The Territorial Sea Act 1987

This Act, enacted on 15 May 1987 and brought into force on 1 October 1987, extended the breadth of the territorial sea adjacent to the United Kingdom from 3 to 12 miles.\(^1\) Until the entry into force of the Act, the baselines around the UK were established by Orders in Council made under the prerogative in 1964 and 1979.\(^2\) In future, orders establishing baselines will have a statutory basis.

Section 2 of the Act preserves, despite the extension of the territorial sea, the present operation of any local Acts or the present limits of existing jurisdiction of any harbour authority or port health authority. Certain existing provisions relating to coal and to regulations and licences for petroleum exploitation not in force are to remain unaffected.

Section 3 makes minor and consequential amendments and repeals existing legislation. These are considered appropriate in view of the extension of the territorial sea. The most important amendment is to the Wildlife and Countryside Act 1981 on marine nature resources. According to this, parts of the territorial sea beyond the 3-mile limit are not automatically covered by the Act.\(^3\) Section 3(2)(b) and (c) provide the necessary power by Order in Council to include such areas in the 12-mile limit if the need arises. There is only one designated area so far, Lundy, but other areas such as Skomer, Menai, Loch Sween, St Abb's Head, Bardsey and the Scilly Isles are under consideration. This, however, restricts the designation of such areas and indicates the reluctance of the government even to consider such a possibility.

The Act is exclusively concerned with the limits of the territorial sea and there are no provisions for the UK jurisdiction within the regime. Nevertheless, it expands the regulatory powers of the UK, and vessels discharging oil or other harmful substances, or vessels which infringe traffic separation schemes will be liable to prosecution in UK ports.\(^4\) Deposits of any substances or other articles either in the sea or under the sea-bed without a licence is also an offence.\(^5\) The power to hold casualty inquiries on shipping accidents giving rise to oil pollution is

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1. Section 1(1)(a) of the Territorial Sea Act 1987 (c. 49); the Territorial Sea Act 1987 (Commencement) Order (S.I. 1987 No. 1270).
2. Ibid. s. 3(b)(c); Sch. 1, para. 6.
4. Food and Environment Protection Act (Part II) 1985 (c. 48).
extended and pirate broadcasting from within 12 miles could be made the subject of prosecution.\textsuperscript{5}

The UK has already agreed to delimit the maritime areas of the Strait of Dover where England and France lie less than 24 miles apart, and in the vicinity of the Isle of Man.\textsuperscript{6} The former delimitation follows the line already agreed by the Agreement of 24 June 1982 between the UK and France, as the boundary of the continental shelf.\textsuperscript{7} This is a simplified median line; that is, a median line which is constructed by a number of straight lines which follow the general line of the more complicated median line.

According to a statement in the House of Lords,\textsuperscript{8} the UK will accord to the international community the essential rights in internationally important straits for which there is no alternative route. These are, according to the statement, the straits of Dover, the North Channel, lying between Scotland and Northern Ireland, and the passage between Shetland and Orkney. Other straits, however, used for international navigation, such as the Pentland Firth south of Orkney and the passage between the Scilly Isles and the mainland of Cornwall, are treated as parts of the territorial sea with only the right of innocent passage. Consequently, submarines must navigate on the surface and aircraft would not be allowed to overfly without permission of the UK government.

It is important to note that this declaration uses the legal categories of straits defined in the 1982 United Nations Convention on the Law of the Sea (UNLOSC) and pertinent to the concept of transit passage,\textsuperscript{9} a regime more restrictive of coastal competence than the regime of non-suspendable innocent passage provided for in the 1958 Territorial Sea Convention. The only definition for a strait in the 1958 Convention is its use for international navigation and its nature, connecting two parts of the high seas or the territorial sea of a foreign state.\textsuperscript{10} The 1982 UNLOSC is still not in force and it is very doubtful that the provisions on straits could be considered as having assumed the status of customary international law.

The Act applies to the UK and Northern Ireland but not the Channel Islands or the Isle of Man. There is, however, a relevant provision for the possibility of a future extension of such a limit by Order in Council. What is more important, it applies to Rockall, the controversial rock off Scotland around which the UK has already declared 200-mile fisheries zone. Ireland, Iceland and Denmark are disputing the claims of the UK around Rockall and it will be important to watch their official reactions to this new development.

The extension to 12 miles indicates no major shift in the UK position as far as the 1982 UNLOSC is concerned. This convention permits states to claim territorial waters up to 12 miles from their baselines, and with 103 states already claiming such

\textsuperscript{5} J.C. Woodliffe, "The Demise of Unauthorized Broadcasting from Ships in International Waters" (1984) 1 UJECI 402.
\textsuperscript{6} The Territorial Sea (Limits) Order 1987 (S.I. 1987 No. 1269).
\textsuperscript{7} UKTS 20 (1983) Cmdnd.8859.
\textsuperscript{8} Parliamentary Debates, Territorial Sea Bill, House of Lords, 3 February 1987, p. 382.
\textsuperscript{9} Art. 36 of the 1982 UNLOSC.
\textsuperscript{10} Art. 16(4) of the 1958 Territorial Sea Convention.