

# WHERE THREE WATERS MEET

## Fisheries after Brexit

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BIICL

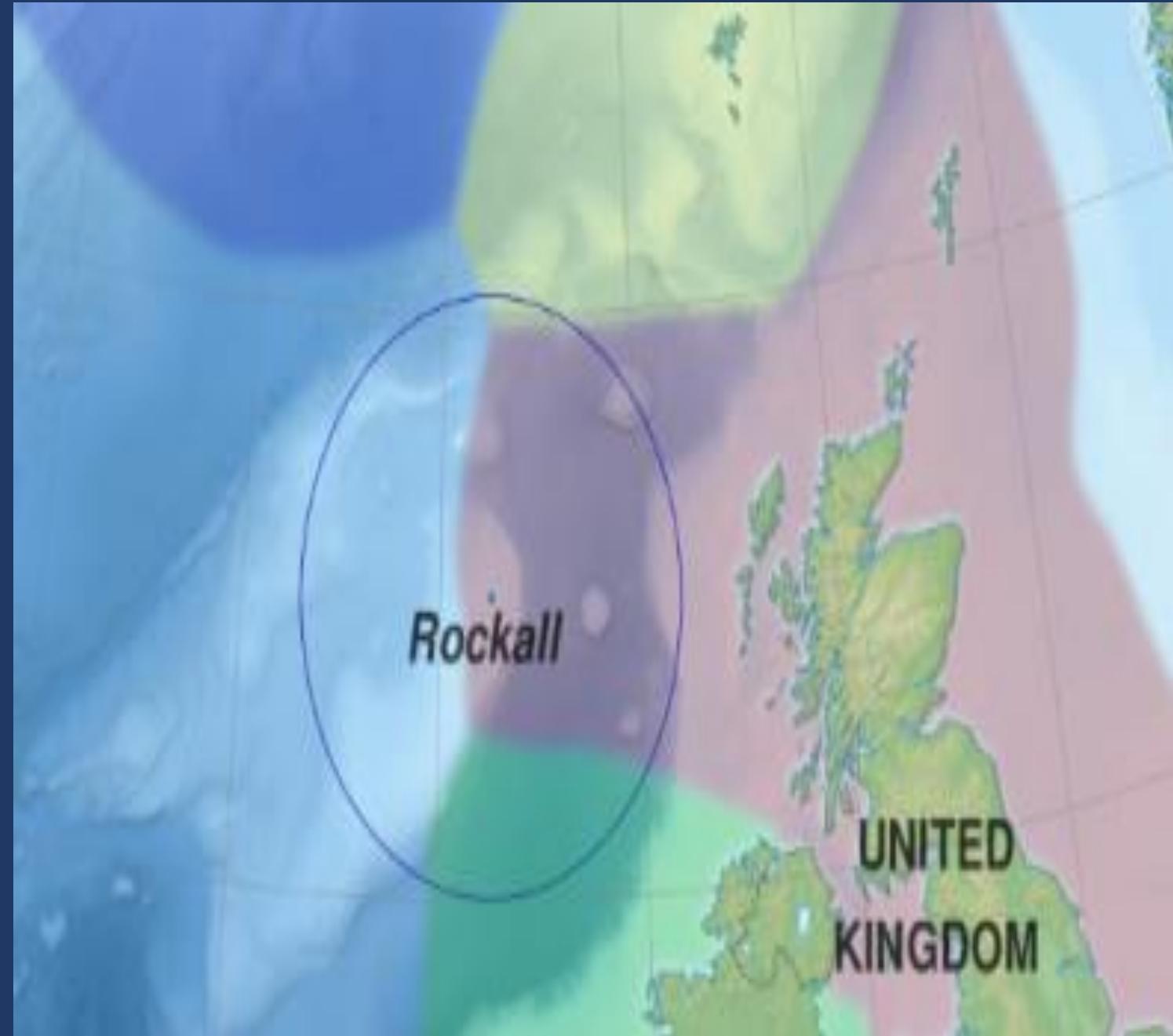
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INTERNATIONAL  
LAW

EU LAW

DOMESTIC LAW



"This is a routine enforcement matter to ensure that illegal activity within the UK's territorial waters, namely within a radius of 12 miles of the islet of Rockall, ceases.

"We have made absolutely clear our view. We are sure of the legal position and of our legal ground and it is my duty to ensure that the law is enforced."

Scotland's Fisheries Minister Fergus Ewing to BBC Scotland 19 June 2019

### Article 2 UNCLOS

- “1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.”

# Treaty of Accession of Denmark, Ireland and the United Kingdom

22 January 1972

## Article 102

From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea.

## Issues

1. What is the jurisdiction of the Scottish Government in relation to enforcing a 12 nautical mile zone around Rockall?
2. Is there jurisdiction at all in the 12 nautical miles around Rockall?
3. What is a position in law in relation to fishing around Rockall?

## Background

1955: UK claims Rockall

1972: Rockall Act

1997: The Fisheries Limits Order; S.I. No 1750 of 1997

1998: Scotland Act 1998 – Section 126

2010: Marine Scotland Act 2010 –  
Section 159

2013: UK EEZ. The Exclusive Economic Zone Order; S. I. 2013 No 3055.

31 March 2014

2013: Scottish Zone; Marine and Coastal Act 2009, Section 41. Sch. 4. Pt 1

The Fisheries Limits Order; S.I. No 1750 of 1997

*“The United Kingdom’s fishery limits will need to be redefined based on St Kilda, since Rockall is not a valid base point for such limits under Article 121(3) of the Convention.”*

British Foreign Secretary, Robin Cook House of Commons 21 July 1997

Symmons, (1993) Ireland and the Law of the Sea at p. 181

Churchill RR (1997); The UK’s Decision to Defer Accession to the UN Convention on the Law of the Sea: A Convincing Move? 12 IJMCL, 110, 115

## What is the position in international law?

**United Kingdom v. Norway, 1951 I.C.J. 8,** (Anglo-Norwegian Fisheries Case)

“The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. (while) the act of delimitation is ... a unilateral act, ..., the validity of the delimitation with regard to other States depends upon international law.” (para 132)

The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.” (para 138)

**France v. United Kingdom (Minquiers and Ecrehos Case ), 1953 I.C.J. 47**

**Meanguera and Meanguerita Islands ICJ 1992**

## C-459/03 Commission v Ireland ECR I-4635 (Mox case)

“..the provisions of the Convention in issue .. come within the scope of Community competence ... with the result that those provisions form an integral part of the Community legal order. (para 126)

It follows that the provisions of the Convention relied on by Ireland in the dispute ... are rules which form part of the Community legal order. The Court therefore has jurisdiction to deal with disputes relating to the interpretation and application of those provisions and to assess a Member State's compliance with them...” (para 119)

## Article 5

### General rules on access to waters

1. Union fishing vessels shall have equal access to waters and resources in all Union waters other than those referred to in paragraphs 2 and 3, subject to the measures adopted under Part III.
2. In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised, until 31 December 2022, to restrict fishing to fishing vessels that traditionally fish in those waters.

C-146/89 Commission v United Kingdom I-3566

“..the fishing activities ... are subject to the detailed provisions contained in Annex I, which fix for each Member State the geographical areas within the coastal bands of other Member States where those activities are pursued and also the species concerned.

## Summary

- International, EU and Domestic law impacts fishing
- Rockall sovereignty is contested
- UNCLOS is EU Law
- EU law on fisheries – law of equal access
- non discrimination
- Symbiotic Relationship between UK and EU fishers
- Norway example

# Conclusion

POLITICAL DECLARATION SETTING OUT THE FRAMEWORK FOR THE FUTURE RELATIONSHIP BETWEEN THE EUROPEAN UNION AND THE UNITED KINGDOM

## FISHERIES

- bilateral cooperate to ensure sustainable fishing
- promote resource conservation
- cooperate on conservation measures for the, rational management and regulation of fisheries,
- non discrimination
- manage shared stocks.
- a fisheries agreement by 1 July 2020 on access to waters and quota shares



Post Brexit

The Three Waters Will Continue to

Meet

*Rockall*

Thank You

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KINGDOM