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SUB

ATTACHED ARE EXCERPTS FROM KOR/BEESLEY PRESS CONFERENCE
MAY 1, 1982.

BEESLEY

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
J.A. Beesley/dc SIG			J.A. Beesley SIG

Q: Ambassador Beesley, could I ask a question? What would happen in the future if those who had adopted the treaty wanted to mine the same sites as those who had adopted the mini-treaty? Would that be a clash, a war?

Amb. Beesley: There would certainly be a clash of interests. I hope it wouldn't lead to anything worse than that, but it's our considered view that precisely because this Convention makes such a major contribution to peace and security, and provides stability and agreed rules of law -- where there were sharp disagreements -- that this would be the worst possible kind of scenario to envisage. So we hope very strongly that there will be no attempt to go ahead with the mini-treaty outside this Convention; the more so because the resolution on Pioneer investors just described by Tommy Koh is not only an adequate substitute for the so-called mini-treaty, I think it goes further than the wildest dreams of the proponents of the mini-treaty, and I would like to comment on one aspect of that touched on by Tommy.

If I had to make a calculation as Chairman of the Drafting Committee in the light of our three thousand amendments, I would say that well over 98% of the provisions of the package of proposals were negotiated by consensus -- and if it's even 2% -- I doubt if it is -- it's probably a fraction of 1%, that were not negotiated by consensus -- I think it most unfortunate that we didn't reach that consensus which we tried so hard to achieve. However, during this session something entirely new emerged. It was created and brought to fruition during this session, namely, the Resolution on Protection of Pioneer Investors. Now that, to my mind, was ~~such~~ a major concession -- from the Group of 77, not from Canada -- we were a major beneficiary of it. We are one of those listed in the resolution as entitled to mine the seabed as pioneers, so I think I can speak with credentials when I say that this was a major concession. We didn't demand it, but we benefitted by it. I don't see how anyone -- and I'm not discussing whatever Ambassador Malone may have said -- I say I don't see how anyone from the industrialized world, including the USSR, can make an appraisal of this package now and go away with the impression that they didn't make major gains. In fact I feared that the Group of 77 would not accept the resolution on PIP because it pushed beyond the limits of tolerability.

The only other comment I would like to make on that issue is that I hope you are all aware, and will dutifully report the fact, that the USSR made some very strong demands during the closing days of the conference which were not accepted by the Group of 77 and which were not accepted by the conference as a whole. So let's not go away with the impression that the Group of 77 or this conference has slapped down the USA and leaned in the direction of the USSR. It was even-handed treatment, in that neither got the maximum they were demanding, but both got a very good deal, because everything that the USA achieved benefitted the USSR, except to the extent that they may not have the Senate problem, but in terms of them both being industrialized countries wanting to mine the ocean, and, much more importantly, wanting to retain all the provisions they had achieved on freedom of navigation.

Well, who can say that American diplomacy was unsuccessful? It was brilliantly successful. It simply wasn't totally successful. So I have no doubt that already that treaty not only reflected the interests of the major powers, it protected their vital interests. It does so even moreso now. So let's not lose sight of all those provisions that took us thirteen years to negotiate, and concentrate only on alleged deficiencies on that one chapter out of seventeen relating to seabed mining -- indeed, some few provisions in that one chapter. I think this is a tunnel-vision approach that skews the whole thing so badly that it amounts to an accidental but fundamental misrepresentation of the facts. You have to view that treaty as a whole, and recall that year after year after year we negotiated provisions by consensus, always around and based upon the demands of the USA and the USSR, so it's very late in the day to hear that either state was rejected. I admit that not all the USA demands were met, or those of the USSR, but as to whether or not it was a fair deal -- like Tommy, I feel it was -- that important concessions were made, and that the Convention is not only a respectable achievement but a brilliant achievement for the UN, its greatest since its inception.

(President Koh: Alan, if I'm wrong, please correct me.)

Amb. Beesley: No, you're absolutely right, and that's what I meant when I said that 98% of the provisions -- more than 98% -- were negotiated by consensus. Now how can that be a question of the majority imposing its views on the minority? Or for that matter, even the minority imposing a veto? It was a genuine accommodation of interests reached on dozens of vital interests - vital issues, that I could mention to you. But if there's moral outrage, I wouldn't think it's directed at anybody. It might be a kind of disappointment at the outcome, in so far as it didn't turn out to be a consensus. But I don't detect that tone in what Tommy has said, and I must say that I have never heard anyone suggest -- never -- either of his predecessor, Shirley Amerasinghe, or Tommy Koh, that he'd ever run the conference in the interests of the Group of 77. On the contrary, he's been totally detached and impartial, impeccably so, and I know you weren't suggesting otherwise - I hope so, anyhow.

(President Koh: He had no reply to that. And worse - should I go on?)

Amb. Beesley: Well, you might make the point that the USSR, Japan, France and India, are all treated exactly alike, and this is why I did not agree, and said so publicly, that there was any discrimination against the USSR. In fact, I still believe it was a fair deal, so long as the Group of 77 felt so, because the concessions came from them. They were giving all this advance authorization well ahead of the treaty coming into force, which they'd never envisaged until this session. It had never been asked of them. These were all new demands, new proposals. We moved from a mild suggestion of protection of investors to a demand for a specific minesite, and then to a guarantee of authorization of approval of plans of work and of authorization of actual production and priority over others.

(President Koh: Well, I think my comments are unpublishable, so I shall not answer them.)

Amb. Beesley: I heard that over the loudspeaker system and I couldn't believe it, I thought I'd misheard, but now you've confirmed that on Tuesday, while the negotiations were under way, Mr. Malone did say that they were making representations which he described as based on solidarity, asking other countries to vote against the Convention. Now, I don't understand this, and I'd rather hear it directly from him before I could believe it.

Q: The USA is suggesting that changes will be made, or may be made either during the August session, the summer session, of the Drafting Committee, or during the three days preceding the next General Assembly session. They're making this point very heavily and they have made it before. In other words, does this mean then that the deadline as of yesterday is meaningless, and that there are possibilities for negotiating between now and September?

President Koh: I'll call on the Chairman of the Drafting Committee.

Amb. Beesley: I'll answer only the first part of the question. No such changes can be made in the Drafting Committee. It is quite beyond the parameters of the Drafting Committee. It is beyond our powers. It would be ultra vires. It would in fact prostitute the Drafting Committee. We can't do that. That doesn't mean that there couldn't be some kind of negotiations going on informally outside the Drafting Committee, either in the same city or elsewhere. I have nothing to say about that. Now, on the other point as to whether negotiations could develop in some way and then be approved in Plenary intended to be held for a totally different purpose, merely to approve Drafting Committee recommendations, there I have no comment. I'd like to pass that to Tommy. But I didn't want the impression to be created that the Drafting Committee could be used as a negotiating forum and I doubt if Ambassador Malone really suggested that. I don't know whether I should make this point but I think I should. It's encouraging to me that all through the period when the USA was in a holding pattern on the conference, and as a result we were all in a holding pattern, the USA participated actively and constructively in the Drafting Committee; not merely as a delegation, but as the coordinator of the whole English Language Group, which is the biggest group with the widest cross-section of geographical regions. I think the USA deserves considerable credit for that. My understanding is that the USA may continue to participate in the Drafting Committee precisely because it's concerned only with drafting, and not substance, and the appeal I made yesterday was to the effect that if only in order to determine what you're rejecting or accepting in due course, help us produce a good legal instrument, and I think the USA may go along with that and the USSR too. But I think it would jeopardize their participating if we were to expand that into a question of negotiating within the Drafting Committee on the basis, for example, of L-104. As an originator of that group, as a co-sponsor of the group, I'd be in an intolerable position -- misusing my position as Chairman of the Drafting Committee to negotiate my favourite proposals.

President Koh: And I wouldn't let you.

PRESS CONFERENCE BY PRESIDENT OF LAW OF SEA CONFERENCE

Tommy T.B. Koh (Singapore), President of the Third United Nations Conference on the Law of the Sea, gave a press conference on Saturday morning, 1 May, on the results of the Conference and its adoption on Friday, 30 April, of the Convention on the Law of the Sea. He was accompanied by J. Alan Beesley (Canada), who was also Chairman of the Conference's Drafting Committee.

Asked about the effect on the Convention of the absence of United States participation, Mr. Koh said: "The fact that a delegation voted against the Convention yesterday does not necessarily mean that the Government of the country will not, after further and sober reflection, decide against signing and ratifying the Convention or acceding to it. And, contrarywise, the fact that a delegation voted in favour of the Convention does not necessarily bind the Government of that country to join in the Convention."

To a query about the United States contention that the Conference had not reciprocated its conciliatory approach, Mr. Koh said he would answer by stating what the Conference had given the Reagan Administration since last summer. First, the industrialized countries had obtained a resolution on preparatory sea-bed protection which recognized the four concertia active in this field, guaranteed them the exclusive right to explore specific mine sites, enabled them to register as pioneer investors if one or more of their Governments signed the Convention, guaranteed their right to a contract if all of their Governments ratified the Convention, and gave them priority over all others except the Enterprise for a production authorization. "These, if I may say so, are very major gains which the United States delegation obtained since the summer of 1980", he added.

He added that, "although it is true that the United States delegation was acting contrary to the doctrine of good faith in demanding that the Conference reopen negotiations on issues which had already been settled", he had been able to convince the developing countries "that it was a price worth paying, because we must do everything possible to make the Convention one that would be supported universally". It spoke well for the wisdom and statesmanship of the "Group of 77" developing countries and the Eastern European Group "that they were willing to follow us".

The United States had also managed to extract the following from the Group of 77, "in return for nothing", he stated: First, a new clause enunciating a more pro-development policy for the projected International Sea-Bed Authority; second, a guaranteed seat for the United States in the Authority's Council, "which the United States Senate had demanded"; third, with regard to the future sea-bed review conference, the rules for decision-making would be the same as those of the Law of the Sea Conference and the number of ratifications needed to bring amendments into force was raised from two thirds to three fourths.

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Asked why the changes had been put into the Convention in exchange for nothing, Mr. Koh replied: "Perhaps I am at fault. I convinced the Group of 77 that they should accept all these unilateral concessions in the hope that, by accepting them, the prospects would be enhanced of attracting United States support for the Convention. And the United States never informed us -- or at least they informed Bernard [Mossiter of The New York Times] at least a day before they informed me -- they never informed us until yesterday, when I received a letter at 11 a.m., that they were pressing for a vote and that they were going to vote no."

Told by a correspondent that James L. Malone (United States) had confirmed at his press conference this morning that the United States had asked France, Japan, the Federal Republic of Germany and the United Kingdom on Tuesday, 27 April, to vote against the Convention, Mr. Koh said, "I am shocked to learn that. Well, I think that my comments are unpublishable, so I shall not utter them."

Mr. Koh recalled the statement he had made to the Conference yesterday that a remarkable feature of the Conference had been that the Group of 77 had not once sought a vote in order to impose its majoritarian power on the minority.

Speaking of the abstentions by the Soviet Union and other Eastern European States, he said that, according to their statement to the Conference yesterday, they had abstained because of one feature in the pioneer investment resolution which they considered to discriminate against the Soviet Union. However, as he had said in a report to the Conference (document A/CONF.62/L.141), it could be claimed that the resolution, in two other respects, discriminated in favour of the Soviet Union, which, though a relative newcomer to sea-bed technology, would have one mine site for itself, while seven countries of North America and Western Europe would have to share four sites.

Asked about the possibility of further changes in the Convention when the Conference met in September to consider the Drafting Committee's report, President Koh said, "My answer would be no; there can be no more negotiations".

To a reporter who asked what would happen if a "mini-treaty" was pursued outside the Convention, President Koh declared: "If the United States, in combination with any other industrialized countries, do go ahead and conclude the so-called mini-treaty, and create an alternative legal regime to the universal Convention we have just adopted, let's assume that they then proceed to mine the sea-bed under their mini-treaty. I want to tell you, and through you I want to tell them, that I will take it upon myself to persuade the United Nations General Assembly to adopt a decision asking the International Court of Justice for an advisory opinion on whether such activities under unilateral national legislation are lawful, or are they illegal. And if in the Court's opinion -- of course, we do not know how the Court will rule -- if the Court's opinion is that such activities under the mini-treaty are illegal, I would like to see whether these Western countries which have been sermonizing to the third world about the rule of law, will ask their consortia to stop such activities or whether they will reveal themselves to be a bunch of greedy hypocrites."

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Mr. Beesley was asked what would happen if someone operating under the Convention wanted to mine the same site as someone operating under a "mini-treaty". He responded that that would be worst possible scenario. He strongly hoped that there would be no attempt to go along with the mini-treaty, particularly as the pioneer investment resolution of the Conference was an adequate substitute for the mini-treaty. In fact, "it goes further than the wildest dreams of the proponents of the mini-treaty." He described it as "a major concession from the Group of 77, adding, "I don't see how anyone from the industrialized world, including the USSR, can make an appraisal of this package now and go away with the impression that they didn't make major gains. In fact, I feared that the Group of 77 would not accept the resolution ... because it pushed beyond the limits of tolerability."

Speaking of the negotiations on the pioneer investment resolution, Mr. Beesley said: "These were all new demands, new proposals. We moved from a mild suggestion of protection of investors to demand for title to specific mine sites and then to a guarantee of authorization of approval of plans of work and authorization of actual production and actual priority over others."

Mr. Beesley remarked that the Soviet Union had made some very strong demands during the closing days of the session which the Group of 77 and the Conference had not accepted. "So let's not go away with the impression that the Group of 77 or this Conference has slapped down the USA and leaned in the direction of the USSR. It was even-handed treatment in that neither got the maximum they were demanding but both got a very good deal, because everything that the USA achieved benefited the USSR also".

"Who can say that American diplomacy was unsuccessful?", he remarked. "It was brilliantly successful. It simply wasn't totally successful. So I have no doubt that already that treaty not only reflected the interests of the major Powers, it protected their vital interests."

Mr. Beesley added that "well over 90 per cent of the provisions of the package of proposals were negotiated by consensus... Year after year after year, we negotiated provisions by consensus, always around and based upon the demands of the USA and the USSR... The Convention is not only a respectable achievement but a brilliant achievement for the UN and, I think, its greatest since its inception."

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4 May 1982

PRESS BRIEFING BY SECRETARY-GENERAL'S SPECIAL REPRESENTATIVE TO
THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Bernardo Zuleta, Special Representative of Secretary-General Javier Perez de Cuellar to the Third United Nations Conference on the Law of the Sea, briefed correspondents this afternoon on the results of the Conference, which concluded at Headquarters on Friday, 30 April, as well as the prospects for the future.

He began by stating that the Convention on the Law of the Sea had been adopted by the Conference with wide-spread support and "there is no return ticket any more". The resolutions on the Preparatory Commission and on preparatory investments would have to be closely examined by those States that were interested in certifying, and later sponsoring, pioneer investments in sea-bed exploration and mining.

"It is not going to be all that easy to claim anymore that sea-bed mining continues to be one of the freedoms of the high seas", he declared. "At least not too many jurists the world over would take that claim at face value in the presence of a Convention adopted by a overwhelming majority of the international community as a consequence of a General Assembly resolution that declared solemnly that the resources of the sea-bed outside national jurisdiction were to be treated as the common heritage of mankind."

Mr. Zuleta said it followed that those who would want to invest additional resources in sea-bed mining "will have to consider very seriously which way to go -- how best to seek a legal and political protection for their investments".

It was also important to remember, he went on, that the decisions of most Governments regarding the signing and ratification of the Convention were not likely to be determined by sea-bed mining considerations. Only in a few cases would sea-bed mining take centre stage for Governments; in most cases, both developing and developed countries would take into consideration the over-all package, not necessarily only its sea-bed mining aspect.

"I have stated for many years now that the sea-bed mining aspect of this negotiation has been grossly exaggerated", he said. Mention had been made of "trillions of dollars" on the sea-bed ready to be distributed to the developing countries for their development. However, the projections did not seem to give a firm foundation to that speculation. While it was true that the sea-bed contained many mineral riches, its exploration and exploitation would be determined basically by market considerations, and he did not foresee a situation in which nickel, manganese and cobalt would have such a large market that they would produce trillions of dollars for distribution. "That speculation about the sea-bed becoming the source of development and the magical solution towards developmental problems doesn't seem to be there any more", he remarked. The sea-bed would produce some income and it was likely over the years to develop as a good source of funds for development, but that

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would take some time and it would be largely determined by other economic considerations.

He said that the immediate concerns of most coastal States were in the areas of fisheries and the exploration and exploitation of their continental shelves; the conduct of marine scientific research; protection of the marine environment and co-operation with their neighbours on all aspects of that problem; preservation of freedoms of navigation and overflight and all related aspects.

He noted that with exception of one member of the European Economic Community (EEC) and two members of the Eastern European socialist group, the entire group of land-locked countries had voted in favour of the Convention. Over the years it had been stated that the land-locked States were being "mistreated" in the negotiations and that they were the "victims" of "selfish coastal States". Apparently the views of the Governments concerned "do not coincide with the views of the self-appointed protectors of the land-locked". They had all voted for the Convention -- Bolivia as well as Nepal, Laos as well as Paraguay, the Central African Republic as well as Burundi. That was because "They see this Convention as a landmark with regard to (a) transit to and from the sea as a legal right and (b) access to an international system that will manage a common heritage". Those two aspects, "plus the built-in protection for some of those countries which happen to be land-based producers of some of the minerals to be found on the sea-bed, may well explain why they solidly voted in favour of the Convention".

He said that the reasons why coastal States voted for the Convention required no elaboration. The reasons why a number of developed countries also voted for the Convention "might require some speculation", but it was interesting to note that Japan, France and Canada were sponsors of pioneer investors and they had voted for the Convention. It was also worth noting that all the Nordic countries had voted in favour of the Convention, as had Switzerland and Austria. "This is clearly not the typical North-South or East-West split", he remarked. The decision probably had the most solid support of any decision ever taken within the United Nations system by means of a vote.

As to what would happen to the funding for the International Sea-Bed Authority if the big contributors were not there, he said the functioning of the Authority was likely to be determined by the agenda of the sea-bed miners. If and when the known pioneer investors were ready to engage in commercial recovery, they would have to make up their minds as to whether they wanted to seek the protection of the Convention or another form of protection. The signals seemed to be that for Japan, Canada, France and others, they would rather seek the Convention's protection. How that would affect the decisions of others "is something that you could speculate on".

Turning to the question of entry into force of the Convention, he said it was not easy at this time to predict how many Governments were ready to take the decision to sign the Convention at Caracas or submit it to their political bodies for ratification. "But I know as a fact that there are already many

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countries that have indicated very clearly that they are ready to be the pioneers in ratifying the Convention", he said. That was true of both developed and developing countries.

"In the meantime", he said, "we have a Convention which is, legally and politically speaking, a landmark already." For the second time in many years, he could agree with The New York Times correspondent Bernard Nossiter when, writing last Sunday, 2 May, about the legal and practical effects of the Convention, he had said that it was already a point of reference to determine what was and what was not international law with regard to the use of ocean space.

Whether the Convention could or could not be invoked by those who did not sign or ratify it was a difficult legal question, Mr. Zuleta added.

Mr. Zuleta was asked when he expected commercial sea-bed mining to begin. He replied that the pioneers themselves believed that commercial recovery was not likely to begin before the end of the current decade, although each consortium seemed to have its own time-table. That question depended very much on a problem that had yet to find a viable solution -- the question of processing facilities. In response to a further question, he said that in order to justify the enormous investment necessary, market conditions had to be propitious.

A correspondent observed that at a party following the adoption of the Convention "there was a singular lack of merriment or mirth". In fact, Conference President Tommy T.B. Koh (Singapore) was "eating alone in the cafeteria"; the Africans who are land-based producers were absent; the Jamaicans, who were to be hosts for the International Sea-Bed Authority, were absent; "you yourself seemed to be one of the few happy people at the party. What were you happy about?" Mr. Zuleta replied that he was not under the impression that the people described by the correspondent were unhappy; some were "extremely happy". The Conference had had "to settle for second best". The ideal situation would have been a consensus Convention, which the Conference had been aiming for eight years. It was quite understandable that those who had worked very hard to reach a consensus agreement had felt rather dismayed that consensus had proved impossible at the last minute. He was among them.

In retrospect, he went on, he felt that, if the Conference had failed to opt for that second-best, "it would have been a total disaster". The alternative was no convention, and a no-convention outcome would have been "an unmitigated disaster for the whole of the United Nations system".

Mr. Zuleta was asked if he agreed with United States Ambassador James I. Malone, who had stated that the Conference had not yet ended and that changes could still be made in the text. He replied that it was his understanding that the Convention had already been adopted; "that was the impression I had on Friday". The decision regarding continued meetings of the Conference's Drafting Committee had to be read in conjunction with the Conference's rules of procedure, according to which the Drafting Committee could neither initiate texts nor alter the substance of existing texts.

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He was then asked about the possibility of holding "outside" negotiations whose results could be submitted to the Conference in September. Mr. Zuleta said he preferred not to answer that question, since everyone was entitled to his own opinion on the matter. "Where I am concerned, as representative of the Secretary-General", he added, "there is a Convention already adopted." Governments were free to decide anything they wished, but procedurally speaking, the Drafting Committee could make no changes in substance to the text. Mr. Zuleta referred correspondents asking related questions to the statement made by President Koh at a press conference last Saturday, 1 May. As a member of the Secretariat, he was not willing to pass judgements on what Governments were willing or not willing to do.

Did he have any estimate as to the number of States that would sign or ratify the Convention in December? He replied that it was too early to tell, "but one has to imagine that a Convention adopted by 130 positive votes stands a pretty good chance of being signed by at least half that number".

Asked whether the United States might ultimately be induced to joint the Convention, Mr. Zuleta said it was his personal impression that the Convention, together with the resolution on preparatory investments and the resolution on the Preparatory Commission, "offer a number of clear incentives that cannot be disregarded by industry".

Mr. Zuleta was then asked where the Preparatory Commission would meet, "considering that there have been allegations by some members of the Jamaican delegation that there is an effort on the part of the Secretariat not to have the Prep Com meet in Jamaica, but to meet in New York". He replied that he could not answer "allegations" which he had not heard. The resolution adopted by the Conference stated that the Preparatory Commission would meet at the site of the future Authority if facilities were available, and subject to the financial approval of the General Assembly. The cost of the Commission would be absorbed by the United Nations budget, subject to the Assembly's approval. It followed, therefore, that it was up to the General Assembly to determine the expenses that the United Nations would be willing to pay.

What impact would the Convention have on the prestige of the United Nations? He replied that he had told the Conference last Friday that its decision would be seen by history as one that had enhanced the role of the United Nations in the solution of global problems. It had reinforced the Organization's role in the maintenance of international peace and security, and as a promoter of development and a more just and stable international economic order. The Convention was one of the most important landmarks in the history of the United Nations, regardless of the fact that consensus had proved to be impossible. No effort to diminish the Convention's importance could cast a shadow over that success.

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