Federal Republic of Germany

The extension of territorial waters in the North Sea

By a proclamation of 12 November 1984 which became effective on 16 March 1985, the Federal Republic of Germany extended the limits of its territorial sea in the North Sea. The extension applies only to the German Bight, an area situated off the mouths of the Jade, Weser and Elbe rivers. This extension was accomplished, not by drawing a new line parallel to the baseline, but by drawing a box, the corners of which are marked by 54° 01' 11" N/ 8° 18' 40" E in the East, 54° 13' 36" N/ 7° 58' 57" E and 54° 14' 26" N/ 7° 49' 50" E in the North East, 54° 08' 11" N/ 7° 24' 36" E in the North West and 53° 47' 58" N/ 7° 24' 36" E in the West. The box delimited by these lines includes within it two road-steads, one to the South and one to the West of the island of Helgoland. To the West of Helgoland the extended territorial sea reaches a breadth of about 16 nautical miles.

The decision to extend the territorial sea, which met criticism and ultimately a formal protest by the USA, was basically motivated by environmental concerns. The main purpose was to provide the legislative and enforcement powers necessary to enhance safety of navigation and thereby decrease the risk of collisions which could have catastrophic impacts on the marine environment and the coast. The German Bight is not only an area of intensive navigation with a considerable danger of collisions (in particular in the area off the mouth of the Jade river where the North-South and East-West shipping lanes cross), but it is also an area with a high risk of groundings because of the difficult hydrological and meteorological conditions. The German Council of Experts on Environmental Questions has warned of the dangers of the situation in the German Bight, suggesting that a major accident in that area is overdue and could happen any day.

The proclamation raises a number of questions under both German constitutional law and international law. In this brief comment only a few remarks may be made on the international legal problems.

One problem is whether the extended territorial sea, reaching a breadth of about 16 nautical miles, exceeds the maximum breadth permitted under international law. Recent state practice shows that the majority of the coastal states adhere to the 12-mile limit; 84 states proclaim a 12-mile territorial sea, whereas some 25 states—

2 See map p. 315.
3 Umweltprobleme der Nordsee (Stuttgart/Mainz, 1980), p. 228.
among them Australia, Belgium, the UK and the USA follow the traditional 3-mile rule.\(^5\) According to the Law of the Sea Convention, 1982, the maximum breadth of the territorial sea is 12 nautical miles,\(^6\) and although the Convention is not yet in force it can be said that as far as the breadth of the territorial sea is concerned, the Convention reflects a consensus of the states which participated in the Third Law of the Sea Conference. The 12-mile limit for the territorial sea was not among the great controversies of the Conference.

In spite of this convincing evidence that the current maximum permissible breadth of the territorial sea is 12 nautical miles, the extension of the German territorial sea may nonetheless be justified under the roadstead rule laid down in Article 9 of the Geneva Convention on the Territorial Sea and the Contiguous Zone and in Article 12 of the Law of the Sea Convention, such provisions being a statement of customary international law. According to that rule, roadsteads which are normally used for loading, unloading and anchoring of ships, and which could otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. Therefore, the FRG was entitled to include in its extended territorial sea the deepwater roadstead to the West of Helgoland. Because the inclusion of this roadstead accounts for the majority of the new territorial sea area past the recognized 12-mile limit, it appears that the extension is justified in this regard under international law.

Another question is whether the extension of the territorial sea was really the only way to achieve the objectives pursued by the FRG, i.e. the provision of legislative and administrative powers for more effective traffic regulations. The Federal Government took the view that there was no alternative to extending the territorial sea; only in an extended territorial sea could the necessary measures for monitoring and regulating traffic and for dealing with emergency situations be enacted and enforced. However, instead of extending the territorial sea the FRG could have claimed functional jurisdiction with regard to pollution control which would have included powers to adopt and enforce traffic regulations. Functional jurisdiction with regard to pollution control is part of the widely recognized concept of the 200-mile exclusive economic zone which gives the coastal state powers to adopt and enforce the necessary measures to protect the marine environment against, among other things, the risks associated with navigation. Today coastal states may clearly claim either wholly or in part the rights and jurisdiction possible within an exclusive economic zone; if it wishes, a coastal state may confine itself to specific rights and jurisdiction.

The FRG, with little doubt, refrained from claiming only such a functional jurisdiction for political reasons. The FRG has always shown a certain reluctance with regard to the new concepts in the law of the sea; the exclusive economic zone and its assertions of functional jurisdiction being one such concept. It is well-known that the FRG is among the few states which still have not signed the new Law of the Sea


\(^6\) LOS Convention, 1982, Art. 3.