

The boundaries of an archipelago

"An archipelagic state, whose component islands and other natural features form an intrinsic geographical, economic and political entity . . . may draw straight baselines connecting the outermost points of the outermost islands and drying reefs to determine its territorial sea."

For the third time in two decades, the Philippines reiterated this doctrine before a world forum which is in the process of drawing up rules to govern territorial seas. Non-resolution of this nagging territorial-seas issue has, more than once, strained relations between countries over conflicting interpretation of the sea limit. For instance, it has given rise to the so-called "shrimp war" between Peru and the United States, "incursions" of Soviet fishing vessels into US territorial seas and apprehension of vessels near the shores of countries jealous of their territorial waters. The Philippines, in particular, has delayed ratification of its proposed Treaty of Amity, Commerce and Navigation with Japan partly because the text interpreted the waters between islands as open seas.

As in the 1958 and 1960 sessions of the United Nations Committee on the Peaceful Uses of the Seabed and the Ocean Beyond the Limits of National Jurisdiction, the Philippines maintains that "the baselines from which the territorial seas in an archipelago are to be determined consist of straight lines adjoining appropriate points of the outermost islands of the archipelago. The baselines are therefore drawn to enclose the entire archipelago."

Heading the campaign to sustain this official Philippine stand at the United Nations preliminary conference in New York in preparation for the Seabed Conference slated in Chile in 1974 is former Senator Arturo M. Tolentino, ambassador-at-large. Assisting him are Solicitor General Estelito Mendoza, Undersecretary of Foreign Affairs Jose D. Ingles, Ambassador Alejandro Yango, assistant secretary for UN affairs, and representatives from the National Science Development Board, the Bureau of Coast and Geodetic Survey and the Fisheries Commission.

The issue has assumed added significance in the wake of evidence of the presence of oil under some sections of the Philippine territorial seas. Any adverse decision will cause irreparable loss to the country, particularly with regard to its development program and security. How can the Philippines, for instance, defend its shores if such bodies of water as the Cagayan de Sulu Sea or the Mindanao Sea are declared as part of international waters?

In the United Nations last week, the Philippines, together with Fiji, Mauritius, and Indonesia, formally presented the archipelagic doctrine before the 91-nation UN seabed committee for inclusion in the projected convention on the law of the sea in Chile in 1974. The theory, according to Mr. Tolentino, was being introduced in the hope that this time, it will finally be adopted by the international body as the legal order to govern the passage, shipping, fishing and other activities within the island groups in the future.

The second principle advanced by



Mr. Tolentino is that waters within these baselines, regardless of depth or distance from the coast, the seabed and the super-adjacent airspace, with all their resources, are subject to the full sovereignty of the archipelagic state.

Mr. Tolentino said the third principle is the agreement on innocent passage of an island group, subject to national legislation with due regard to the existing rules of international law and with the archipelagic state specifying the sealanes to be used.

He said: "An archipelago must be basically considered as an integral geographical entity, strengthened by political and economic unity, and in some cases, sustained through the years by historical continuity from which it derives its identity. Thus an archipelago may have some or all of these factors but the fundamental consideration is that they must have always been identified as distinct entities."

"This essential element of unity cannot be overstated as the basis of the desire of an archipelagic state to preserve its identity as one state and one nation. Otherwise, the archipelago may be splintered into as many islands as compose it with the consequent fragmentation of the nation and the state itself."

The Philippine position is anchored on solid grounds. For one, its new Constitution defines the national territory as encompassing all the islands and waters embraced by the archipelago, and all other territories belonging to the Philippines by historic right or legal title, including the territorial sea, the air space, the subsoil, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago — irrespective of their breadth and dimensions — form part of the internal waters of the Philippines.

This stand is embodied not only in the 1935 and the new Constitution, but also in a law defining the baselines

of the Philippine Republic (Act 3046, as amended by Act 5446). The baselines are determined from the baselines of the Philippine sea.

Solicitor General Mendoza emphasized that the concept implies full sovereign rights over waters within the baselines, primarily the waters between the islands which compose the archipelago. By the application of this concept, the identity of the Philippines as one state is preserved and not splintered into 7,000 islands, Mr. Mendoza asserted.

While big maritime powers like the United States, Japan and Great Britain are opposed to the archipelago doctrine, other states like Indonesia, Fiji, Ecuador and Norway support this theory advanced by the Philippines. The validity of the method of the straight-line baselines in delimiting their respective territorial waters has been adopted by Denmark, Sweden, Yugoslavia, Saudi Arabia and Cuba.

Mr. Mendoza observed that traditional alignments in the UN corridors are not easily apparent, as far as the law of the sea is concerned. In this particular issue, he said, it may be difficult to speak of old friends, only of common situations.

The Philippines, like any archipelago-state, is jealous of its territorial boundaries, for the purpose of protecting its fishing rights, its fishery resources, enforcing its revenue and anti-smuggling laws, and for its defense and security.

Especially at this time, when there are positive signs of oil within its offshore and continental shelves, the Philippines is concerned in protecting its national patrimony. After all, as the International Court of Justice ruled on the Anglo-Norwegian Fisheries case, "there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are already evidenced by a long usage."

The UN Conference of the Sea in 1958 recognized the sovereign right of the coastal state over the continental shelf for the purpose of exploring it and exploiting the natural resources. In the Philippines, under the Petroleum Act of 1949, all natural deposits or occurrences of petroleum or natural gas on the continental shelf "seaward from the shores of the Philippines belong to the State, inalienably and imprescriptively."

Former Senator Tolentino advanced the proposition that both political and economic considerations are the dominant factors in determining the extent of the territorial sea. The territorial sea, he said, is not a mere juristic concept; it is vitally linked with the political and economic security of the coastal state. Thus, the coastal state asserts and exercises sovereignty and jurisdiction over certain areas of the sea adjoining its land territory.

Mr. Tolentino pointed out that any proposal that would reduce or limit the extent of the territorial waters over which the state now actually asserts and exercises sovereignty would amount to an impairment of the ter-

then one sovereign territorial legal and

A pre ed last of first worth need pelr

upl tic o t

lers, irrelative distances between such islands.

The Philippine Constitutional Convention went further to elaborate on the stand on the territorial limits of the Philippines when it drafted and approved the article on the national territory, providing for:

- The inclusion of Batanes Islands which were erroneously excluded in the Treaty of Paris.

- The protection and strengthening of the Philippine claim on Sabah, Freedomland, the Spratley islands and the Marianas group, including Guam.

It was the view of the Constitutional Convention that the archipelago doctrine is an exception to the three-mile limit or the marine league from the low-water mark (the theory adopted by the Dutch publicist Cornelius Van Bynllershoek in line with the effective range of the shore batteries centuries ago) or the 12-mile rule as advocated by the big powers.

As early as 1955, the Philippine government had asserted the straight-baselines method in a note verbally transmitted to the UN Secretary General.

It is about time that the age-old traditions on the law of the seas be discarded, to conform with the modern methods of use, exploitation and conservation of the marine resources of various states and to prevent poaching on the fishing grounds and trespassing of the territorial waters of small countries.

The International Court of Justice itself paved the way for a reexamination of the traditional concepts on the delimitation of the territorial seas and a closer look on the present archipelago doctrine which the Philippines is espousing in the international forum.