'A Constitution for the Oceans'

Remarks by Tommy T.B. Koh, of Singapore
President of the Third United Nations Conference on the Law of the Sea

On 10 December 1982, we created a new record in legal history. Never in the annals of international law had a Convention been signed by 119 countries on the very first day on which it was opened for signature. Not only was the number of signatories a remarkable fact but just as important was the fact that the Convention had been signed by States from every region of the world, from the North and from the South, from the East and from the West, by coastal States as well as land-locked and geographically disadvantaged States.

When we set out on the long and arduous journey to secure a new Convention on the Law of the Sea, covering 25 subjects and issues, there were many who told us that our goal was too ambitious and not attainable. We proved the skeptics wrong, and we succeeded in adopting a Convention covering every aspect of the uses and resources of the sea.

The question is whether we achieved our fundamental objective of producing a comprehensive constitution for the oceans which will stand the test of time. My answer is in the affirmative for the following reasons:

- The Convention will promote the maintenance of international peace and security because it will replace a plethora of conflicting claims by coastal States with universally agreed limits on the territorial sea, on the contiguous zone, on the exclusive economic zone and on the continental shelf.
- The world community's interest in the freedom of navigation will be facilitated by the important compromises on the status of the exclusive economic zone, by the régime of innocent passage through the territorial sea, by the régime of transit passage through straits used for international navigation and by the régime of archipelagic sea-lanes passage.
- The world community's interest in the conservation and optimum utilization of the living resources of the sea will be enhanced by the conscientious implementation of the provisions in the Convention relating to the exclusive economic zone.
- The Convention contains important new rules for the protection and preservation of the marine environment from pollution.
- The Convention contains new rules on marine scientific research which strike an equitable balance between the interests of the research States and the interests of the coastal States in whose economic zones or continental shelves the research is to be carried out.
- The world community's interest in the peaceful settlement of disputes and the prevention of use of force in the settlement of disputes between States have been advanced by the mandatory system of dispute settlement in the Convention.

Adapted from statements by the President on 6 and 11 December 1982 at the final session of the Conference at Montego Bay.

- The Convention has succeeded in translating the principle that the resources of the deep sea-bed constitute the common heritage of mankind into fair and workable institutions and arrangements.
- Though far from ideal, we can nevertheless find elements of international equity in the Convention, such as revenue sharing on the continental shelf beyond 200 miles, giving land-locked and geographically disadvantaged States access to the living resources of the exclusive economic zones of their neighbouring States, the relationship between coastal fishermen and distant-water fishermen, and the sharing of the benefits derived from the exploitation of the resources of the deep sea-bed.

I would like to highlight the major themes which I found in the statements made by delegations at Montego Bay.

First, delegations said that the Convention does not fully satisfy the interests and objectives of any State. Nevertheless, they were of the view that it represents a monumental achievement of the international community, second only to the Charter of the United Nations. The Convention is the first comprehensive treaty dealing with practically every aspect of the uses and resources of the seas and the oceans. It has successfully accommodated the competing interests of all nations.

The second theme which emerged from the statements is that the provisions of the Convention are closely interrelated and form an integral package. Thus it is not possible for a State to pick what it likes and to disregard what it does not like. It was also said that rights and obligations go hand in hand and it is not permissible to claim rights under the Convention without being willing to shoulder the corresponding obligations.

The third theme I heard was that this Convention is not a codification Convention. The argument that, except for Part XI, the Convention codifies customary law or reflects existing international practice is factually incorrect and legally insupportable. The régime of transit passage through straits used for international navigation and the régime of archipelagic sea lanes passage are two examples of the many new concepts in the Convention. Even in the case of article 76 on the continental shelf, the article contains new law in that it has expanded the concept of the continental shelf to include the continental slope and the continental rise. This concession to the broad margin States was in return for their agreement for revenue-sharing on the continental shelf beyond 200 miles. It is therefore my view that a State which is not a party to this Convention cannot invoke the benefits of article 76.

The fourth theme relates to the lawfulness of any attempt to mine the resources of the international Area of the sea-bed and ocean floor. Speakers from every regional and interest group expressed the view that the doctrine of the freedom of the high seas can provide no legal basis for the grant by any State of exclusive title to a specific mine site in the international Area. Many are of the view that article 137 of the Convention has become as much a part of customary international law as the freedom of navigation. Any attempt by any State to mine the resources of the deep sea-bed outside the Convention will earn the universal condemnation of the international community and will incur grave political and legal consequences. All speakers have addressed an earnest appeal to the

United States to reconsider its position. The United States is a country which has, throughout its history, supported the progressive development of international law and has fought for the rule of law in the relations between States. The present position of the United States Government towards this Convention is, therefore, inexplicable in the light of its history, in the light of its specific law of the sea interests and in the light of the leading role which it has played in negotiating the many compromises which have made this treaty possible.

A final theme which emerged from the statements concerns the Preparatory Commission. Now that the required number of States have signed the Convention, the Preparatory Commission for the establishment of the International Sea-Bed Authority and the International Tribunal for the Law of the Sea will begin its work. The Commission will have to adopt the rules and procedures for the implementation of resolution II, relating to pioneer investors. It will, *inter alia*, draft the detailed rules, regulations and procedures for the mining of the sea-bed. If it carries out its work in an efficient, objective and business-like manner, we will have a viable system for the mining of the deep sea-bed. This will induce those who are standing on the sidelines to come in and support the Convention. If, on the other hand, the Preparatory Commission does not carry out its tasks in an efficient, objective and practical manner, then all our efforts in the last 14 years will have been in vain.

In the report of the Secretary-General on the work of the United Nations (A/37/1) dated 7 September 1982, he wrote:

> "We have seen, in the case of the law of the sea ..., what remarkable results can be achieved in well-organized negotiations within the United Nations framework, even on the most complex of issues..."

It may be helpful to identify those features of the negotiating process of this Conference which were productive, and to distil some wisdom from our experience.

I would point, *first* of all, to the importance of reaching agreements on substantive matters on which States have important interests by consensus. The Conference was wise to resist the temptation of putting substantive proposals to the vote, because those who vote against a proposal would naturally not feel bound by it. The consensus procedure, however, requires all delegations, those in the majority as well as those in the minority, to make efforts, in good faith, to accommodate the interests of others.

Second, the Conference took the wise decision that the package deal approach did not preclude it from allocating the 25 different subjects and issues to different negotiating forums, so long as the results were brought together to form an integral whole.

Third, the group system in the Conference contributed to its work by helping delegations to identify their positions and by enabling negotiations to take place between competing interest groups. The group system should, however, be used with flexibility and not be allowed to paralyze the negotiating process with rigidity.

Fourth, the negotiations in this Conference could not have been brought to a successful conclusion if we had failed to progressively miniaturize them. It is obvious that no meaningful negotiations can take place in a forum consisting of 160 delegations.

Fifth, there is a role for the main committees, for formal negotiating groups, for informal negotiating groups and even for privately convened negotiating groups. In general, the more informal a negotiating group, the more likely are we to make progress. Some of the most intractable problems of the Conference were resolved in privately convened negotiating groups, such as the Evensen Group and the Castañeda Group.

Sixth, the Drafting Committee and its language groups played a very important role in the negotiating process. It was due to their hard work that we have one treaty in six languages and not six treaties in six languages.

Seventh, the leaders of a conference can play a significant role in determining the success or failure of a conference. In our case, we were extremely fortunate that the Collegium worked well together. The Conference could well have floundered during its many crises if the Collegium had not been united and if it had failed to provide the Conference with leadership.

Eighth, the Secretariat played an important role in the work of this Conference. The members of the Secretariat, under the able leadership of the Special Representative of the Secretary-General, not only provided the Conference with excellent services but also ably assisted the President and the Chairmen of the various committees and groups in the negotiations. I should like to take this opportunity to thank Mr. Bernardo Zuleta and his loyal Deputy, Mr. David Hall.

Ninth, I should also acknowledge the role played by the non-governmental organizations, such as the Neptune Group. They provided the Conference with three valuable services. They brought independent experts to meet with delegations, thus enabling us to have an independent source of information on technical issues. They assisted representatives from developing countries to narrow the technical gap between them and their counterparts from developed countries. They also provided us with opportunities to meet, away from the Conference, in a more relaxed atmosphere, to discuss some of the most difficult issues confronted by the Conference.

Although the Convention consists of a series of compromises, they form an integral whole. This is why the Convention does not provide for reservations. It is therefore not possible for States to pick what they like and disregard what they do not like. In international law, as in domestic law, rights and duties go hand in hand. It is therefore legally impermissible to claim rights under the Convention without being willing to assume the correlative duties.

Let no nation put asunder this landmark achievement of the international community.

I cannot conclude without recalling, once more, our collective debt to two men, Hamilton Shirley Amerasinghe [former President of the Confer-

ence] and Arvid Pardo [former Permanent Representative of Malta to the United Nations]. Arvid Pardo contributed two seminal ideas to our work: first, that the resources of the deep sea-bed constitute the common heritage of mankind, and second, that all aspects of ocean space are interrelated and should be treated as an integral whole. Shirley Amerasinghe led our efforts from 1968 until his untimely death in 1979.

In the final analysis, I believe that this Conference succeeded because it brought together a "critical mass" of colleagues who were outstanding lawyers and negotiators. We succeeded because we did not regard our counterparts in the negotiations as the enemies to be conquered. We considered the issues under dispute as the common obstacles to be overcome. We worked not only to promote our individual national interests but also in pursuit of our common dream of writing a constitution for the oceans.

We have strengthened the United Nations by proving that with political will, nations can use the Organization as a centre to harmonize their actions. We have shown that with good leadership and management, the United Nations can be an efficient forum for the negotiation of complex issues. We celebrate the victory of the rule of law and of the principle of the peaceful settlement of disputes. Finally, we celebrate human solidarity and the reality of interdependence which is symbolized by the United Nations Convention on the Law of the Sea.