Threats may be inaccurately assessed if one of the states does not have input from the other. These exchanges should be systematized in terms of their frequency, the ways in which they will take place, and precisely what will be exchanged, working from most urgent to less urgent, and mitigating any gaps. In this sense, the establishment of Bilateral Police Cooperation Centers at certain points of the border could help the exchange of information at a tactical level, lead to the development of an effective joint risk assessment model, streamline communications, and improve management of border operations on both sides of the border, all of which would reduce the need for “hot pursuit.”

***Good Practice #2 – Cooperate with and among trans-border communities to foster links that can function as an informal part of the border security system.*** Border security initiatives that involve civil society, particularly in areas that are lightly patrolled, will provide greater awareness and reduce the need for “hot pursuit.” In cooperating with border communities, many of which straddle both sides of any given border, it is important to reassure them of their safety, to build trust by meeting some of their needs, if possible, for supplies (e.g., health care and medication), and infrastructure. It is also necessary to learn about these communities, their customs, and their conflict resolution cultures.

***Good Practice #3 – Initiate or build upon bilateral and sub-regional joint border patrols and training exercises.*** National, bilateral, and multilateral training at the tactical and central command levels will greatly improve the effectiveness of border security operations, responses, and increase the likelihood of positive outcomes in disrupting terrorists’ movements and related criminal activity. Potential options for enhancing these resources include the creation of special units which periodically mobilize to carry out border security operations, including “hot pursuit,” or a permanent sub-regional force (with troop contributions from relevant countries) in place or at the ready, to be activated when deemed necessary. This does not release each country from seeking to secure its borders by recruiting each year, or on a periodic basis, additional defense and security forces, a good part of which may be sent to the borders, making use of a rotation or relief system as needed. Thus, states should consider standardizing this good practice throughout the Sahel region.

***Good Practice #4 – Provide relevant authorities on both sides of a border with up-to-date information about border security rules and procedures, and threat assessments, including posters, standard operating procedures, and contact rosters.*** This information can serve as guidance during actual border security events and as checklists for practitioners. Contact rosters can be used for periodic communications tests with neighbors and can help facilitate working relationships, while rules and procedures can be built into periodic drills designed to maintain readiness. Posters and SOPs should build upon joint border patrols and serve as foundational documents for future joint

workshops.

***Good Practice #5*** – *Host joint workshops and exercises on border security operations, including hot pursuit, between border authorities on both sides of a border to build knowledge and trust.* These workshops and exercises should be conducted on a frequent basis (they can be small, but spaced closely together), and should be appropriately tailored and scalable to have immediate and meaningful results. These exercises may not all be alike; rather, they will be specifically tailored to deterring and preventing terrorism, terrorist movement across borders, and related criminal activity, in locations where there are signs of these phenomena or where they are recurrent.

## **B. Implementation and execution of “hot pursuit”**

***Good Practice #6*** – *Adopt safeguards to ensure that “hot pursuit” is conducted in accordance with applicable international law, including international human rights law, and national and local laws.* In particular, those conducting the pursuit must *not* take advantage of their position to engage in torture or cruel, inhumane or degrading treatment or other violations of international human rights law.

***Good Practice #7*** – *Provide clear operational parameters for “hot pursuit.”* Agreements on “hot pursuit” should be simultaneously specific—e.g., how far can the pursuing State travel into the second State as well as the terms and conditions of the pursuing officers’ actions—and flexible to allow for the dynamic and contingent nature of any “hot pursuit” situation. Given the vast distances between settlements in many border regions of the Sahel, “hot pursuit” agreements should address not only the permissible distance into a country under “hot pursuit,” but also the duration of the pursuit and how the pursuit may be conducted (e.g., overland with air or maritime support if necessary). In some cases, duration may be the preferred way to define the permissible scope of “hot pursuit.” Agreements should provide clear operational parameters and also allow for cases in which mediation may be required.

***Good Practice #8*** – *Use joint border patrols to help build trust between the police forces of both sides of the border, while facilitating rapid reaction response by the forces in place.* Police and border security forces should have direct lines of communication with their counterparts on the opposite side of their border. Joint patrols facilitate critical relationship building at multiple levels, including senior leaders who organize the patrols and among operators who must know their working-level counterparts. These joint patrols should take place on a frequent basis to ensure the legitimate establishment of trust between forces. Particularly, in the absence of fully institutionalized agreements on “hot pursuit” that are accompanied by SOPs, joint patrols are necessary to develop effective communication channels and productive working relationships. Joint patrols will also facilitate the exchange of information to enhance overall border security.

***Good Practice #9*** – *Transfer pursuit from the first State to the second State, when possible.* Early and effective tactical communication and cooperation between States is crucial. Regional States should ensure that interoperable communications systems and

SOPs are in place to enable such communication and cooperation.

***Good Practice #10*** – Clarify and document who within the government has the authority to authorize “hot pursuit.” Given how quickly “hot pursuit” situations can unfold, determining in advance who may authorize “hot pursuit”—tactical commanders at the local level or political leaders at the national level—is essential. If the latter, consideration should be given in national frameworks to defining exceptions under which tactical commanders can authorize “hot pursuit” without permission from the central authority.

***Good Practice #11*** – Establish a standing crisis management center or an appropriate crisis unit for cases of “hot pursuit.” Such centers enable key decision makers to receive updates from the field and issue authorization or guidance. They will also be of use in resolving any disagreements regarding the application of “hot pursuit” agreements or consequences of pursuits (damage recovery). The crisis unit should pass operations to appropriate authorities once the criminals being pursued are arrested or detained (in custody), pending provisional or permanent resolution of issues relating to the criminal(s) pursued.

### **C. Resolution of “hot pursuit” incidents**

***Good Practice #12*** – Establish a shared judicial and coordination framework to guide the development of “hot pursuit responses and resources. The optimal end state for any case of “hot pursuit” is the lawful apprehension of the terrorism or transnational crime suspect(s). The pursuing officer does not have the authority to apprehend a person, unless a bilateral agreement stipulates such an authority. The framework should take into account the legal consequences of the action (e.g., effect on mutual legal assistance in the subsequent investigation and extradition), as well as the legal status of the pursuing officers (in the host State, and then with regard to any offenses that may have been committed by the suspect).

***Good Practice #13*** – Ground all actions in the resolution of a “hot pursuit” incident in relevant law, including relevant international, regional, and sub-regional conventions, including human rights conventions, and the national laws of the states in question. All actions taken by either state in the resolution of a “hot pursuit” case—including detention, extradition, gathering and disposition of evidence and contraband, trial, and imprisonment—must be grounded in relevant law and with due respect to human rights. At a minimum, authorities in the State into which the pursuit enters should be notified as soon as possible of the pursuit, as “hot pursuit” involves the exercise of law enforcement authority by one country’s official on another country’s territory, which can take place only in strict conformity with the relevant laws and agreements.

### **III. Considerations that should be addressed in bilateral and sub-regional agreements and SOPs for “hot pursuit”**

Bilateral agreements constitute the recognition of an understanding between two States regarding certain issues, and that each State is ready to respect the terms of the agreement. In this way, everything about those crimes which warrant pursuit, the distance or how deeply pursuit can go into the other state's territory, time, the transfer of criminals, their trial, and jurisdiction are matters that can be regulated in a straightforward manner in the agreement. Building on the above good practices, the below items provide key, non-binding considerations for developing and implementation of bilateral and sub-regional agreements and SOPs for "hot pursuit" in the Sahel region.

**A. Legal considerations:**

1. Whether the offenses covered by the parties to a "hot pursuit" agreement are criminalized in both countries;
2. What offenses, in addition to terrorism, warrant "hot pursuit"—specifically, what preparatory terrorist acts warrant a "hot pursuit" response;
3. When does the first State in a "hot pursuit" case have the responsibility to transfer pursuit to the second State;
4. How will the "hot pursuit" agreement address issues related to the absence of an agreed border between two States;
5. Who detains apprehended suspects and, if the second State, for how long, and if the first State, under what legal framework and subject to what provisions – for example, is the first State entitled to bring the suspect back into the first state's territory;
6. How the first State may seek transfer of the apprehended suspects from the second State;
7. Where apprehended suspects are tried;
8. Who retains evidence and/or contraband gathered as the result of a hot pursuit;
9. Who is responsible for collateral damages resulting from a "hot pursuit;"
10. When and who will make a decision or consider the second State is not in a position to pick up the pursuit once the suspects enter the territory;
11. When and who makes the determination that the second State cannot—or will not—interdict the offenders and lawfully return them to the first State; and
12. Legal status of pursuing officers and specification as to how actions are to be carried out.

**B. Policy considerations:**

1. The level of authorization required to launch a "hot pursuit" operation. Political and administrative authorities are to be kept informed, taking into account considerations of time and urgency;
2. Whether all categories of security and defense forces should be authorized to engage in pursuit as any one of these forces may need to do so;
3. When and how the first State notifies the second State of a "hot pursuit" into the second state's territory;
4. How states involved in the "hot pursuit" will communicate with one another and third parties, including civil society and the general public;

5. How far and for how long can the first State pursue terrorism suspects into the second State; and are there exemptions in cases of extreme urgency for authorization to continue pursuit beyond the space and time limits indicated in the agreement? If several countries are interested parties in this type of operation, one country acting alone should not decide for the others what is to be done, unless urgency so requires;
6. What are the rules of engagement for both States in a “hot pursuit;”
7. How to benefit from the local knowledge of cross-border populations in cases of “hot pursuit;” and
8. How to handle kidnapping for ransom and other special situations during a case of “hot pursuit.” In particular, if the lives of ordinary citizens are in danger, then the pursuit must be approached in a completely different way, taking into account variables and other unforeseen circumstances, with the possibility of halting the pursuit operation or improving preparations for it.

**C. Operational considerations:**

1. How to ensure both the first and second State in a case of “hot pursuit” have the operational capabilities, in terms of forces, equipment, and procedures, to pursue and intercept suspects. Two states can define the terms of their mutual assistance, particularly in those cases in which one has greater resources than the other. The decision can then be made as to who will manage operations.
2. If the States in question do not have the appropriate technology or logistics, they can request support from a better-equipped country;
3. How to ensure logistical support to forces involved in “hot pursuit,” including fuel, water, and repairs for pursuing vehicles;
4. How to ensure relevant authorities of both States involved in a “hot pursuit” have interoperable communications equipment and effective communications mechanisms to enable coordination between and among them; and
5. How to ensure relevant authorities of both States have playbooks, contact information, and other resources for the conduct of “hot pursuit.”