

Verbatim Transcript of an Interview with

Mr. J.A. Beesley
Head of the Canadian Delegation
to the UN Conference on the Law of the Sea

conducted by Mr. Alex Desfontaines
for CBC Radio

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D Here is the Introductory piece of my interview with Amb. Beesley, leader of the Canadian Delegation to the United Nations Conference on the Law of the Sea. This is meant for Radio-Canada International both for international services and probably some pieces which I will tell you more about later for the national service.

D Mr. Beesley, we have heard that the United States and Canada have signed an agreement putting an end to the endless fighting of the so-called fishing war off the Atlantic coasts. What will be the reactions about this within this Conference?

B Well there already have been some reactions and the reactions are generally extremely favorable - pleasure that these two countries have been able to make a settlement of some of the fisheries problems and a good deal of satisfaction from some of the eminent jurists here that the two countries have decided to go to a panel of the International Court to resolve the boundaries problems. It is considered that this is the sensible thing to do; the wise thing to do, as well as the civilized way of settling a dispute like that.

D Now this international court, is it the first time that such a major problem has been presented to such a panel.

B It is the first time that the functions of the court have been utilized at all, this will create a precedent ⁱⁿ ~~and~~ that we are going to a panel of the court. Three judges of the court plus two ad hoc judges selected from outside the court both of whom will be neutral judges, and there is a good deal of discussion about this for understandable reasons because those who value the role of the court are pleased to see someone doing something of real significance that will put a problem squarely before a panel of the court and perhaps show this flexibility that has always been there but never utilized. You don't need to ^{have} the full court with everything that is entailed -select

a panel and in a sense get the best of both worlds and get the advantages of a small arbitration but you still are utilizing the court which has been set up for precisely this kind of function. So it's quite an unusual precedent and an interesting one.

D Where was the court actually meeting?

B It ~~is~~^{will} meet, I assume, in the Hague, although I don't know if that has been determined, but that is where the court has sat, the court as a whole.

D Will this take a long time, according to you? Because normally whatever goes in front of the International Court of Justice in the Hague usually takes years and years to be settled out. Do you hope that now that these Agreements have been signed between the United States and Canada the whole thing might just go along much more smoothly?

B Well I am not the correct person to address that question. I am speaking really on the basis of the link between the dispute, the substance of that dispute and what is going on in the conference. As to what the hopes are on either side of the border^{as} to how long it will take, I don't know, but I'm quite certain that they hope it is not going to take years and years and I believe that they're adopting procedures that will lend to reaching an early decision, but I can't really speculate on how long it will take.

D Wasn't there a precedent about Kenya some time ago?

B There have been a number of uses of the court, some of which have had boundary implications but the most recent decisions of real importance have come out of ~~arbitration~~^{arbitration} and it is the fact that we are utilizing the court that is interesting. There is ~~the~~ South-West Africa case and others going back some years that have ^{had} the effect of making the court become rather more controversial so that there has been a feeling of loss of confidence in the court. More imagined than real, I believe but nevertheless that has been the feeling. This decision I think will go some way to correcting that impression.

D To come to another subject, nickel of course is of main concern to Canada and the fact that now deep sea mining might produce some nickel too will that present some kind of problem in Canada?

B It could present major problems, on the other hand it might present none at all. A lot depends on precisely what goes into the treaty that we are here to negotiate. Now there is a short history on this in that there was an article inserted into the draft text which we had not seen but had the effect of imposing a floor on nickel production from the sea bed which meant that the sky was the limit insofar as what could come out of the seabed and as you know these manganese nodules consist largely of nickel, copper, cobalt and manganese and the value of the minerals is probably in the billions of dollars. Obviously, there is a problem when you have a new source of supply. Even though we all want to develop it. We want to develop the technology and bring on stream this very ^{new} source of these metals, particularly because of the benefits that will go to many of the developing countries as a result of this concept of the common heritage of mankind which we have adopted in this conference. That concept, as you know, means that instead of the prior rule of law applying which was strictly "first come first served" we will have not just a system of ^{new} law set-up but institutions to manage the Area and to manage the mining and indeed a new enterprise entirely, the UN Enterprise which would itself be a miner for one half of the Area. This is very radical, very imaginative, very forward looking and quite exciting, but if the conference fails we may find then the most bitter kind of disputes between those major industrialized countries that have the technology to go out there and do it on their own and those countries who don't; who say this should be reserved for the common heritage and handled only as a result of an agreement amongst all parties. So there is a lot riding on this insofar as Canada is concerned. We have unemployed miners right now. I'm not just referring to the strike in Sudbury ~~right now~~, I'm talking about the unemployment, the layoff that occurred because of the depressed nickel market. So to bring on another source of nickel, leaving aside the effect on copper or anything else, could have been quite a serious development. Fortunately, however, during the last session which was

held in Geneva, Elliot Richardson and I and members of our delegations - key members who ~~were~~^{were} experts - together worked out a resolution of this problem. It's called the "US/Canada (or the Canada/US depending on who you are talking to) ad referendum nickel production ceiling". Now that has still not been accepted by the US Administration but Elliot

Richardson is a man of his word and a man of considerable stature and only the President can overrule him. I mention this because it is a known fact that the major industrialized states do not like that formula and have been pressuring strongly in Washington and elsewhere to have it changed or abandoned, but it is still in the text which is being negotiated and in my view it is going to stay in the text. There may be additions to it that make it more acceptable to the countries of the industrialised world who oppose it. There may be some which make it more acceptable to the Group of 77. But the Group of 77 backs that text. We back it. E. Richardson backs it. I hope the US Government will back it eventually. I hope it will eventually be accepted by the EEC and Japan and even if it has to be added to, as I say, in order to reassure some of the countries in question concerning some aspects of it. But to date, it remains in the conference. ~~and~~ It's not so much a coup for Canada, it's an achievement of an objective for Canada but it's a very equitable, sensible accommodation. It's a genuine compromise between Canada and the United States. I think it's the kind of thing that makes the conference worth pursuing.

D There is another aspect like for instance in Switzerland as you know, every decision has to be taken on the canton side, while in Canada of course, there are the provinces, now will that bring problems to Canada again the federal/provinces?

B Well it could, I hope not. But to give you a frank answer, if we in the Canadian delegation were to ignore the problems that some of the provinces now have and would have with the mining issues we wouldn't be acting, in my view in the Canadian interest. We're not ignoring it so there is on the contrary instead of a dispute, just the opposite. We have key representatives in our delegation

from the provinces most concerned. We have experts whom we lean on very heavily in working out ^{solutions +} the kind of problem I just mentioned,-- the nickel production ceiling. Turning to other questions, fisheries some aspects of which are still unresolved, we have representatives again and as in the case of the mining problem we have representatives from the owners, the companies so to speak, ^{and} we have union representatives from both coasts on fisheries (and this is the same in mining, we have a Mining Association representative, we also have a union representative) and we have the provincial representatives; so there are federal/provincial aspects on the nickel production ceiling, also on the continental margin definition, -the outer limit of Canada's resource jurisdiction, -the continental shelf, -the submerged land territory; and of course there are federal/provincial aspects, very key ones to this bilateral negotiation and now the submission to the international court panel, because the provinces are going to be affected by that decision, so that all of this had to be negotiated with the provinces too. This is the way we work in Canada. As you know, we're probably the loosest federation in the world and I think we've been able to work effectively in this conference because we recognize that most of those parties are directly interested within Canada. The interests have to be reflected in this delegation. And they are. Sometimes we have interesting meetings, I can tell you, which make the meetings in the Conference as a whole mild by comparison. But we thrash things out. It works.

D This would also affect the outer limits of the continental shelf?

B One of the key issues unresolved is exactly that. What is to be the outer limit of the continental shelf. And there are some provinces who claim the area is theirs, while the government of Canada says "no" - that this is a national resource - and that's still unresolved on the east coast, although on the west coast, as you know, the Supreme Court of Canada rendered a decision. There too, I had to leave a meeting to come here - a meeting of what we call the Margineers, a group of states with wide shelves who don't intend to give up what they consider to be their territories just because it's covered with water. There is actually a geological definition of the continental shelf and we were the first country to assert it in this conference,

and now there are a large number who made the claims which we knew were there anyhow on the basis of their legislation, their constitution etc. ~~but~~ At the same time we were the first delegation to suggest revenue sharing beyond 200 miles so as to put an element of equity into the compromise, because the wider we push the shelf limit out the less there is of the seabed beyond national jurisdiction for the common heritage. So we have had to adopt an equitable approach, and indeed we wanted to. And that's been a consistent Canadian policy. But that ^{problem} is still unresolved. When I leave you, I have to go back into the meeting, consisting this time of the wide-shelf states and ^{the} USSR delegation, which has a totally different kind of proposal. We may be on the verge of reconciling these two different positions and hammering out a compromise. We may be on the verge of splitting up and having a ding-dong battle, I don't know.

D Now of course if the Law of the Sea Conference finally succeeds this will mean a new fantastic agreement and an international code of conduct for everybody as far as the sea is concerned. Should it fail what will happen then?

B Well I think you've described very well the prospects of a successful conference. It goes even deeper, perhaps, because what we're negotiating here are not just legal issues, of course, but fundamental issues touching on the jurisdiction and sovereignty of states, ^{and} also economic issues of the kind we've just discussed, and, I might mention, military issues. There are a number of military uses of the sea which will be affected in one way or another by what we do. And similarly with respect to preservation of the marine environment; similarly with respect to the conservation of the living resources of the oceans, fisheries, etc. and to sum up what has been achieved to date, I would say that we have settled about 90% of the range of problems, most of which looked absolutely insuperable when we began. But it's still not an easy task to settle the remaining 10%, - it never is, - it's sometimes the last few steps to the top of Everest that are the most difficult ones.

I'm glad that you focussed on the real issue here because often press reports make it sound like just another conference where diplomats come because they enjoy Geneva, they like rain -

that kind of thing, or they like New York, because they like humidity and crowds. I haven't met any of these peculiar people. The people I work with all wish to hell they were home doing their job there and being with their families, but they've been coming to these meetings because there is a sense of commitment and purpose and indeed some progress to make it worthwhile. And we have come a long way towards resolving the problems, but If you contrast the two situations you can imagine on the one hand binding treaty obligations, -not resolutions, -binding treaty obligations. And states do, in spite of common opinion to the contrary, states do respect their treaty obligations. It's in their self-interest to do so. That's all we have going for ^{us} internationally and I could give you twenty minutes of examples of treaties that are never noticed because they work. For example the hijacking treaty between Canada and Cuba. All the many treaties that are negotiated right here in Geneva within the WHO, ITU, ILO, etc. These are important agreements that enable states to deal together on the basis of civilized rules of conduct. It's in their collective interest, their enlightened self-interest if you will. That's one situation, ^{here} where we not only have solved problems, but we have created wholly new law, radical changes in the law from what it was when we began, because the law had stood still for about 300 years. And what we've done here is not tinker with the law. We didn't scrap the law, we ~~simply~~ revolutionized it. Now the alternative? Well we began with chaos. People generally agree that's the function of lawyers - to create chaos, but in this case if we are successful - well I've explained one result. But if we're unsuccessful, we will have worsened the situation tremendously. The disagreement that existed when we began was fundamental and was leading to very serious disputes. If the conference falls apart now and doesn't ^{finish} its mandate, we've created so much momentum towards the new principles of law, like the common heritage of mankind, the 200 mile economic zone, the rights of passage through international straits, the archipelago concept, the marine pollution rights, etc. that if we don't bind it into treaties, there is a possibility that the different states could interpret these principles in different ways because they'll say "well we would have gone for that if it had

been a final, complete solution, but since it isn't, we like this part but we don't like that" and we will find the most terrible chaos you could imagine, the kinds of disputes that will almost certainly lead to the use of force. And that applies particularly, incidentally, to the one subject which is most commonly talked about as being solved if necessary by unilateral action and that is the seabed. As you probably know, there is legislation ^{under way} in several countries which would authorize the nationals of these countries to mine the deep ocean seabed without benefit of clergy, so to speak, without a UN Treaty. That is such an emotive issue for the developing countries who attach so much importance to the common heritage that if that occurs, either because this conference fails or simply because there is so much pressure within the parliaments or congresses of states that legislation is passed, then I fear that you will find claims, counter-claims, conflicts, bitterness that goes well beyond this conference into the North-South dialogue, ^{and} also the genesis of some first class political disputes which are so important that some states wouldn't hesitate to use force I'm quite sure. So there is a tremendous amount riding on the Conference. I think also incidentally, it would be a shot in the arm for the UN, if we pull it off and it will be a kick in the pants if we don't.