

**STATEMENT OF MINISTER ARTURO TOLENTINO
AT THE UNCLOS, JAMAICA,
DECEMBER 10, 1982**

“Mr. President:

Let me begin by conveying to the government and the people of this beautiful island country of Jamaica the appreciation of my government and delegation for the warm hospitality and cordial attention we have received here since our arrival.

Like a ship that has been at sea for these many years, the Third United Nations Conference on the Law of the Sea has finally reached its port of destination. In the course of our voyage, there has been a succession to the vital position of Captain, and some members of its crew have been changed. The voyage was often difficult and at times its success seemed dim and uncertain. But now we finally witness its conclusion.

For this, and without in any manner detracting from the credit due Ambassador Hamilton Shirley Amerasinghe, my delegation takes great pleasure in thanking our able President and congratulating him for a job well done. It was largely because of his diplomatic skill, his patient perseverance, his absolute dedication, and his untiring efforts to direct and guide the course of the Conference in its most difficult period that we will be able at this time to open the New Convention on the Law of the Sea for signature.

We are indebted to the chairmen of the different committees, working groups and negotiating groups for the progress in the work of the Conference during the last nine years.

Our appreciation also goes to the distinguished conference leaders and delegations whose dogged determination to bring about a new regime for the seas of the world kept this Conference going. Their spirit of compromise which made possible ultimate agreements on very controversial issues, resulting in the approval of the Convention, must be commended.

Finally, but not the least, we thank the distinguished special representative of the Secretary-General, Mr. Bernardo Zuleta, Mr. David Hall and the Staff of the Secretariat for their admirable efforts in assisting the Conference.

Mr. President, we are happy that we have reached the official conclusion of our labors. In utmost candor, however, I must say that my government and my delegation are not fully satisfied with the text of the Convention that we have approved. In the course of our negotiations, we put forth some proposals dictated by some peculiar circumstances relating to my country; we attached and still attach great importance to those proposals in the light of my govern-

ment's concerns. Some of them, which we consider very vital to us, were not accepted by the Conference.

This notwithstanding, Mr. President, impelled by a spirit of compromise and accommodation in the interest of ensuring the rule of law and international order in the seas and oceans of the world, my government, after consideration at the highest levels, has decided and accordingly instructed my delegation to sign the Convention.

We regard the Convention as a triumph of the conscience of mankind in the field of international law. It represents the collective decision of an overwhelming number of members of the family of nations as shown by the vote on April 30, 1982 when we approved it, with 130 voting in favor, 4 against, and 17 abstentions.

In the past, the rules of international law were dictated by the big powers, to be observed by the rest of the nations of the world. For the first time in the history of international law, we shall have in the present Convention, a set of rules formulated by the combined will of the great majority of states, regardless of size or power, in an assembly where equality and freedom in the making of decisions prevailed as a guiding principle.

This Convention, therefore, is a historic milestone in the progressive development of international law, a monumental achievement of cooperation and goodwill among nations. Its provisions — many of them introducing new concepts — will govern the seas and their resources for generations to come, even long after the individuals who participated in this Conference shall have been gone and forgotten. Any state acting outside or in defiance of the Convention would be doing so without legal basis for his actions.

Among the new concepts in the Convention is that of the archipelago. The Philippines advanced the archipelago principle as early as 1956 and we have established it in our national legislation. We are therefore happy that the archipelago principle has finally been recognized and accepted as part of Public International Law. Although we would have been much happier if our proposed amendments in this area had gained general acceptance, we are satisfied, principally because of the inclusion of two basic considerations in the text of the Convention.

The first of these is the recognition of the concept that an archipelago is an integrated unit in which the "islands, waters and other natural features form an intrinsic geographical, economic and political entity". No longer will the various islands of an archipelago be regarded as separate units, each with its own individual maritime areas, and the waters between them as distinct from the land territory. This archipelago concept carries far-reaching implications which can influence the interpretation of the provisions of the Convention.

The second welcome basic consideration that gives us satisfaction is the recognition of the sovereignty of the archipelagic state over the archipelagic waters, the air space above them, the sea bed and subsoil below them, and the resources contained therein. The text states explicitly in clear terms the only qualification of this sovereignty, by providing that this sovereignty is to be exercised "subject to the part," referring to Part IV on archipelagic states.

No qualification or limitation, therefore, outside of Part IV, on the exercise of sovereignty by the archipelagic states over the archipelagic waters would be valid. To make provisions outside of Part IV applicable to the archipelagic waters, the Convention expressly so provides (Arts. 52 and 54).

One consequence of this, is that the archipelagic waters are subject only to two kinds of passage by foreign ships provided in Part IV of the Convention: (1) innocent passage, and (2) archipelagic sea lanes passage. This refers to all archipelagic waters, or waters inside the archipelagic baselines, wherever located, whether around or between islands and whatever their breadth or dimension. Transit passage, therefore, available to foreign ships in straits used for international navigation under Part III of the Convention, would not be available to them on national or domestic straits entirely within the archipelagic baselines.

Such national straits could be subject to sea lanes passage if the archipelagic state so decides. Of course, the elements of sea lanes passage are practically the same as those of transit passage; but while transit passage is imposed by the Convention on the waters of the coastal states concerned, sea lanes passage can be exercised by foreign ships only in such sea lanes as the archipelagic state may designate and establish.

Sea lanes passage does not impair the sovereignty of the archipelagic state over the waters of the sea lanes. It is thus expressly provided in Article 49, paragraph 4, that: "the regime of archipelagic sea lanes passage established in the part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic state of its sovereignty over such waters and their air space, bed and subsoils, and the resources contained therein."

As incident to this sovereignty, the archipelagic state could validly enact legislation to ensure compliance of ships exercising sea lanes passage with the obligations and duties imposed on them by the Convention (see Art. 54). Among these duties is to refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of the archipelagic state (Art. 39.).

Mr. President, I beg your indulgence for dwelling at some length on the matter of sovereignty of the archipelagic state over the archipelagic waters and their air space, sea bed and subsoil, and their resources. This emphasis in a way indicates that this matter of sovereignty was the weightiest consideration leading to the decision of my government to sign the Convention.

But Mr. President, we have some problem with the provisions of the Convention on the breadth or limits of the territorial sea. During the sessions of the conference, my delegation had, on various occasions, explained the unique nature and configuration of our territorial sea and proposed that it be an exception to the 12-mile rule. We claim these waters under historic and legal title. Their outer limits were set forth in the Treaty of Paris between Spain and the United States of December 10, 1898, and the Treaty of Washington between the United States and Great Britain on January 2, 1930. These limits were expressly acknowledged by the United States in our Mutual Defense Treaty with that country of August 20, 1951 and its related interpretative ins-

truments. We have existing legislation, both of a constitutional and statutory character, confirming those limits. At one point the outer limit of this historic territorial sea is over 200 miles from the shore. But at other points even less than three miles.

You can readily see from this, Mr. President, that we have some problem with the 12-mile breadth of the territorial sea provided in the Convention. My government has studied the problem; it is a very difficult one for us. But this notwithstanding, my government nevertheless decided that it shall sign the Convention. The determining factor in arriving at this decision, as we have repeatedly stated, was the sovereignty of the archipelagic state over the archipelagic waters, their air space, sea bed and subsoil, and their resources, this sovereignty will bind together, in the eyes of International Law, the islands, waters and other natural features of the Philippines as an "intrinsic geographical economic and political entity".

Our problem on the matter of territorial sea is indeed a difficult one, but is not insurmountable. Somewhat lightening this problem is the new concept of the Exclusive Economic Zone under the Convention. In this 200-mile belt of water around our archipelago, the Philippines will have sovereign rights, "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea bed, subsoil and the superjacent waters".

In addition, the Philippines would have sovereign rights in the EEZ in regard to other activities for economic exploitation and exploration therein, such as the production of energy from the waters, currents and winds, as well as jurisdiction over such matters as scientific research and the protection of the marine environment.

Our satisfaction with the EEZ may be better appreciated when we consider that the Philippine EEZ is more than 132,000 square nautical miles bigger than our historic territorial sea and therefore has a compensating effect.

This net gain in resources has contributed to the positive decision of my government to sign the Convention on the Law of the Sea which we shall do on Friday the 10th of December.

In closing, Mr. President, may I state that when we sign the Convention, we shall also submit a formal declaration in the exercise of the right granted under article 310.

Thank you."