A QUESTION OF SOVEREIGNTY? SUBMISSIONS TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF AND MARINE PROTECTED AREAS

Ingo Winkelmann*

Throughout his career, the work of Rüdiger Wolfrum has been characterized by the high professional standards that he himself set and by his readiness to tackle issues which, in addition to their legal complexity, have a considerable political impact. He always managed to strike a subtle balance between formal legal logic and political pragmatism. Recent questions concerning the relationship between submissions to the Commission on the Limits of the Continental Shelf (CLCS) and marine protected areas beyond national jurisdiction belong to a category which demands just such a balance. They also touch upon issues which have benefited greatly from Rüdiger Wolfrum’s considerable insight and dedication ever since he wrote his seminal work on the “Internationalisierung staatsfreier Räume” in the early 1980s.¹

This contribution will examine the extent to which a submission made to the Commission on the Limits of the Continental Shelf may have a negative impact on any marine protected areas which overlap with the area covered by the submission. Part A of this paper outlines a specific case which has recently arisen within the context of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR). Part B reflects the political solution found within this organization, part C contains comments on the concept of marine protected areas in areas beyond national jurisdiction, and part D analyses the existing approaches to resolving potential collisions between continental shelf submissions and marine

* The opinions given in this article are those of the author and do not necessarily reflect those of the Federal Foreign Office or other government offices.

¹ R. Wolfrum, Die Internationalisierung staatsfreier Räume (1984); as one more example among many others, see R. Wolfrum, in: W. Graf Vitzthum (ed.), Handbuch des Seerechts, Chapter 4: Hohe See und Tiefseeboden (Gebiet), 287 (2006).
protected areas. The final part E will be dedicated to a preliminary legal assessment.

A. The Concrete Case: the Charlie Gibbs Fracture Zone

In 2009, unexpected questions arose with regard to an area about to be designated a marine protected area by the Member States of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR). The debate was triggered by a submission of continental shelf data by Iceland to the Commission on the Limits of the Continental Shelf\(^2\) containing new outer continental shelf limits (Table 1), on the basis of which Iceland withdrew its support for the establishment of the marine protected area (MPA) under discussion. As a result, a far smaller MPA was established than had originally been planned.

I. Location of the Area

The projected area, known as the Charlie Gibbs Fracture Zone (CGFZ), lies in an area beyond national jurisdiction (ABNJ). The area does not form part of a coastal zone, nor does it lie in the exclusive economic zone of any coastal state. The CGFZ covers an area of 323,900 km\(^2\) and is located in the northern part of the Mid-Atlantic Ridge.\(^3\) The area comprises the Faraday (1251 km\(^2\)) and Hecate (358 km\(^2\)) seamounts, and in the north a section of the Reykjanes Ridge (20644 km\(^2\)), where bottom trawling and fishing with static gear, including bottom set gill-nets and longlines, was prohibited from 2004 until the end of December 2009.\(^4\) The proposed MPA was significantly larger than current NEAFC\(^5\) closures, with the purpose of covering a coherent area which includes all the relevant biogeographical regions and a wide range of habitats, as well as bypassing the general lack of knowledge about deep-sea habitats by implementing the precautionary principle.

\(^2\) See infra A. III.

\(^3\) The original coordinates proposed for the boundaries of the MPA were: Latitude N Longitude W, 55o 37o W, 55o 32o W, 53.5o 32o W, 53.5o 27o W, 49o 27o W, 49o 32o W, 51o 32o W, 51o 37o W, 55o 37o W; data and description of the area taken from OSPAR Doc. 09/6/5-E (2009).


\(^5\) North-East Atlantic Fisheries Commission.