ATT Welcome October 2020

Welcomes

29 September 2020

Last month the focus shifted back to Brexit, after a summer when we have had other important issues to consider. A major sticking point was about continued access to UK waters – fishing rights. I remembered seeing a map of the UK's territorial waters and how they would appear next year when Brexit is supposed to be done; and I noticed that both Lough Foyle and Carlingford Lough (those are the bits of water where Northern Ireland and the Republic butt together) were split in half. With all the talk about trade negotiations between the UK and EU, I wondered how easy was it to agree our split in 1922.

When I started to look into this more closely, I discovered that the issue remains unresolved even today, almost a hundred years later. The problem appeared to stem from the Government of Ireland Act 1920, when Ireland was partitioned by reference to the land mass (six counties in Northern Ireland and 26 counties in Southern Ireland). The matter of territorial waters was not an issue because the whole island of Ireland was still part of the UK. The issue only reared its head when Southern Ireland left the UK in 1922.

Sir James Craig, the Prime Minister of Northern Ireland at the time, asked the question in the UK Parliament – do the territorial waters surrounding Northern Ireland also form part of Northern Ireland and therefore the UK? Sir Douglas Hogg (Attorney General) opined that the territorial waters did indeed belong with Northern Ireland. But in a subsequent Irish court case relating to fishing rights in 1923, the court decided Ireland's territorial waters extended to the low water mark on the shoreline around County Londonderry.

In 1927, perceived illegal fishing on Lough Foyle had become so grave that Sir James Craig (still Prime Minister) contacted his Irish counterpart, hinting that he might introduce a Bill giving the police powers to stop and search vessels on Lough Foyle. Ireland asserted that all of Lough Foyle was Irish territory and that, as such, a Bill would be rejected by the Republic of Ireland and its introduction would create 'a

very serious situation’.

With the fall of France in 1940, the British Admiralty ordered convoys to be re-routed through the north-western approaches, which would take them around the north coast and through the North Channel to the Irish Sea. However, escorting those convoys raised a problem: it became imperative to establish an escort base as far as possible to the west in the UK. There was one obvious location, being Lough Foyle, but it remained unclear where the border was between the UK and Ireland in Lough Foyle.

In the early months of 1941, the Royal Navy increased its use of Lough Foyle but remained concerned that there might be a challenge to its use of the Foyle on the grounds that ships navigating the river were in the waters of neutral Ireland. The Royal Navy continued to use its new base on the Foyle until 1970. When both Ireland and the UK joined the European Communities in 1973, the issue lost all importance because the disputed waters were now European territorial waters.

The territorial dispute between Ireland and the UK concerning Lough Foyle and Carlingford Lough is still not settled.

As recently as 2005, when asked to list those areas of EU member states where border definition is in dispute, a British government minister stated:

> ‘Border definition (i.e. the demarcation of borders between two internationally recognised sovereign states with an adjoining territorial or maritime border) is politically disputed between Ireland and the UK.’

In June 2009, the UK’s Foreign & Commonwealth Office underlined its view that the whole of Lough Foyle is within the UK, but also recognising that the Irish Government does not accept this position.

This does not bode well for the future. I am sure the matter will come to the fore again the next time there is a dispute about fishing rights in the Lough.

On a lighter note, I trust you tuned in to Professional Standards – Updates and Reminders webinar on 15 September. A very important and very interesting session…

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