

GENERAL
ASSEMBLYDistr.
GENERALA/2706/
23 August 1954

ORIGINAL: ENGLISH

Ninth session

SUPPLEMENTARY LIST OF ITEMS FOR THE AGENDA OF THE
NINTH REGULAR SESSION OF THE GENERAL ASSEMBLY:
ITEM PROPOSED BY BRAZIL, CHINA, LIBERIA, THE
NETHERLANDS, NEW ZEALAND, THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
UNITED STATES OF AMERICA

DRAFT ARTICLES ON THE CONTINENTAL SHELF

Letter dated 20 August 1954 from the delegations
of Brazil, China, Liberia, the Netherlands,
New Zealand, the United Kingdom of Great Britain
and Northern Ireland and the United States of
America to the United Nations, addressed to the
Secretary-General

New York, 20 August 1954

We have the honour, on instructions from our Governments, to request that the following item be included in the supplementary list for the provisional agenda of the ninth regular session of the United Nations General Assembly:

"Draft articles on the continental shelf."

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum is attached.

(Signed)

Shuhsi HSU
Alternate Representative of China
on the Security Council

Ernesto LEME
Permanent Representative of Brazil
to the United Nations

D.J. VON BALLUSECK
Permanent Representative of the
Netherlands to the United Nations

James J. WADSWORTH
Deputy Representative of the United
States of America to the United Nations

Peter E. RAMSBOTHAM
for the Permanent Representative of the
United Kingdom of Great Britain and
Northern Ireland to the United Nations

L.K. MUNRO
Permanent Representative of New Zealand
to the United Nations

Cecil D.B. KING
Acting Permanent Representative of
Liberia to the United Nations

EXPLANATORY MEMORANDUM

At its fourth session, the General Assembly recommended that the International Law Commission study the régime of the high seas and the régime of Territorial waters (resolution 374(IV)). At its fifth session, the International Law Commission completed its work on the continental shelf, and it recommended to the Assembly that it give favourable consideration to the draft articles on the continental shelf.^{1/} At its eighth session, the Assembly decided "not to deal with any aspect of the régime of the high seas or of the régime of territorial waters until all the problems involved have been studied by the International Law Commission and reported upon by it to the General Assembly." (resolution 798 (VIII)).

Since the passage of resolution 798 (VIII), the co-sponsors have come to the conclusion that it would be desirable for the Assembly to consider and attempt to solve, one at a time, the numerous segments of the very broad general subject of the régime of the high seas and territorial waters, as those segments are completed by the International Law Commission. This would seem to accord with the views of the International Law Commission itself, which has recommended consideration of its draft articles on the continental shelf and on fisheries.

It has become more apparent since last year that if the Law Commission is to do its best work on these thorny problems, it may require several more years to complete its task. For example, it is felt that the Commission might not be able to reach final decisions regarding the breadth of territorial waters in the immediate future. Consultations with States and further useful deliberations on the part of the Commission will probably consume several more years. Hence this one aspect of the régime of the high seas and territorial waters may well require additional time before final recommendations can be sent by the Commission to the Assembly. Moreover, the problem of the régime of the high seas and territorial waters contains the following sub-items on which little or no work has yet been done by the Commission: nationality of ships, collision, safety of life at sea; the right of approach, slave trade, submarine telegraph cables, and the right of pursuit. Meanwhile, the number and intensity of international disputes

^{1/} See Official Records of the General Assembly, Eighth Session, Supplement No. 9, document A/2456.

relating to high seas and territorial waters seem to be increasing. Hence, the need for agreed solutions for these problems or any part of them is apparent.

Although the simultaneous solution of these problems might appear more logical, in practice, international law has frequently been advanced only by concentration and agreement on one small segment at a time. Frequently the process is one of reaching agreement on the less controversial segments first, and only then attempting to solve the more controversial aspects. In the view of the co-sponsors, the multi-sided field of the law known as the régime of the high seas and territorial waters may well be a good example of an instance in which such a process will prove very useful. Also, it may be an instance in which the reverse process of simultaneous consideration of all segments might prove unworkable. At best simultaneous consideration will greatly delay settlement of all of the problems in this field.

For example, there does not seem to be any basic disagreement among nations as to the conclusions reached by the International Law Commission concerning the exploration and exploitation of the resources of the continental shelf. On the other hand, there is nothing to indicate that there will be general acceptance of any solution of the question of breadth of territorial waters which might ultimately be recommended by the Law Commission. Since the whole project of the régime of the high seas and territorial waters contains a number of controversial problems, the solution of the less controversial should not be tied to the solution of the more controversial. To do so might delay indefinitely the solution of the whole project.

It has been argued that since the various segments of the problem are inter-related, it will be impossible to solve one segment without prejudging or prejudicing the other segments. However, this difficulty can be overcome by disclaiming specifically any such prejudgment or prejudice. For example, in the final Assembly resolution relating to the draft articles on the continental shelf, a preambular paragraph could be inserted to the effect that the articles would not purport to prejudice or prejudice future decisions relating to such matters as base lines for territorial waters, the width of territorial waters, and fishery resources of the superjacent waters. Such a technique should reassure those States which have expressed a fear that the solution of one segment will prejudice the solution of another.

The co-sponsors believe that consideration of the Law Commission's draft articles on the continental shelf by the Assembly should not be postponed for an indefinite, and possibly great, number of years. However, since a number of Governments have indicated that they would prefer to study the draft articles further before reaching conclusions in relation to all of their details, it is believed desirable to delay substantive consideration of them until the tenth session of the Assembly. This additional year should provide sufficient time for thorough study by all Governments. The co-sponsors believe that in order to avoid undue delay the Assembly should decide at its ninth session to place on the provisional agenda of its tenth session the question of substantive consideration of the draft articles on the continental shelf.
