Chapter 8

The Legal Regime of the Straits around Great Britain*

I The Geopolitical Setting

Great Britain is a large and populous island situated off the North-West European continental land mass (see the map annexed to this paper). Great Britain and its associated islands form, together with Northern Ireland, the metropolitan territory of the United Kingdom: the full title of the State is “the United Kingdom of Great Britain and Northern Ireland” (in this paper, “UK”). The UK has long been a maritime state, yet it also has important coastal interests. Around the coasts of Great Britain, there are several named straits and some other similar stretches of sea bearing a variety of names. Different regimes of navigation apply in these different areas of sea, composed mainly of territorial sea and internal waters. This paper examines the legal regimes applicable to different areas. In particular, the rights of passage of foreign ships

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1 Notably, the Isle of Wight, the Isles of Scilly, Anglesey, the Hebrides, the Orkney Islands and the Shetland Islands. The Isle of Man, Guernsey and Jersey are Dependencies of the Crown and constitutionally separate from the UK.

2 For instance, there are several “Channels,” two “Minches” and a “Gap” with two parts.
and aircraft are noted, as well as the rights of the UK as the coastal state to regulate the exercise of those rights of passage.

II The Evolution of British Practice in Regard to the Territorial Sea

Following the failures at both the First and Second United Nations Conferences on the Law of the Sea, held respectively in 1958 and 1960, to reach agreement on the question of the maximum breadth of the territorial sea, the UK maintained its limit of 3 nautical miles (nm). However, during the next decade diplomatic protests were no longer addressed to States which claimed 4, 6, 10 or 12 nm. In 1964, the UK implemented the rules on baselines contained in the Geneva Convention on the Territorial Sea and the Contiguous Zone and also introduced a fishery limit beyond the territorial sea extending to a maximum of 12 nm from those baselines. However, it did not do so unilaterally: rather, it acted in agreement with its neighbouring states in the form of the European Fisheries Convention of 1964. In 1974, at the first substantive session of the Third UN Convention on the Law of the Sea, the UK delegation presented a package of detailed proposals, including 12 nm as the new maximum breadth of the territorial sea, the right of innocent passage and the right of transit passage through straits used for international navigation. These proposals influenced the eventual outcome of the Conference on these important issues. In 1987, the UK abandoned the 3 mile limit of the territorial sea, which it had upheld for very many years, both diplomatically and in former times by sending the Royal Navy. The Government’s decision to extend was based upon the outcome of the Third UN Conference on the Law of the Sea and the practice of States. The Government took the position that the terms of the United Nations Convention on the Law of the Sea (“the LOS Convention”) were helpful, with the sole exception of Part XI concerning deep sea bed mining. In line with Parts II and III of the Convention, the Territorial Sea Act 1987 established the maximum breadth of the British territorial sea as 12 nautical miles. There is a need for boundaries in three areas where neighbouring jurisdictions are situated less than 24 nm away. These jurisdictions are France, the Republic of Ireland and the Isle of Man which, although British territory, has its own legislation for the territorial sea. The timing of the Bill had much to do with the preparations to construct the Channel Tunnel under the straits of Dover and the wish to tunnel through seabed which was either British or French in all respects, so as to have jurisdictional certainty.

3 Territorial Waters Order in Council 1964. The baselines are a mixture of normal baselines, bay-closing lines and some straight baselines. Further details are in Chapter 26 below.
4 Fishery Limits Act 1964.
6 The 12 nm limits are shown on Figure 1, the map annexed to this paper.