

Abortions on the High Seas: Can the Coastal State invoke its Criminal Jurisdiction to Stop Them?[†]

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INTRODUCTION

In June 2001, the Netherlands-registered ship *Sea Change* docked in the port of Dublin, attracting considerable media attention. At the time, abortion was legal in the Netherlands,¹ but illegal in Ireland.² The crew members of *Sea Change* openly announced their intent to circumvent Irish criminal law. They planned to take pregnant Irish women on board, travel into international waters, and there, in international waters, provide abortions. Ultimately, the plan was unsuccessful because the crew had failed to acquire the abortion clinic license required by Dutch law, so if crew members had performed abortions on board the ship, they could have been subject to prosecution upon their return to the Netherlands.³ *Sea Change* was spon-

[†]EDITORS' NOTE.—This article was the winning entry in the 2001 *Ocean Yearbook* Student Paper Competition.

1. The criminal prohibition against abortion in the Netherlands was lifted by the Law on the Termination of Pregnancy in 1981. The Law came into force in 1984 as a result of the Decree on the Termination of Pregnancy. English-language versions of both the Law and the Decree can be found in the volumes 8 and 11 of the *Annual Review of Population Law* (New York: United Nations Fund for Population Activities, 1981) and (New York: United Nations Fund for Population Activities, 1984).

2. Abortions have been prohibited in Ireland since 1861, when the Offences Against the Person Act made self-induced and aided abortions illegal for both the mother and any person who assists the mother. For a fuller discussion of Irish abortion law, see: D. A. MacLean, "Can the EC kill the Irish unborn?: an investigation of the European Community's ability to impinge on the moral sovereignty of member states," *Hofstra Law Review* 28, no. 2 (1999): 527 at 552–61. See, further: Susan Bouclin, "Abortion in post-X Ireland," *Windsor Rev. of Legal and Social Issues* 13, (2002): 133.

3. According to news reports, the crew could have faced up to four-and-one-half year's imprisonment if convicted. (12 June 2001). Dutch say abortion boat flouts law. Accessed 12 June 2001 at CNN.com on the World Wide Web: <http://www.cnn.com/2001/WORLD/europe/06/12/netherlands.abortion.index.html>. (However, just over one year later, on 1 July 2002, Women on Waves issued a press

sored by the Women on Waves Foundation ("Women on Waves"), a charitable foundation based in the Netherlands, which aims to provide offshore abortions to women who live in coastal countries where abortion is prohibited.⁴

The plan proposed by Women on Waves raises issues about the limits of a coastal State's criminal jurisdiction. A traditional view is that a State's criminal jurisdiction ends where its territory ends.⁵ According to Article 3 of the United Nations Convention on the Law of the Sea (UNCLOS),⁶ a coastal State's territory ends 12 nautical miles (M) from its coastline, at the limits of the territorial sea. Thus, it appears at first glance that activities occurring beyond the 12-M limit of the territorial sea cannot be subject to the criminal jurisdiction of the coastal State. This is the position taken by Women on Waves:

By performing abortion services outside territorial waters, women and abortion providers cannot be charged or prosecuted when returning to port because applicability of national penal legislation, and thus also of abortion law, extends only to territorial waters. Outside that 12-mile radius it is Dutch law that applies on board a Dutch ship and abortion

release stating that the Dutch Minister of Health, Els Boist, had stated that, since in the Netherlands no license is needed to provide pregnancy terminations within the first 45 days of pregnancy, Women on Waves would not be violating Dutch law by providing the abortion pill in such situations on board a Dutch ship.)

4. The Foundation was established in May 1999 by Dr. Rebecca Gomperts, a Dutch gynecologist. Providing abortions is only part of the Foundation's mission. The Foundation's mission, in its entirety, as stated on its Web site: <http://www.womenonwaves.org>, is:

- Empower women to make conscious, well-informed decisions about family planning.
- Prevent unwanted pregnancy.
- Ensure safe and legal abortion.
- Reduce unnecessary physical or psychological suffering and deaths from illegal abortions.
- Catalyze support for liberalization of abortion laws worldwide.

5. *R. v. Keyn* (1876) 2 Ex. Div. 63 (CCR). See also s. 6(2) of Canada's Criminal Code, R.S.C., c. C-46 (1985), which states that: "Subject to this Act or any other Act of Parliament, no person shall be convicted or discharged under section 730 of an offence committed outside Canada." However, this is not the only traditional view, as Akehurst notes that the principles of passive personality and universality also have a long history. M. Akehurst, "Jurisdiction in international law," *British Year Book of International Law* 46 (1972-73): 145 at 163-64.

6. Montego Bay, 10 December 1982, in force 16 November 1994. 137 ratifications as of 24 September 2001. Cmnd. 8941; *International Legal Materials* 21 (1982): 1245. Accessed 24 September 2001 on the World Wide Web: <http://www.un.org/depts/los/>.