The Strait of Dover and the Southern North Sea—Some Recent Legal Developments*

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On 2 November 1988 the British and French Foreign Ministers signed an agreement establishing a territorial sea boundary down the middle of the Strait of Dover.1 At the same time the two Ministers issued a joint declaration about passage through the Strait. The declaration represents the latest of a series of joint actions about navigation in the narrow congested waters between the English Channel and the southern North Sea where the four coastal states have all now extended the breadth of the territorial sea to 12 n.m. Reporting systems have been introduced by the Belgian and Dutch Authorities. In 1990 and 1991 boundary agreements were signed between Belgium and France,2 Belgium and the UK,3 and France and the UK.4 Finally, in July 1991 the European Court of Justice gave judgment in Case 146/89 Commission v United Kingdom5 concerning the measurement of the 6- to 12-mile belt principally in the southern North Sea for fishing purposes. This article reviews the significance of these developments.

Geographical Setting

The Strait of Dover, as defined by the International Hydrographic Organization, extends on the north coast from about Beachy Head to the Thames Estuary and on the south from Dieppe to the Franco-Belgian border. The Strait is less than 24

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5 62 CMLR 649.

n.m. wide for part of its length.\textsuperscript{6} It is shallow, the controlling depth in the fairways of the traffic lanes being only 21 metres in the vicinity of the Sandettie Bank. There are many hazards, both natural and man-made: tidal streams, bad weather, moving sandbanks, wrecks, heavy traffic, yachts, fishing boats at work and undersea power cables. It is the busiest strait in the world, linking the Baltic and North Seas via the English Channel with the Irish Sea and the Atlantic Ocean.\textsuperscript{7} In addition to the shipping going up or down the Strait, something in the order of 500 ships each day, there is a very significant cross-channel ferry traffic between ports such as Ostend, Dunkirk, Calais and Boulogne on one hand and Dover, Folkestone, etc. on the other. There are also regular hovercraft and hydrofoil services, which reach 65 knots.\textsuperscript{8} A tunnel for rail traffic is nearing completion.

\textbf{Maritime Traffic Schemes}

In 1964, the Maritime Safety Committee of what is now called the International Maritime Organization (IMO) decided to introduce traffic separation schemes in areas where traffic was congested. Work started on plans for such a scheme through the Strait of Dover. When the scheme came into operation (on a voluntary basis) in 1967, it was the first in the world. The scheme has been refined and made compulsory in the intervening 25 years.\textsuperscript{9}

Rule 10 of the Collision Regulations 1972 applies fully to the Strait. Under the terms of the traffic scheme, the main route into the North Sea runs on the French side, and the route from the North Sea runs on the English side. Between them, there is a separation zone, which has a crossing “gate” opposite Dover for the ferries, and in which fishing is prohibited. Cross traffic is required to cross the lanes as nearly as possible at right angles to the flow of traffic. Extensive pilotage assistance is available on both sides, and there is full radar surveillance from Dover coastguard and Cap Gris Nez Traffic Centre. There are inshore traffic zones on both sides of the Strait for use by smaller vessels as well as deep draught routes within the main lanes. The IMO scheme emphasizes the need for adequate underkeel clearance (UCK). In 1982, IMO recommended four metres for UCK, but later studies showed this was insufficient in certain instances.

Co-operation between the British and French Governments over matters to do

\textsuperscript{6} The definitions adopted by the Dover Strait Pilot are somewhat more extensive in the southern North Sea, extending from Cape d’Antifer to Scheveningen (Netherlands).

\textsuperscript{7} For a full review, see L. Cuypers, \textit{The Strait of Dover} (1986), Vol. 8 in the series \textit{International Straits of the World}, ed. G. J. Mangone.


\textsuperscript{9} IMO Assembly Resolution A475 (XII). The Collision Regulations of 1972 made traffic schemes compulsory, with effect from 1977. The UN Convention on the Law of the Sea 1982 takes account of this position in Articles 22 and 41. Effect is given to the Collision Regulations and IMO-approved traffic separation schemes by the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1983 (SI 1983/708). These apply to UK vessels wherever they may be and to other vessels while they are within UK territorial waters. It is an offence to contravene the Collision Regulations, and vessels suspected of non-compliance may be detained.