

TERRITORIAL STATUS OF DEEPWATER PORTS

The rapid growth of the supertanker fleet has created the need for deepwater ports to accommodate them. The legal status of these offshore ports is not presently recognized by existing law of the sea conventions. This Comment examines the necessity of granting territorial status to deepwater ports and the means to achieve this recognition. The Comment also discusses the United States Deepwater Port Act of 1974, the first unilateral declaration dealing with superports. The author concludes that deepwater ports should be accorded territorial status or permitted an encompassing territorial sea.

Superports will come. Superport construction activity will be as dynamic as the container and intermodal revolutions which we have been witnessing in the shipping community for the past 16 years.¹

Little more than a decade ago, virtually no vessels of more than 100,000 deadweight tons (dwt)² were employed anywhere in the world.³ Today more than 200 tankers of over 200,000 dwt are in use.⁴ Some authorities note that a 1,250,000 dwt vessel may soon be built.⁵ Bulk cost savings and economies of scale⁶ spur the continuing devel-

1. Barrett, *Superports*, 40 VITAL SPEECHES OF THE DAY 714, 714 (1974).

2. Deadweight is the measure of total carrying capacity of a tanker (or other ship) in long tons of 2,240 pounds. Deadweight tonnage (dwt) of a tanker includes the weight of all the cargo oil plus the weight of fuels, stores, water, and crew. In most tankers, the deadweight capacity is within five percent of the actual cargo capacity. U.S. OFFICE OF TECHNOLOGICAL ASSESSMENT, U.S. CONG., OIL TRANSPORTATION BY TANKERS: AN ANALYSIS OF MARINE POLLUTION AND SAFETY MEASURES, at xvii (July 1975).

3. Lawrence, *Superports, Airports and Other Fixed Installations on the High Seas*, 6 J. MAR. L. & COM. 575, 575 (1975).

4. *Id.*

5. Barrett, *Superports*, 40 VITAL SPEECHES OF THE DAY 714, 714 (1974).

6. The following table demonstrates the cost savings of bulk oil transport through the use of supertankers:

<u>Ship Size (in dwt)</u>	<u>Freight Cost in Dollars Per Ton</u>		
	<u>Round-trip Distance in Miles</u>		
	<u>4,000</u>	<u>8,000</u>	<u>24,000</u>
65,000	\$1.90	\$3.50	\$9.05
250,000	1.40	2.50	6.55
326,000	1.25	2.30	6.15
500,000	1.00	1.90	5.45

opment of the titan maritime carriers.⁷

Because of the magnitude of the new supertankers,⁸ or very large crude carriers (VLCC),⁹ they are technological wonders. However, one fundamental problem exists for their implementation: VLCC's are too large for almost all world ports, especially the ports of the United States. Existing supertankers require a port to have a harbor or channel depth of nearly ninety-four feet. The deepest Eastern or Gulf port of the United States is forty-four feet.¹⁰ Because present port and harbor facilities are unable to service these supertankers, the coastal States of the world have responded to the problem with the development and use of offshore deepwater ports.¹¹ Deepwater

SELECT ASSEMBLY COMM. ON DEEPWATER PORTS, CAL. LEGISLATURE 23 (Pub. No. 394) (1974). According to one recent oil industry report there is presently a worldwide surplus of supertankers in the total range of 85,000,000 dwt. This surplus of supertankers has resulted in the sharpening of competition. The Shell Oil Co. reported "the average freight rate for a 200,000 dwt vessel making a single round-trip voyage from the Middle East to Northwest Europe during the first half of 1976 was \$4.26/ton of cargo carried. . . . Operating costs for this voyage averaged about \$5.59 . . ." Wett, *World Tanker Doldrums May Last to Mid-1980's*, 75 OIL & GAS J. 21 (No. 36, 1977).

7. Tankships up to 500,000 dwt are now within range, and there is no determination of where diseconomies of size begin to be apparent. There is a split of opinion within the shipping industry on the maximum tanker size issue. Shimp & Spyrou, *The Million Ton Tanker Fleet: Is It Really Coming?*, 72 OIL & GAS J. 58 (No. 9, 1974).

8. A supertanker is a tanker of great size and carrying capacity, generally considered to be over 100,000 dwt. U.S. OFFICE OF TECHNOLOGICAL ASSESSMENT, U.S. CONG., OIL TRANSPORTATION BY TANKERS: AN ANALYSIS OF MARINE POLLUTION AND SAFETY MEASURES, at xvii (July 1975).

9. VLCCs are supertankers of 200,000 to 400,000 dwt. *Id.*

10. Legislative Development, *Deepwater Port Act of 1974*, 7 LAW & POL'Y INT'L BUS. 1271, 1273 (1975). The United States Maritime Administration filed a report stating that "[t]he U.S. remains the only exception among the world's major industrial nations who has not provided support facilities to handle these giant bulk carriers." *Deepwater Port Policy Issues: Hearings Before the Senate Comm. on Interior and Insular Affairs*, 92d Cong., 2d Sess., pt. 3, at 1336 (1972).

11. Although deepwater ports are currently being developed as the best possible solution to meet the needs of VLCCs, there are other alternatives. Some of the possibilities are to do nothing (continue the use of smaller tankers), to lighten supertankers by unloading a prescribed portion of the cargo offshore, to raise the vessels draft, to develop or use foreign (but adjacent) transshipment terminals, or to develop new offshore terminals. *Deepwater Port Policy Issues: Hearings Before the Senate Comm. on Interior and Insular Affairs*, 92d Cong., 2d Sess. 158 (1972) (submission by the U.S. Coast Guard). See also Knight, *International Legal Aspects of Deep Draft Harbor Facilities*, 4 J. MAR. L. & COM. 367, 370 (1973). The estimated costs of dredging a few of the American ports to facilitate supertankers are Los Angeles: \$60,000,000; New York: \$520,000,000; and Baltimore: \$3,200,000,000. *Deepwater Port Act of 1973: Joint Hearings on S. 1751 & S. 2232 Before the Special Joint Subcomm. on Deepwater Ports Legislation of the Senate Comms. on Commerce, Interior and Insular Affairs, and Public Works*, 93d Cong., 1st Sess., pt. 1, at 139 (1973) (table 9) [hereinafter cited as *Hearings on the Deepwater Port Act*].

ports utilize the accommodating depths of the offshore waters on the continental shelf to locate port facilities capable of loading and unloading these VLCC's.¹²

The essential problems which face the technologically advancing maritime transport industry are not those concerning design, construction, and maintenance of deepwater ports. These skills have been mastered, as evidenced by the over one hundred deepwater ports now in operation.¹³ Rather, the central issue is both politico-legal and geographical. Where shall the deepwater ports be located? If deepwater ports are situated within the coastal State's territorial sea,¹⁴ international law recognizes that State's right to assert all the privileges and protections that territorial status accords.¹⁵ But what happens when a coastal State's offshore port, due to continental shelf limitations,¹⁶ is located wholly outside the territorial sea of that State? Presently, the answer to this question is unresolved. Deepwater ports, or superports, appear to exist without any territorial classification or status.

International law and conventions do not specifically recognize deepwater ports as a permissible use of the high seas. When the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone¹⁷ was held, supertankers and superports were not as yet developed. In light of present technology, the Third United Nations Conference on

12. The monobuoy is one class of deepwater ports. "The monobuoy is an offshore mooring connected to mainland storage facilities by pipeline. It would not have the protection of a breakwater and the supertanker would be free to rotate around the buoy." The monobuoy involves the lowest initial expenditure of all the deepwater port prototypes. *Hearings on the Deepwater Port Act*, *supra* note 11, at 175. For a more detailed discussion of the monobuoy system as it relates to deepwater ports, see Knight, *supra* note 11, at 370; Comment, *The International Legal Implications of Offshore Terminal Facilities*, 9 TEX. INT'L L.J. 205 (1974); Legislative Development, *Deepwater Port Act of 1974*, 7 LAW & POL'Y INT'L BUS. 1271, 1273 (1975). For the planning and general preparation of a deepwater port facility, see Havik, *Many Variables Go into Planning Deepwater Port Terminal*, 72 OIL & GAS J. 53 (No. 9, 1974).

13. N.Y. Times, Feb. 2, 1976, at 35, col. 1.

14. The term *territorial sea* or *territorial waters* "is used to indicate that part of the sea which extends from a line running parallel to the shore to a specified distance therefrom . . ." C. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* § 97, at 88 (6th ed. 1967).

15. Knight, *supra* note 11, at 373-74.

16. On Florida's Northeastern Gulf Coast, the necessary 100 feet depths are not reached until about 100 miles offshore. *Hearings on the Deepwater Port Act*, *supra* note 11, at 454.

17. Convention on the Territorial Sea and the Contiguous Zone, *done at Geneva*, Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

the Law of the Sea (UNCLOS III) will now be able to address the deepwater port issue at its next session.¹⁸ In the meantime, deepwater ports cannot realistically be built and maintained without a legal status. Therefore, deepwater ports will have to be recognized.

This Comment takes the position that a deepwater port may be used in the delimitation of the territorial sea. Alternatively, justifications for a territorial sea for deepwater ports will be presented for future law of the sea conventions. This Comment will further analyze the necessity of territorial status for deepwater ports. The reluctance of past law of the sea conventions to expressly define the deepwater port produces a need to investigate the traditional concepts of the port, the island, and the roadstead. Circumstances which permit the expansion and resulting delimitation of the coastal State's territorial sea will then be examined. Finally, the United States Deepwater Port Act of 1974¹⁹ will be discussed as the first unilateral declaration dealing with superports.

DEEPWATER PORTS REQUIRE A TERRITORIAL STATUS

Since the beginning of maritime mobility, all coastal nations²⁰ have enjoyed certain exclusive rights and privileges with respect to waters adjoining their seaboard. This belt of sea is considered "as much a part of the territory of a nation as is the land itself."²¹ The concept of territorial seas derived its origin from the internationally accepted view²² that coastal States have always found it essential to "exercise effective jurisdiction and control over a belt of seas adjacent to their sea coast in order to secure and maintain the security of their citizens."²³

Several important justifications exist to support the extension of the State's sovereignty outside the boundaries of its land territory. First, the security of the State is essential.²⁴ Coastal States have historically demanded exclusive possession of their shores and ports.

18. The Sixth Session of the Third United Nations Conference on the Law of the Sea (UNCLOS III) did not draft articles on deepwater ports, as evidenced by the Informal Composite Negotiating Text, U.N. Doc. A/Conf. 62/WP. 10 (1977) [hereinafter cited as ICNT].

19. 33 U.S.C. § 1500 (1974).

20. Landlocked States are still struggling for ocean rights. *See generally* Comment, *UNCLOS III: Last Chance for Landlocked States?*, 14 SAN DIEGO L. REV. 637 (1977).

21. P. JESSUP, *THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION* 115 (1927).

22. H. LAUTERPACHT, *INTERNATIONAL LAW* 375-77 (E. Lauterpacht ed. 1970).

23. Harlow, *Freedom of Navigation*, in *THE LAW OF THE SEA: OFFSHORE BOUNDARIES AND ZONES* 189, 189 (L. Alexander ed. 1967).

24. C. COLOMBOS, *supra* note 14, § 95, at 87. *See also* S. SWARZTRAUBER, *THE THREE-MILE LIMIT OF THE TERRITORIAL SEAS* 1 (1972).

Therefore, protection of the coastal State's seaward approaches is also necessary. Deepwater ports will supply industrialized nations with essential oil shipments.²⁵ Thus, the same security rationale that protects land-based ports and shorelines could justifiably be applied to deepwater ports.

Second, the State must be able to regulate all ships entering, leaving, and anchoring in its territorial sea. This justification is based on commercial, fiscal, and political interests.²⁶ Without the ability to supervise the activities surrounding the deepwater port, an important aspect of the State's economy—the ingress of oil—will function with little or no regulation. Further, ships failing to exercise voluntary precautions may inflict serious harm upon adjacent property and people from the discharge of wastes.²⁷ Enforcement of environmental standards and customs laws may prove futile without territorial jurisdiction.²⁸

The territorial sea is not an absolute concept. Some commentators suggest that territorial sovereignty is divisible and penetrable.²⁹ The uncertainty of the concept is evidenced by the inability of the Convention on the Territorial Sea and the Contiguous Zone to establish the breadth of the territorial sea.³⁰ Larger maritime nations are primarily responsible for this failure. These nations use the high seas³¹ as a means of strategic communication,³² and any extension of

25. *Hearings on the Deepwater Port Act*, *supra* note 11, at 124 (statement of Jack Horton, Department of the Interior).

26. C. COLOMBOS, *supra* note 14, § 95, at 87.

27. M. MCDUGAL & W. BURKE, *THE PUBLIC ORDER OF THE OCEANS 177-78* (1965).

28. *Id.*

29. Territorial sovereignty is a "[h]ighly modifiable and seperable bundle of rights . . ." 1 H. LAUTERPACHT, *INTERNATIONAL LAW* 376 (E. Lauterpacht ed. 1970). England, for example, assumed power to exercise jurisdiction over and destroy if necessary non-registered British ships in the high seas when they created a threat of massive oil pollution of the British territory or territorial waters. Oil in Navigable Waters Act of 1971, 41 HALSBURY'S STATUTES OF ENGLAND 1338 c. 21 (3d ed. 1972). Canada has also declared jurisdiction and control to prevent pollution in a controversial zone up to 100 miles. Arctic Waters Pollution Prevention Act of 1970, CAN. REV. STAT. c. 2 (1st Supp. 1970). The United States has a similar statute, the Inland Rules of the Road, 33 U.S.C. §§ 154-232 (1972), to enforce navigational safety rules. R. WENTWORTH, *KNIGHT'S MODERN SEAMANSHIP* 297 (12th ed. 1953).

30. S. SWARZTRAUBER, *THE THREE-MILE LIMIT OF THE TERRITORIAL SEAS* 211 (1972).

31. The 1958 Geneva Convention on the High Seas defines the "high seas" as the ocean area not included in the territorial sea or the internal waters of a coastal State. Article 2 of the Convention on the High Seas states:

the accepted territorial sea would limit their intelligence operations and military mobility. Ironically, the larger nations will now be building deepwater ports and seeking expanded territorial sea areas. Without international agreement on the issue, there is a certain hesitancy among the coastal States to extend their territorial sea to encompass a deepwater port. Over 160 deepwater ports are installed or proposed worldwide.³³ If one nation extends its territorial sea, other nations may follow suit.

A new claim of territorial jurisdiction in the high seas produces serious ramifications. The ocean is a finite resource. The high seas area claimed by one nation is necessarily taken from other nations. Due to the reluctance of UNCLOS III to deal with the superport issue, a unilateral State act declaring territorial status could prevail. The danger of sectioning off previous areas of high seas will be overcome by the international demand for deepwater ports and their continued existence. The significance and historical importance of

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of freedom of the high seas.

Convention on the High Seas, art. 2, *done at Geneva*, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. *See also* C. COLOMBOS, *supra* note 14, § 54, at 47; P. JESSUP, *THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION* 3, 4 (1927).

32. The champion opponent of the territorial sea delimitation battle is, of course, the United States. One example describes an insight into the United States global mobility argument. In 1964, Representative Downing of Virginia proposed a bill to the House of Representatives that would have expanded the American territorial sea from three to 12 miles. H.R. 10492, 88th Cong., 2d Sess. (1964). In a reply to the proposed bill the United States Navy commented:

The effect of the United States action to extend its territorial sea to twelve miles would understandably lead to worldwide adoption of such a limit. Universal extension of the breadth of the territorial sea to twelve miles would adversely affect the Free World's seapower by reducing the high seas by an area of three million square miles or the entire area of the U.S. including the Great Lakes. In the Mediterranean alone, extending the territorial sea from 3 to 12 miles removes 145,000 square miles from the high seas (an area 1½ times the size of Italy) . . . [and] would remove some 116 straits as free high seas, placing them under the national sovereignty of the bordering states.

Navy Department Memorandum Op.—614 C/mg ser. M1669P61, from Office of the Chief of Naval operations, Director, Politico-Military Policy Division, to Chief of Legislative Affairs (9 Mar. 1964), *reprinted in* S. SWARZTRAUBER, *THE THREE-MILE LIMIT OF THE TERRITORIAL SEAS* 240 (1972) (parenthetical original).

33. R. MAARI, *OFFSHORE MOORING TERMINALS* 51-54 (1975).

seaports must be balanced against the delimitation of the territorial sea and the accompanying limitation of the adjacent high seas.

Security of Investment

The vast majority of existing deepwater ports have been privately funded ventures.³⁴ Whether this trend will continue may depend upon the relative security of the deepwater port as an investment. Investing in an international enterprise beyond the territory of the littoral State depends heavily upon the political stability of the proposed geographical area of the investment. An oil industry spokesperson recently remarked:

Ordinarily, . . . whether an investment is made will depend upon the comparative attractiveness of one proposal weighed against others. Obviously, where there is a set of dependable factors, e.g., long-term political and economic stability (or development), mutual interest in the effective and efficient development of the resource in question, and means for resolving disputes which may arise, the prospect is good for reaching and implementing agreement. The central observation must be the more "dependable" factors that can be enlisted in favor of a major investment, the better the prospect of company interest leading to engagement.³⁵

The funds necessary for construction of deepwater ports will be considerable.³⁶ Public and private investors will demand more than a monetary return on their investment. Investors will want a legally ascertainable property interest to dispose of as they wish. Sufficient security of title, besides "reasonable use of the high seas,"³⁷ will be required to satisfy the traditional skepticism of lending institutions or corporate boards of directors.³⁸

34. Over 75% of the installed or proposed offshore mooring terminals are or will be privately funded. *Id.* Although United States deepwater ports will be licensed and regulated by the Department of Transportation, the ports will be privately funded. 33 U.S.C. § 1503 (1974).

35. Conant, *Industry's Needs—Political*, in *THE LAW OF THE SEA* 325, 325 (U. of R.I., L. Alexander ed., 1968) (parenthetical original).

36. The proposed LOOP deepwater port in the Gulf of Mexico will ultimately involve an investment of over \$738,000,000. DEP'T OF TRANSPORTATION, *THE SECRETARY'S DECISION ON THE DEEPWATER PORT LICENSE APPLICATION OF LOOP INC.* 14 (1976) (on file with the *San Diego Law Review*).

37. The 1958 Convention on the High Seas stated that all nations shall be permitted to make reasonable use of the high seas, provided the uses "be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas." Convention on the High Seas, art. 2, done at Geneva, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. See also Knight, *International Legal Problems in the Construction and Operation of Offshore Deep Draft Port Facilities*, in *HAZARDS OF MARITIME TRANSIT* 91, 102, 103 (1973).

38. Knight, *International Legal Problems in the Construction and Operation*

If the deepwater port is a territory of the coastal State, any civil or criminal conflicts that may arise involving the deepwater port could be settled without question as to the jurisdiction of the State's courts. Territorial status would afford the necessary support, protection,³⁹ and certainty of political climate to assure the future of deepwater ports. Without territorial status, security of title for deepwater port builders and investors may not be resolved until an international incident occurs.⁴⁰ At this point, the investment⁴¹ becomes a several hundred million dollar gamble.⁴²

Navigational Safety

Deepwater ports were designed to accommodate the world's new supertanker fleet. Tankers of any size have long been notorious for their inability to stop quickly, avoid obstacles, or even slow down to prevent an accident. The Ship Division of Britain's National Physical Laboratory concluded that a small supertanker (100,000 dwt) will decelerate at only one knot per minute.⁴³ Supertankers have a limited capacity to respond to emergencies. For a 250,000 dwt tanker, a complete stop under favorable weather conditions will take twenty-two minutes and at least three miles.⁴⁴ To further compound the

of Offshore Deep Draft Port Facilities, in HAZARDS OF MARITIME TRANSIT 91, 99 (1973).

39. See generally Landau, *Protection of Foreign Investment*, in INVESTMENT IN DEVELOPING COUNTRIES 77-80 (F. Nattier ed. 1972).

40. "[I]t is no secret that in most instances the actions which precipitate serious controversy are on the side of the State and not of the private party." Young, *International Remedies in Investment Disputes: A Forward View*, in SYMPOSIUM: RIGHTS AND DUTIES OF PRIVATE INVESTORS ABROAD 359, 360 (Int'l and Comp. L. Center 1965).

41. According to one proposed American offshore superport study, the existence of the port would: 1) double the State's refining capacity; 2) create almost 40,000 new jobs, both land and sea based; 3) attract over \$2,000,000,000 in capital investments within a 15-year period; and 4) upon completion, the capacity of the superport would be about 4,600,000 barrels of crude oil per day. Mills, *The Louisiana Superport Authority: Its History and Its Future*, 2 OFFSHORE TECH. CONFERENCE 629, 631 (1974).

42. Property rights beyond the territory of one's State presents the ageless fear of expropriation. A current international controversy concerns the existence or nonexistence of a duty to pay compensation to the foreign investor who has been deprived of his property by State action. Kissam & Leach, *Sovereign Expropriation of Property and Abrogation of Concession Contracts*, in SELECTED READINGS ON PROTECTION BY LAW OF PRIVATE FOREIGN INVESTORS 353, 354 (1964).

43. N. MOSTERT, SUPERSHIP 31 (1974).

44. At very low speeds, such as those advisable in fog, mammoth ships may be unable to maneuver at all. Anchors don't stop these ships. Where an ordinary merchantman would drop its anchors in attempt to hold its motion, putting down anchors to stop a 200,000 tonner even slightly underway would simply mean having them wrenched from the deck.

Id.

maneuverability difficulties, the height of the supertanker creates visibility problems.⁴⁵

Due to the special navigational problems facing the operation of VLCCs, Article 60 of the Informal Composite Negotiating Text (ICNT),⁴⁶ the series of Draft Articles from UNCLOS III, must be viewed skeptically. Article 60(4) and (5) allows the coastal State to establish 500-meter safety zones around artificial installations beyond the territorial sea. Activity beyond the 500-meter safety zone may only be regulated through voluntary compliance. Presently, voluntary sea lane separation schemes have been generally ineffective in preventing collisions between tankers and installations.⁴⁷ If the deepwater port is in the high seas and is not accorded territorial status, a coastal State authority cannot enforce navigation and safety codes beyond the prescribed safety zone.⁴⁸ This small safety zone disregards the unique difficulties of VLCC mobility. Protection of the coastal State's land, citizens, environment, and deepwater ports warrants a zone of authority which exceeds the present 500-meter limit.

The ICNT 500-meter safety zone is a reproduction of the 500-meter security zone of offshore installations for the exploration and exploitation of the seabed found in Article 5 of the 1958 Geneva Convention on the Continental Shelf.⁴⁹ Adoption by UNCLOS III of this security zone fails to consider the substantial change in the size and nature of offshore installations since the 1958 Convention. The 500-meter security zone is "a survivor of the past."⁵⁰

Although the 500-meter security zone is inadequate, a twelve mile territorial sea⁵¹ around a deepwater port is both unnecessary and too

45. The visibility problem is illustrated by an incident which occurred between the tanker *Mostoles* and the trawler *Harvest del Mar*. The *Mostoles* ran down the *Harvest del Mar* with "all hands down." The tanker's crew was not even aware of the disaster. The captain of the *Mostoles* "eventually realized because of slight damage to his bow that he had struck something . . . [and] reported he had hit a 'semi-submerged object.'" *Id.* at 32.

46. ICNT, *supra* note 18, art. 60.

47. Knight, *Shipping Safety Fairways: Conflict Amelioration in the Gulf of Mexico*, 1 J. MAR. L. & COM. 1, 18-19 (1970).

48. The Inter-Governmental Maritime Consultation Organization prescribes the voluntary navigational measures. DEP'T OF TRANSPORTATION, THE SECRETARY'S DECISION ON THE DEEPWATER PORT LICENSE APPLICATION OF SEADOCK, INC. 20 (1976) (on file with the *San Diego Law Review*).

49. Convention on the Continental Shelf, *done at Geneva*, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

50. Pardo, *A Statement on the Future of the Law of the Sea in Light of Current Trends in Negotiations*, 1 OCEAN DEV. & INT'L L. 315, 325 (1974).

51. Every State has the right to establish a territorial sea not exceeding 12 miles. ICNT, *supra* note 18, art. 3.

large. However, there is a more functional approach to using adjacent ocean space.⁵² A coastal State could extend its territorial sea of three miles outward from all major deepwater ports. Within this area the coastal State would have exclusive jurisdiction to demand that all supertankers comply with the State's civil and criminal codes. A three mile sea belt would give reasonable space to enforce navigational, environmental, and safety laws and would only appropriate enough high seas space to aid in this effort.⁵³ To prevent dispersion of established shipping routes and interference with vessels not intending to use the deepwater port, the port and its encompassing territorial sea should be located outside the shipping corridors.

THE DEEPWATER PORT AND TERRITORIAL CLASSIFICATION

Both the Convention on the Territorial Sea and the Contiguous Zone and UNCLOS III recognize three maritime concepts applicable to deepwater ports: the traditional port, the island, and the roadstead,⁵⁴ all three of which are generally held to be territories of the coastal State. Because previous law of the sea conferences have been reluctant to expressly classify the deepwater port, an examination of these three traditional concepts is necessary.

The Traditional Port

A port has historically been an integral part of a coastal State's territory.⁵⁵ This classification is attributable to the contiguous nature of ports to their coastal State's land mass. Because of this close geographical relationship, ports have always received full State sovereignty.

The port's basic functions justify such sovereignty. A port acts as

52. Letter from H. Gary Knight to Gordon E. Dunfee (Oct. 5, 1977) (on file with the *San Diego Law Review*).

53. The United States Secretary of Transportation granted safety zones far in excess of the ICNT 500-meter zone for two proposed deepwater ports. A special five-tiered safety zone has been developed using methodology of tanker approach, maneuvering ability, casualty assumptions, and weather conditions. The safety zone radius for LOOP Inc. is 2.41 nautical miles. DEP'T OF TRANSPORTATION, THE SECRETARY'S DECISION ON THE DEEPWATER PORT LICENSE APPLICATION OF LOOP INC. 20 (1976) (on file with the *San Diego Law Review*). The safety zone for SEADOCK, Inc. will be 2.38 nautical miles. DEP'T OF TRANSPORTATION, THE SECRETARY'S DECISION ON THE DEEPWATER PORT LICENSE APPLICATION OF SEADOCK, INC. 20 (1976) (on file with the *San Diego Law Review*).

54. A roadstead is a sheltered, offshore anchorage for ships. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1122 (W. Morris ed. 1975). See text accompanying note 91 *infra*.

55. The overall importance of ports is exhibited by the estimate that ocean transportation accounts for more than 75% of the total tonnage of goods exchanged internationally. W. WOYTINSKI & E. WOYTINSKI, WORLD COMMERCE AND GOVERNMENTS 429 (1955).

an agent between sea transport and the land.⁵⁶ It is a place where ships come to load and unload. As "in Roman law, [ports are] dependencies of the maritime territory, and they form part of the domain of the State in nearly all modern countries."⁵⁷ The port is unique among all other land-based industries, for it has no final product; its one basic functional purpose is to provide services and facilities for ship turnaround.⁵⁸

The proposition that a port is considered part of the nation's territory in which it is located has received unanimous approval from international law scholars.⁵⁹ Professor Fauchille contends that ports comprise a part of the State's maritime territory.⁶⁰ Waters of ports have been viewed as national or internal in nature.⁶¹ Another international legal writer declared that "[e]very sovereignty exercises dominion over his seaports. He can, therefore, by law and regulation, regulate the police of ports, anchorages, the loading and unloading of ships and the security and custody of goods."⁶² In *Cunard S.S. Co. v. Mellon*,⁶³ the United State Supreme Court stated that whenever a foreign vessel enters a nation's port, the jurisdiction of that coastal State "attaches in virtue of her presence. . . . During her stay, she is entitled to the protection of the laws of that place, and correlatively, is bound to yield obedience to them."⁶⁴

The major factor distinguishing the traditional port from the deep-water port is the distance from the land mass. The internal or national waters that embrace the traditional ports must, by definition, be immediately adjacent to the land territory of the State or in close

56. F. MORGAN, PORTS AND HARBOURS 13 (1964). See also R. ORAM, CARGO HANDLING AND THE MODERN PORT 1 (1969).

57. C. COLOMBOS, *supra* note 14, § 180, at 175. See also Hurst, *The Territoriality of Bays*, [1922-1923] 3 BRIT. Y.B. INT'L L. 42.

58. R. ORAM & C. BAKER, THE EFFICIENT PORT 4 (1971).

59. 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 258 (1965). Cf. C. COLOMBOS, *supra* note 14, §§ 180, 181, at 175, 176 (ports form part of the State's domain); P. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 144, 145 (1927) (foreign merchant vessels in port are subject to local jurisdiction); M. MCDUGAL & W. BURKE, *supra* note 28, at 316 (port areas are internal waters of the coastal State).

60. 1 P. FAUCHILLE, TRAITE DE DROIT INTERNATIONAL PUBLIC, 388-89 (1925), quoted in 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 260 (1965).

61. 1 L. OPPENHEIM, INTERNATIONAL LAW § 190(c), at 502 (8th ed. H. Lauterpacht 1955).

62. P. FIORE, INTERNATIONAL LAW CODIFIED 183 (E. Borchard trans. 1918), quoted in 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 260 (1965).

63. 262 U.S. 100 (1923).

64. *Id.* at 124.

proximity thereto.⁶⁵ This limitation will preclude the deepwater port in the high seas from obtaining internal water status.

Although internal waters may not exist within the deepwater port, the significant internal interests of the coastal State nevertheless warrant extending a territorial status to the superport. The interest in health and safety of a nation's citizens is affected by the mere presence of VLCCs.⁶⁶ The movement of VLCCs into and out of the superport demands supervision for continued safety and efficiency. With deepwater ports, as with traditional ports, the maintenance of order, the protection of property, and safeguarding the well-being and security of the inhabitants are legitimate concerns of local government officials.⁶⁷

Modern law of the sea theory provides that in order to extend the coastal State's territorial sea to accommodate a port, the extension should be measured from the "outermost permanent harbor works which form an integral part of the harbor system."⁶⁸ These outermost points will be regarded as forming part of the coast for delimitation purposes.⁶⁹ Most deepwater ports use pipelines to pump their VLCCs' crude oil into onshore storage facilities. An argument may be made that the pipelines are permanent harbor works. Although deepwater port pipelines have not yet become an international issue, support for this proposition may be found in a 1954 International Law Commission comment which noted that a permanent structure erected on the coast and jutting out to sea, such as jetties and protecting walls or dykes, are assimilated to harbor works.⁷⁰ Consequently, the coastline

65. C. COLOMBOS, *supra* note 14, § 180, at 175-77; M. MCDUGAL & W. BURKE, *supra* note 27, at 89.

66. *See generally* DEP'T OF TRANSPORTATION, U.S. COAST GUARD, FINAL ENVIRONMENTAL IMPACT STATEMENT, LOOP DEEPWATER PORT LICENSE APPLICATION, EXECUTIVE SUMMARY 56 (1976) (on file with the *San Diego Law Review*).

67. *See generally* B. CUNNINGHAM, PORT ADMINISTRATION AND OPERATION 62-63 (1925); M. FAIR, PORT ADMINISTRATION IN THE UNITED STATES 13-23 (1954).

68. "For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast." Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 8. UNCLOS III has left the port-harbor works article essentially the same. *See* ICNT, *supra* note 18, art. 11.

69. ICNT, *supra* note 18, art. 11.

70. Report of the International Law Commission Covering the Work of Its Sixth Session, 9 U.N. GAOR, Supp. (No. 9) 15, A/2693 (1954). The United Kingdom objected unsuccessfully to this comment. It recommended a modification and narrower definition of harbor works in view of a seven-mile pier which was under construction in the Persian Gulf. The United Kingdom contended that the coastal State could unreasonably claim an extension of its coastline. Report of the International Law Commission Covering the Work of Its Seventh Session, 10 U.N. GAOR, Supp. (No. 9) 44, A/2934 (1955). *See generally* B. BRITTON & L. WATSON, INTERNATIONAL LAW FOR SEAGOING OFFICERS 93 (3d ed. 1972).

should extend a reasonable distance to encompass the entire works of the superport, as it does with anchorages.⁷¹

Although the pipeline-harbor works argument appears tenuous, Article 8 of the Convention on the Territorial Sea and the Contiguous Zone does not specifically require the permanent harbor works to be physically connected to the land.⁷² The permanent works must form only an integral part of the harbor system. Deepwater ports in practical usage will complement and encourage the growth of existing onshore ports.⁷³ In the absence of international agreements concerning deepwater ports, Article 8 of the Convention on the Territorial Sea and the Contiguous Zone leads to the reasonable conclusion that offshore deepwater ports, if within a close proximity to the territorial sea, could be used for delimitation purposes.

Islands

Artificial islands or sea islands present another basis for territorial status. Article 10 of the Convention on the Territorial Sea and the Contiguous Zone permits islands that exist beyond a coastal State's territorial sea⁷⁴ to have their own territorial sea belt.⁷⁵ In order for an island to be accorded this protective sea belt, the island must be

71. If an anchorage is "reasonably related to the physical surroundings and the service requirements of the port," it is part of the permanent harbor works. Report of Oct. 14, 1952, of the Special Master, William A. Davis, following *United States v. California*, 332 U.S. 19 (1947), received by the Supreme Court on Nov. 10, 1952, 344 U.S. 872 (1952), printed in *Submerged Lands: Hearings on S.J. Res. 13, S. 294, S. 107 Amendment, & S.J. Res. 18 Before the Senate Comm. on Interior and Insular Affairs*, 83d Cong., 1st Sess. 1211, 1212 (1953).

72. Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 8.

73. *Hearings on the Deepwater Port Act*, *supra* note 11, at 364 (statement of J. Arnold).

74. A nationality approach to the jurisdictional problems was stressed by the Belgian representative in the 1971 United Nations Seabed Committee. This approach subjects individuals involved in a deepwater port incident to the jurisdiction of a State on the basis of their nationality. Vessels would be subject only to the jurisdiction of their flag State (the nation in which the vessel is registered). Under the nationality approach, complex issues will emerge as to which State would have jurisdiction over incidents arising in deepwater ports. Furthermore, the affected coastal State may have difficulty in preventing future misconduct. Koers, *Artificial Islands in the North Sea*, in *LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS* 223, 229 (J. Gamble & G. Pontecorvo ed. 1973).

75. Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 10. See also J. ANDRASSY, *INTERNATIONAL LAW AND THE RESOURCES OF THE SEA* 40 (1970); C. COLOMBOS, *supra* note 14, § 129, at 119, 120.

naturally formed.⁷⁶ The United States has continually expressed its opposition to blanket grants of territorial status to artificial islands.⁷⁷ Although it could be argued that an artificial island manufactured through the accumulation of sand, rock, or coral is the result of an acceleration of the natural accretion of land, it is more likely that deepwater ports will be classified as artificial islands.⁷⁸ Because the territorial sea belt will not be awarded as a matter of course,⁷⁹ some reasonable justification must be sought for the extension.

Several persuasive factors have been utilized in the past⁸⁰ to establish territorial claims to artificial islands. Some of the considerations are: permanency of the installation,⁸¹ visibility in normal weather conditions;⁸² capability for habitation,⁸³ susceptibility to economic use;⁸⁴ coastal State's ability to defend or arm the sea station,⁸⁵ national security interests,⁸⁶ and strong links to the coastal State.⁸⁷

These factors are equally applicable and relevant to the superport-island analysis. The importance of the superport to the coastal State

76. Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 10(1); Convention on the Continental Shelf, art. 5(3), *done at* Geneva, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311. For an early case on the definition of a sea island, see *The Anna*, 165 Eng. Rep. 809 (Adm. 1805).

77. At the 1958 Geneva Conference, the United States submitted a proposal to change the definition of *island* to reflect that it is a "naturally formed area of land." This provision later became adopted as Article 10, paragraph 1, of the Convention on the Territorial Sea and the Contiguous Zone without a debate on the precise meaning of "naturally formed." A. SOONS, *ARTIFICIAL ISLANDS AND INSTALLATIONS IN INTERNATIONAL LAW* 18 (Law of the Sea Inst., U. of R.I., Occasional Paper No. 22, 1974). "Artificial Islands . . . have no territorial sea of their own and their presence does not affect the delimitation of the territorial sea . . ." ICNT, *supra* note 18, art. 60(8).

78. Land reclamation is not a new idea in the North Sea. Airports, sea cities, chemical industries, power plants, and waste disposal facilities are planned or are now in use in this region. Koers, *Artificial Islands in the North Sea*, in *LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS* 223, 224 (J. Gamble & G. Pontecorvo eds. 1973). See also M. MOUTON, *THE CONTINENTAL SHELF* 237 (1969).

79. Hirsch, *Special Circumstances: Superports*, in *LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS* 217, 230 (J. Gamble & G. Pontecorvo eds. 1973).

80. See Convention for the Arbitration of Questions as to Jurisdictional Rights in Behring Sea (United States v. Great Britain) (1892), 5 J. MOORE, *INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY* 4759 (1898); Fur Seal Arbitration (United States v. Russia), 1 J. MOORE, *INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY* 755 (1898).

81. Johnson, *Artificial Islands*, 4 INT'L L.Q. 203, 214 (1951).

82. *Id.* at 213, 214.

83. 1 D. O'CONNELL, *INTERNATIONAL LAW* 547 (2d ed. 1970).

84. *Id.*

85. M. MOUTON, *THE CONTINENTAL SHELF* 235 (1969).

86. *United States v. Ray*, 294 F. Supp. 532 (S.D. Fla. 1969). See Soons, *Artificial Islands and Installations* in *INTERNATIONAL LAW* 19 (Law of the Sea Inst., U. of R.I., Occasional Paper No. 22, 1974).

87. Soons, *Artificial Islands and Installations* in *INTERNATIONAL LAW* 19 (Law of the Sea Inst., U. of R.I., Occasional Paper No. 22, 1974).

and its high initial expense virtually insure permanency.⁸⁸ Once installed, the superport will be above the high water mark and highly visible to facilitate incident-free approaches. The larger superport complexes will house the portmaster, operational crews, and visitors.⁸⁹ The economic use theory accounts for the initial development of deepwater ports. For armament purposes, if a deepwater port is a reasonable distance from the coast, its defense may easily be incorporated into existing naval patrols. The internal interest for a continued oil supply highlights the national security factor. Presently, an industrialized nation's survival depends upon oil. A wrongful appropriation or destruction of the deepwater port would affect both the national defense and the economy. The link between the coastal State and the deepwater port will, of necessity, be strong, although political links may weaken the relationship if the investors in superports are foreign interests.⁹⁰

The fact still remains that artificial islands are expressly denied territorial status by international law. However, this denial fails to consider the purpose for which the island was built and the intentions of the sponsoring State. Application of the above factors demonstrates the major impact the deepwater port has upon the territorial community of the coastal State. Despite its artificial construction, the deepwater port is a significant and purposeful national asset of peacetime economy and a natural target during war. The "artificial" versus "natural" distinction in Article 10 of the Convention on the Territorial Sea and the Contiguous Zone was made at a time when the drafters were concerned primarily with islands manufactured for the exploration and exploitation of the continental shelf. Territorial recognition for deepwater ports can be realized without disturbing the distinction. It is suggested that future law of the sea conventions accomplish this recognition by specifically defining the purpose for which any island, natural or artificial, may be utilized. Territorial status may then be set out in accordance with that purpose.

88. See note 41 *supra*.

89. The proposed LOOP deepwater port will contain three levels of shops, offices, storage and recreation areas, control rooms, and sleeping accommodations for 25 people. 1 DEP'T OF TRANSPORTATION, U.S. COAST GUARD, FINAL ENVIRONMENTAL IMPACT STATEMENT: LOOP DEEPWATER PORT LICENSE APPLICATION 56 (1976) (on file with the *San Diego Law Review*).

90. The Shell Oil Company built and maintains numerous deepwater ports in over 12 different coastal nations. R. MAARI, OFFSHORE MOORING TERMINALS 51-54 (1975).

The Roadstead

The similarity of the superport to the roadstead is the strongest argument in support of the contention that superports within a reasonable distance from their coast are a part of the coastal State's territory. A roadstead is defined as a "known general station for ships, notoriously used as such and distinguished by the name; and not any spot where an anchor will find bottom and fix itself."⁹¹ Article 9 of the Convention on the Territorial Sea and the Contiguous Zone defines roadsteads as anchorage areas to allow the loading and unloading of ships and allows roadsteads to be included within the territorial sea even if they exist wholly or partly outside it.⁹² At the Hague Codification Conference of 1930, the Report of the Second Committee declared that roadsteads should not have their own territorial sea, but "[i]t was agreed that the waters of the roadstead should be included in the territorial sea of the State even if they existed beyond the general limit of the territorial sea."⁹³

It is doubtful that the drafters of Article 9 of the Convention on the Territorial Sea and the Contiguous Zone intended to grant territorial status to roadsteads which are an unreasonable distance from the State. Article 9 is unclear on this point. The Article provides only general language to include a roadstead in the territorial sea if it is "wholly or partly outside the territorial sea."⁹⁴

Legal commentators have already suggested that deepwater ports and roadsteads function identically.⁹⁵ Roadsteads comprise an extension of the coastal State's ports.⁹⁶ They operate in the same manner as natural ports.⁹⁷ The deepwater port performs the same unloading and loading functions as the roadstead. The deepwater port is more complex, expensive, useful, and even more vulnerable than the historic roadstead. A deepwater port can be demarcated and posted on navigational charts, as Article 9 of the Convention on the Territorial Sea and the Contiguous Zone requires for a roadstead.⁹⁸ Therefore, if the superport is situated a reasonable distance beyond the territorial

91. BLACK'S LAW DICTIONARY 1492 (4th ed. 1951).

92. Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 9.

93. Basis of Discussion No. 11, 2 Territorial Waters Conference for the Codification of International Law, The Hague, C. 74, M. 39.1929 V, at 47; Report of the Second Comm., Conf. for the Codification of International Law, The Hague, C. 230, M. 117. 1930 V., at 12.

94. Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 9.

95. Knight, *supra* note 11, at 389.

96. 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 264 (1965).

97. *Id.* at 260, 264.

98. Convention on the Territorial Sea and the Contiguous Zone, *supra* note 17, art. 9.

sea, the roadstead principle of international law requires that it be included in the territorial sea.⁹⁹

DELIMITING THE TERRITORIAL SEA

The principle policy issue in considering whether any effect, for delimitation purposes, ought to be attributed to other formations and structures is whether they create in the coastal State any particular interest in the surrounding waters that would not otherwise exist, requiring that the total area of the territorial sea be increased¹⁰⁰

The exact purpose or function for which an installation is placed in the high seas should be defined and included in any future law of the sea agreements. As previously discussed, UNCLOS III has not yet addressed the deepwater port issue. Although Articles 60 and 80 of the ICNT deal with artificial islands, installations, and structures, no adequate definitions were provided. Through the failure to define these facilities Articles 60 and 80 become overly inclusive. A broad reading of the ICNT articles will extend the same limited sovereignty and protections to offshore superport complexes as are extended to simple navigational markers and lights, oil drilling platforms, and lighthouses.

However, special status is necessary for a deepwater port facility that will eventually receive the majority of crude oil imports for petroleum-dependent nations, harbor numerous supertankers on the high seas, and attempt to control environmental damage. The purpose and function of an artificial island, installation or structure should be considered before declaring any jurisdiction. Two writers have suggested a "reasonableness" test to determine the issue of

[w]hether it is constructed for the practical use or rather as a disguised attempt to extend the territorial sea or internal waters without other relation to local interest. When the construction of an area of land serves a consequential coastal purpose, it would seem to be in the common interest to permit the object to be used for delimitation purposes.¹⁰¹

Permissive uses should be defined by international law. The use of superports to expand areas of comprehensive authority should be forbidden.¹⁰² The use of a high seas structure for regulation of navi-

99. For a deepwater port to be part of the coastal State's territorial sea, the superport should be relatively close to that territorial sea's outer limit. Knight, *supra* note 11, at 388.

100. M. McDUGAL & W. BURKE, *supra* note 27, at 388.

101. *Id.* at 387-88.

102. *Id.* at 388. For abuse in territorial sea delimitation, see [1954] 1 Y.B. INT'L L. COMM'N 91, 91-94, paras. 9-16, 24, 33, 38, 39, 48, & 54, U.N. Doc. A/CN.4/SER.

gation would be unacceptable in itself as a justification to extend territorial jurisdiction.¹⁰³ UNCLOS III should consider the purposes for which a coastal State may desire extension of its territorial sea to include a deepwater port.

The United States and Unilateral Action

International laws and conventions do not expressly recognize the construction and operation of deepwater ports as a permissible use of the high seas.¹⁰⁴ The United States was the first country to attempt to define the legal status of deepwater ports. As a unilateral action,¹⁰⁵ the Deepwater Port Act of 1974¹⁰⁶ establishes two international precedents. First, the Act declares deepwater ports to be a reasonable use of the high seas under Article 2 of the 1958 Geneva Convention on the High Seas.¹⁰⁷ The Act then appears to declare deepwater ports to be federal territories.¹⁰⁸ The Department of Transportation, the Act's regulatory agency, pronounced the legislation "sufficiently broad to apply the laws of the United States not only to any foreign or domestic activity using the facility, but also to any foreign or domestic activity which by its nature has a capacity to interfere with or pose a threat to the use and operation of such a facility."¹⁰⁹

Construction of a deepwater port on the high seas may, in and of itself, constitute a unilateral act declaring territorial status.¹¹⁰ If this is so, and no objections are raised by other nations, a new rule may be

A/1954; Lauterpacht, *Sovereignty Over Submarine Areas*, [1950] 27 BRIT. Y.B. INT'L L. 376, 411 (1962).

103. M. McDOUGAL & W. BURKE, *supra* note 27, at 388.

104. DEP'T OF TRANSPORTATION, THE SECRETARY'S DECISION ON THE DEEPWATER PORT LICENSE APPLICATION OF LOOP INC. 19 (1976) (on file with the *San Diego Law Review*).

105. Unilateral acts are binding declarations by one State which may take the form of recognition, reservation, notification, acquiescence, renunciation, protest, or unilateral acts as part of a wider consensual nexus. E. BROWN & G. SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 141 (6th ed. 1976). See generally Rubin, *The International Legal Effects of Unilateral Declarations*, 71 AM. J. INT'L L. 1 (1977).

106. 33 U.S.C. § 1500 (1974).

107. Convention on the High Seas, art. 2, *done at Geneva*, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

108. The Act states:

The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this chapter and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were in an area of exclusive Federal Jurisdiction located within a State.

33 U.S.C. § 1518(a)(1) (1974). J. Tidd, then General Counsel for the Department of Transportation, stated that the freedom of the high seas and unilateral action will have to be balanced against the need for deepwater ports. *Hearings on the Deepwater Port Act*, *supra* note 11, at 46.

109. *Hearings on the Deepwater Port Act*, *supra* note 11, at 46.

110. Knight, *Commentary*, in *THE LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS* 231, 233 (1973); Knight, *supra* note 11, at 390.

established by international acquiescence.¹¹¹ With the construction of the first deepwater port by the United States and recognition of the Act with its attendant jurisdiction, the presence of a territorial claim quietly emerges. As with the Truman Proclamation,¹¹² the Act may once again proclaim the United States "both a pathfinder and, in foreign eyes, something of an aggressor."¹¹³

CONCLUSION

The majority of industrialized nations cannot obtain enough crude oil from domestic exploration and exploitation. Therefore, the continued presence of supertankers and deepwater ports is necessary until alternate forms of energy become practical and economical.

Although deepwater ports are a new international issue, support for their territorial status is historical. A superport is similar in function to both the traditional roadstead and the port. As an artificial island, the deepwater port serves an important coastal purpose. Accordingly, local governments have an interest in regulating activities in and around the superport. At the very least, deepwater ports should be used to delimit coastlines. In the alternative, and because of the total inadequacy of the present 500-meter safety zone, a territorial sea of three miles should be recognized around the deepwater port. Due notice may then be given and international chart demarcations realized.

Future law of the sea conventions must be more cognizant of the coastal importance and the special problems unique to deepwater ports. The drafting of, and subsequent acquiescence in, international agreements is a more desirable course of action than are unilateral declarations.

111. See *S.S. Lotus*, P.C.I.J., ser. A., No. 9, at 28 (1927). See also Knight, *supra* note 11, at 377; Rubin, *International Legal Effects of Unilateral Declarations*, 71 AM. J. INT'L L. 1, 1 (1977); Knight, *International Legal Problems in the Construction and Operation of Offshore Deep Draft Port Facilities*, in HAZARDS OF MARITIME TRANSIT 91, 99 (T. Clingan, Jr. & L. Alexander eds. 1973). If the extension of territory affects the interests of other nations then it is not a proper subject for an ex parte action by any single nation. Houston, *Freedom of the Seas: Present State of International Law*, 42 A.B.A. J. 235 (1956).

112. The United States declared unilaterally that all the natural resources of the seabed and subsoil of the continental shelf of the United States were subject to its exclusive jurisdiction and control. Pres. Proc. No. 2667, 3 C.F.R. 67 (1945), reprinted in 13 DEP'T STATE BULL. 485 (1945).

113. Maechling, *Uncle Sam's Long Arm*, 63 A.B.A. J. 373, 373 (1977).

Finally, the precious freedom of the high seas must be balanced against the need for deepwater ports. Deepwater ports are more than loading and unloading facilities. They are centers of commerce during times of peace and obvious targets during times of war. For reasons of economic and national security, environmental control, navigational safety, and jurisdiction to enforce criminal and civil codes, territorial status is a necessity for the superports. A coastal State cannot safely sponsor a deepwater port without claiming the concomitant privileges and protections territorial status accords.

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