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United Nations Conference on the Law of the Sea

Official records

Volume VII:

FIFTH COMMITTEE

(Question of Free Access to the Sea of Land-locked Countries)

Summary records of meetings and Annexes

GENEVA

24 February — 27 April 1958

United Nations Conference on the Law of the Sea

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Volume VII:

FIFTH COMMITTEE

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OFFICERS OF THE FIFTH COMMITTEE

Chairman :
Mr. Jaroslav ZOUREK (Czechoslovakia)

Vice-Chairman :
Mr. Wálter GUEVARA ARZE (Bolivia)

Rapporteur :
Mr. Abdul Hakim TABIBI (Afghanistan)

SUMMARY RECORDS OF THE FIFTH COMMITTEE

FIRST MEETING

Wednesday, 26 February 1958, at 5 p.m.

Acting-Chairman: Prince WAN WAITHAYAKON (Thailand)

Election of the Chairman

1. Mr. TUNKIN (Union of Soviet Socialist Republics) nominated Mr. Zourek (Czechoslovakia).

2. The ACTING-CHAIRMAN said that, as there was only one candidate, the Committee might wish to elect Mr. Zourek by acclamation. Unless he received any proposal to the contrary, he would assume that that procedure was generally acceptable.

Mr. Zourek (Czechoslovakia) was elected Chairman by acclamation.

The meeting rose at 5.5 p.m.

SECOND MEETING

Friday, 28 February 1958, at 4.40 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Election of the Vice-Chairman

1. Mr. TRUJILLO (Ecuador) nominated Mr. Guevara Arze (Bolivia).

2. The CHAIRMAN, after recalling rules 51 and 53 of the rules of procedure, said that, as Mr. Guevara Arze was the only candidate, he assumed the Committee would have no objection to electing him by acclamation.

Mr. Guevara Arze (Bolivia) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

3. Mr. LESCURE (Argentina) nominated Mr. Tabibi (Afghanistan).

4. Mr. PERERA (Ceylon) seconded the nomination.

5. The CHAIRMAN said that, as there was again only one candidate, he assumed the Committee would have no objection to proceeding in the same way as for the election of the Vice-Chairman.

Mr. Tabibi (Afghanistan) was elected Rapporteur by acclamation.

6. Sir Gerald FITZMAURICE (United Kingdom) stressed that the fact that all of the Committee's officers came from land-locked countries did not in any way imply that the maritime States were not deeply interested in the problems with which the Committee would be dealing.

The meeting rose at 5 p.m.

THIRD MEETING

Wednesday, 5 March 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Introductory statement by the Chairman

1. The CHAIRMAN made an introductory statement on the background to the question of free access to the sea of land-locked countries, and on the manner in which he thought the Committee should conduct its work.

2. Mr. GEAMANU (Romania), supported by Mr. PERERA (Ceylon), said that the Chairman's statement itself offered a basis for discussion and suggested that the verbatim text be circulated as a Committee document, so that delegations could study it.

It was so agreed.[1]

Organization of the work of the Committee

3. Mr. BELTRAMINO (Argentina) said that a general debate was justified, particularly as the General Assembly had not dealt with the particular item, and the International Law Commission had submitted no document on the subject. The Argentine delegation was prepared to accept as a basis of discussion the principles enunciated by the Preliminary Conference of Land-locked States (A/CONF.13/C.5/L.1, annex 7).

4. Mr. MASCARENHAS (Brazil) considered that, in view of the insufficient preparatory work on the substance of the question, the Committee should be apprised of the conclusions of the Economic Conference held at Buenos Aires in August and September 1957 under the auspices of the Organization of American States. Since one of the points in the ten-point declaration adopted by that conference dealt with the free access to the sea of land-locked countries, the report of the Conference should be placed at the Committee's disposal.[2]

5. In other respects, the Brazilian delegation agreed to the programme of work recommended by the Chairman.

6. Mr. CADIEUX (Canada) hoped that the text of the Buenos Aires declaration would be circulated to the members of the Committee.

7. The CHAIRMAN proposed that the Committee's first business should be a general debate on the question of free access to the sea of land-locked countries.

It was so agreed.

[1] See annex hereto.

[2] *Final Act, Conference and Organization Series, No. 58,* Pan American Union, Washington, D.C. An extract from the Declaration of Buenos Aires, together with resolutions XXIII, XXXVIII and XLI of the Conference, was circulated to members of the Committee as document A/CONF.13/C.5/L.4.

Study of the question of free access to the sea of land-locked countries

General debate

STATEMENT BY MR. BELTRAMINO (ARGENTINA)

8. Mr. BELTRAMINO (Argentina) said it was perfectly proper for the land-locked countries to wish the question of their access to the sea to be considered at the Conference. He drew attention in that connexion to the treaties which Argentina had concluded in the nineteenth century with Bolivia and Paraguay for the purpose of facilitating the access of the latter countries to the sea; the rights conferred by those treaties had come to be accepted as part of international law. The representative of Bolivia had accordingly been quite right in stating at the Preliminary Conference that the principles enunciated by that conference were not more extensive than those embodied in the bilateral treaties concluded by his country. It was gratifying to note that Argentina's relations with Bolivia and Paraguay in the matter of the transit of persons and goods had at all times been based on friendship and mutual understanding.

9. Undoubtedly, the study of the question should not be confined strictly to traditional principles; it should take full account of technical advances and of developments in relations between States. It was the Committee's function to determine whether the principles now recognized by international law were sufficient, or whether they should be modified or supplemented by convention. His own delegation considered that the recognition of certain rights, such as those connected with free zones, could not be obtained except through the conclusion of bilateral agreements.

10. Since the problems involved in the access of land-locked countries to the sea did not take the same form in every part of the world, he thought that if, as he hoped, the work of the Conference was to culminate in solutions applicable universally, the instruments embodying those solutions would have to be drafted in sufficiently flexible and broad terms to be capable of being applied and finding acceptance throughout the world. The Argentine delegation would support any proposal that took due account of the interests of the land-locked countries and at the same time of the need to ensure close and cordial relations between such countries and those having direct access to the sea.

11. The conclusion of a convention based on the principles enunciated by the Preliminary Conference (A/CONF.13/C.5/L.1, annex 7) was desirable. Those principles, however, required a thorough examination, and as yet delegations had not had the time to study them with the necessary care. The delegation of Argentina would learn with interest the viewpoints of the other delegations, especially of those of land-locked countries. It reserved the right to speak again later.

The meeting rose at 12.5 p.m.

Annex

STATEMENT MADE BY MR. ZOUREK (CZECHOSLOVAKIA), CHAIRMAN OF THE FIFTH COMMITTEE [1]

1. Today sees the opening of the proceedings of our committee, which is faced with the heavy and most responsible task of studying the régime of free access to the sea of land-locked countries and preparing the corresponding drafts for inclusion in the general codification of rules concerning the régime of the sea. We cannot blind ourselves to the difficulty and complexity of this task. Whereas the other main committees of the Conference can base their work from the beginning on the International Law Commission's very thorough and detailed draft (A/3159, chapter II), which is the fruit of several years of effort by a body of highly qualified jurists, the comments of governments and the conclusions from earlier discussions in the General Assembly of the United Nations, our Committee has before it problems which have not been thoroughly studied either by the International Law Commision or by the General Assembly. But this does not mean that we are beginning our important work of codification today without some initial preparation, without essential groundwork or without the prerequisites for reaching general agreement on this question among the States participating in the Conference.

2. The interdependence between the tasks of the other main committees of the Conference and those of the Committee on Free Access to the Sea of Land-locked Countries is, to my mind, obvious. The régime of the sea forms a single body of questions, one of which, as confirmed by General Assembly resolution 1105 (XI), is the situation of land-locked countries within the great family of nations, all of which enjoy the benefits deriving from the equality reigning among the members of the international community as regards use of the sea as a means of communication and a source of natural wealth.

3. For the first time in the history of international relations, a great work of codification in the realm of the law of the sea is being carried out as an organic whole; if this work is crowned with success, it will constitute the foundation of the law of the sea for decades to come. May this great undertaking, which it has by no means been easy to set on foot but which is seconded by the efforts of so many delegations to create general harmony among States, meet the expectations and the rightful claims of all members of the international community, whether maritime or land-locked States. In my view, all the prerequisites for attaining this objective are present. Agreement reached in our Committee would undoubtedly be a substantial contribution to the success of the Conference and an important factor in the search for balance in regulating the régime of the sea.

4. I think it will be not without profit to recall, before commencing our work, the main milestones passed in the development of the question before us.

5. At the eleventh session of the General Assembly of the United Nations, the delegations of certain land-locked States formally proposed the inclusion in the agenda for this conference of the right of free access to the sea for such States.[2] Under resolution 1105 (XI) of 21 February 1957, which was all but unanimously adopted by the General Assembly, the question of access to the sea of land-locked States was included among those to be codified at the Conference on the Law of the Sea. That is assuredly a clear enough sign that the question of the rights of land-locked States is considered one coming under the general regulation of the régime of the sea, which this conference has the happy task of codifying.

6. During the same eleventh session of the United Nations General Assembly, and also later, certain delegations held a broad exchange of views on the chief questions connected

[1] Circulated to members of the Committee as document A/CONF.13/C.5/L.2.

[2] See *Official Record of the General Assembly, Eleventh Session, Annexes*, Agenda item 53, document A/3520, para. 14, sub. paragraph iv.

with the codification of the right of free access to the sea of land-locked States. It is quite natural that the initiative in this matter should have been taken by the land-locked States, which arranged a number of meetings at New York in the autumn of 1957 to bring out the general principles on which codification should be based.

7. The United Nations Secretariat also made a considerable contribution towards providing a basis for our discussions by preparing a comprehensive study (A/CONF. 13/29) on the question of access to the sea of land-locked States, which brings together in orderly fashion and analyses a considerable quantity of international instruments governing the access to the sea of such States. I take this opportunity of thanking through the secretaries of our committee, Mr. Sandberg and Mr. Malek, on your and my own behalf, all those members of the United Nations Secretariat who helped to produce a preparatory study of such great value to all of us.

8. The last stage of the preparatory work for this conference was the preliminary conference of twelve land-locked States, convened by the Swiss Government at Geneva from 10 to 14 February 1958, and presided over by Ambassador Paul Ruegger. That meeting undoubtedly proved most useful and fruitful; but since it finished its work quite recently and, I suppose, not all delegations will have had an opportunity of studying the fairly copious documentation, I think it advisable to recall the broad lines of the proceedings and the findings of an international meeting which was of such undoubted importance for our work.

9. The Conference of Land-locked States had a dual importance from the standpoint of our present activities: first, the general discussion gave us an almost complete view of the circumstances in which the various land-locked States exercise their right of free access to the sea and the manner in which that right is at present safeguarded; secondly, the Conference prepared a resolution enunciating general principles which, in the present state of international law, govern the position of land-locked States in respect of access to the sea.

10. The statements by the delegations of the land-locked States showed that these States have obtained in international law in general a high degree of recognition for their right of free access to the sea, and safeguards concerning their exercise of this right through multilateral agreements, and above all by bilateral agreements concluded with coastal States and States of transit. Although the land-locked States exercise their right of free access to the sea in varying geographical, economic and political conditions, the Preliminary Conference succeeded in bringing out general all-round principles representing a minimum common denominator of the requirements of all land-locked States and governing passage to and from the sea for such States in existing international law.

11. When referring to the principles adopted at the Preliminary Conference as the foundation on which the codification of the rules governing access to the sea of land-locked States should rest, we should bear in mind that the right of free access to the sea is already embodied in international law; for land-locked States already enjoy the right to use the high seas, on the same footing as maritime States. In virtue of the principle of freedom of the high seas, as enunciated in article 27 of the International Law Commission's draft, the high seas are open to all nations, hence, to land-locked States also. This principle represents for such States a basis of specific rights, without which the exercise of the fundamental right concerning the use of the high seas would be impossible. These specific rights — the most important of which are the right of innocent passage through the territory of countries situated between a land-locked State and the sea and the right to use the ports of a coastal State — derive from peculiarities due to the geographical situation of land-locked States and the recognition of their vital economic interests. At the present time, when, compared with earlier centuries, economic relations have reached an unprecedented degree of intensity and constitute a factor helping to strengthen the bonds between all members of the international community, it is particularly important to ensure favourable conditions for friendly co-operation based on respect for the principle of equal rights in the matter of the use of the sea. In that way it will be possible to create, as advocated in Article 55 of the United Nations Charter, conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights. As our conference has been convened by, and is held under the auspices of, the United Nations, I think it well to recall at this point Article 56 of the Charter, which pledges all Member States to take joint and separate action in co-operation with the organization for the achievement of the purpose to which I have referred.

12. The Preliminary Conference of Land-locked States provides us with an example of the kind of co-operation advocated in the Charter, and the principles formulated by that conference in its final resolution (A/CONF.13/C.5/L.1, annex 7) may be regarded as a basis for our future work. The resolution adopted by the Preliminary Conference of Land-locked Countries contains seven general principles — with which, of course, the Conference did not presume to cover the entire scope of the right of free access to the sea.

13. Allow me briefly to recall the gist of the principles adopted at this preliminary conference.

14. Principle I, which may be regarded as the keystone of future regulation, is a statement of the right of land-locked States to free access to the sea, a right deriving from the principle of the freedom of the high seas. Indeed, without such a right, freedom of the high seas would lose its universality.

15. Principle II, embodying the right of a land-locked State to fly a maritime flag, is really nothing more than a restatement of the Barcelona Declaration of 1921, and thus does not, I feel, call for more detailed explanation.

16. Principle III likewise derives directly from the principle of freedom of the high seas, ensuring for ships on the high seas flying the flag of land-locked States the same treatment as is accorded to the vessels of any maritime State. The right to the same treatment in territorial and in internal waters is the logical corollary of this. But here the equality naturally applies only to the régime enjoyed by vessels of maritime States other than the territorial State, which, as a general rule, alone has the right to accord its own vessels more extensive rights — e.g., the exclusive right of engaging in coast-wise traffic.

17. Principle IV adopted at the Preliminary Conference deals with the rights of a land-locked State with respect to the use of maritime ports. According to this principle, the land-locked State is entitled to the most favoured treatment in the maritime ports of coastal States and under no circumstances to treatment less favourable than that accorded to the vessels of the coastal State as regards access to maritime ports, use of those ports and facilities of any kind that are usually accorded. This principle is confirmed by, in particular, article 2 of the Statute on the International Régime of Maritime Ports, annexed to the 1923 convention of the same name. It was precisely to take account of the peculiar position of land-locked States that a provision was included in paragraph 4 of the Protocol of Signature to the above-mentioned convention explicitly exempting countries with no sea-coast from the condition of reciprocity otherwise laid down by the Convention and the Statute on the Régime of Maritime Ports. This provision confirms the recognition of the right of land-locked States

to participation on equal terms in the use of maritime ports and of the need to compensate such States for their adverse geographical situation.

18. Principle V ensures the right of innocent transit of a land-locked State towards the sea, and vice versa through the territories of third States. This principle is of vital importance for land-locked countries, for without this right of transit, they would be unable to enjoy the benefits deriving from the freedom of the high seas.

19. Principle VI, expressing the right of a State of transit to take measures to protect its sovereignty and legitimate interests, should, in the opinion of the Preliminary Conference, form an integral part of any future regulation of the right of access to the sea. It is quite natural that the exercise of the right of land-locked States to free access to the sea must not infringe the fundamental prerogatives of a coastal State or State of transit. There can be no doubt that such States, preserving their sovereign power over their entire territory, are entitled to take any measures which a violation of their legitimate interests, especially with regard to security and public health, might render essential. In this way, the balance is ensured between the interests of land-locked States and those of States of transit.

20. The purpose of Principle VII is to ensure the continuance in force of all individual agreements governing the access of the various land-locked States to the sea. Nor, according to this principle, must the new codification be an obstacle to these States concluding such agreements with their neighbours in the future, provided that the new agreements do not establish a régime which is less favourable than that based on the seven principles I have just outlined. Clearly, the general corpus of regulations, which should embody a common denominator of the rights hitherto enjoyed by all land-locked States, should not constitute an obstacle to the conclusion of bilateral regulations according to these States individually more extensive rights than those flowing from the general régime.

21. Such are the seven principles contained in the resolution of the Preliminary Conference of Land-locked States. In addition, a further principle, which is of great significance both for the land-locked States and for coastal States and States of transit, was included in the preamble to the resolution in question. In view of the peculiar position of the land-locked States and the special régime accorded them as a result, there is no reason to accord that special régime *ipso facto* to third States on the strength of the most-favoured-nation clause, since the latter States are not in the same position as the land-locked States. In other words, the regulation of the right of land-locked States to free access to the sea is outside the sphere of operation of the most-favoured-nation clause.

22. In my opinion, the results of the Preliminary Conference are in themselves a sound basis for our general discussion. As I have already remarked, the list of general principles on which the right of free access to the sea is based must not be regarded as complete. Whether it will be felt necessary to add other principles will depend more particularly on the form of the draft emerging from our Committee's deliberations.

23. In the second phase of our work, it will be necessary to formulate more specific proposals, framing draft articles like those of the draft prepared by the International Law Commission.

24. Quite apart from the statements made by the delegations to the Preliminary Conference of Land-locked Sates, the documents assembled for it constitute a fund of interesting material which may lighten our task. First in this respect come the written statement of 26 August 1957 from the Permanent Mission of Afghanistan to the United Nations (A/CONF.13/C.5/L.1, annex 4), the memorandum of the Swiss Government for the attention of the United Nations Conference on the Law of the Sea, dated 31 January 1958 (A/CONF.13/C.5/L.1, annex 5), and the draft articles relating to access to the sea of land-locked countries submitted by the Czechoslovak delegation to the Preliminary Conference (A/CONF.13/C.5/L.1, annex 6). I am sure that all these documents will be closely studied by delegations and will at the same time be used in drafting proposals for discussion in our committee.

25. After that brief outline of the chief preparatory stages through which the question of the access of land-locked countries to the sea has passed, I should like to submit for the consideration of the members of the Fifth Committee some suggestions on the organization of our work at this conference.

26. In view of the nature of the question before this committee, I think it would be useful to hold a general discussion on the question as a whole. The need for a general discussion in our Committee is more urgent than in the other main committees, who nevertheless are likewise beginning their work with a general debate. Such a discussion can help to elucidate a few basic points which might be felt to be insufficiently clear; it can bring the viewpoints of the land-locked States and the maritime States closer together, and provide us wih some valuable criteria for the framing of the proposals which delegations will be submitting.

27. I am convinced that delegations will find it desirable to begin straight away discussing among themselves proposals for submission to the Committee, so that when the general discussion is closed — and it would naturally be preferable for all this to be done before the discussion is over — the members of the Committee may have concrete proposals before them.

28. It is perhaps a little too early to try to decide at this very meeting on the manner of organizing the discussion of such drafts as may be before us in the second phase of our work. The Committee will not be able to settle that question until later on.

29. Permit me, finally, to state my profound conviction that the important task entrusted to us by the General Assembly of the United Nations will be successfully performed and that the discussions in our Committee will be imbued with a spirit of constructive endeavour and mutual co-operation, and marked by loyal efforts to achieve positive results.

FOURTH MEETING

Monday, 10 March 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. MASCARENHAS (BRAZIL), MR. TABIBI (AFGHANISTAN), MR. GEAMANU (ROMANIA), MR. SHAHA (NEPAL), AND MR. PECHOTA (CZECHOSLOVAKIA)

1. Mr. MASCARENHAS (Brazil) thought it true to say that the study of all the questions connected with the free access to the sea of land-locked countries provided a means of establishing new modes of international co-operation and of ensuring better understanding between nations. Hence, if it succeeded in its difficult task, the Committee would be entitled to the greatest praise.

2. It would, of course, be very pleasant to wait until certain problems which arose from time to time solved themselves or were solved in accordance with existing procedures. That attitude, however, must be eschewed, for the development of human relations and the complexity of world affairs demanded a gradual change in the principles and practices of international law, so as to provide international relations with a firm legal basis. Furthermore, an effort should be made to give durability to the results achieved. That had been understood by all delegations, and it therefore seemed that the Conference had a good chance of achieving its aim, which in the last resort would be to the advantage of all peoples and States.

3. The Fifth Committee would certainly have many difficulties to overcome ; for the problem with which it was concerned was — so to speak — a new item on the agenda of international meetings, although it was a very old problem and although various countries, including Brazil, had concluded treaties dealing with it. On the whole, however, the present conference was the first occasion on which the land-locked countries, their maritime neighbours and other countries which had access to the sea had attempted to unite their efforts to secure the adoption of principles designed to widen the agreement already reached on the subject.

4. The Chairman had very ably shown how the work of the Fifth Committee was closely linked with the work of the four other committees of the Conference, and he had given a masterly account of the study of the question by the United Nations and other organizations. In doing so, he had emphasized in particular the importance of the bilateral agreements concluded by numerous countries taking part in the Conference, and the importance of the Preliminary Conference which had just been held at Geneva.

5. Brazil's position on the law of the sea had been clearly explained by Mr. Amado, the Brazilian representative, at the 489th meeting of the Sixth Committee of the General Assembly, on 4 December 1956,[1] and at the fourth meeting of the First Committee of the Conference on the Law of the Sea. In all the work of the Fifth Committee relating to the régime of the sea, the continental shelf, fisheries and the right to fly a flag, the Brazilian delegation would be guided by the views which Mr. Amado had expressed.

6. He recalled Brazil's participation in the work of certain international organizations, including GATT (General Agreement on Tariffs and Trade), and the treaties it had concluded with Bolivia and Paraguay. Those treaties had given the countries in question free access to the sea and had afforded them transit facilities, exemption from taxes, application of the Brazilian railway tariffs, a free port and a free zone for the warehousing of goods. That showed Brazil's willingness to co-operate in solving all problems and to listen with the greatest interest to the views of all delegations.

7. Its close relations with Paraguay and Bolivia — countries without access to the sea — had shown Brazil that the land-locked countries needed access to the sea in order to develop their economies and ensure the well-being of their population. Those relations had also shown Brazil that the adoption of certain principles and practices was necessary to safeguard the rights of all the States concerned. It was also particularly necessary to reconcile the sovereign rights of the coastal States with the rights claimed by the land-locked States. The reconciliation of those rights was an essential condition for the acceptability of an international agreement.

8. It was no less important to study in detail the conditions peculiar to every land-locked State or group of States, for it would be a waste of time and effort to attempt to derive instruction and deduce general rules from the study of an isolated case. However much work that task entailed, the Fifth Committee should undertake it, for the stake was too great to permit of ill-considered haste, which might jeopardize the results already achieved. It was better to go forward slowly but surely. The Committee would succeed, but to that end delegations must make the fullest use of the experience gained, take recognized practices into account, be guided by the existing documents, and rely on the treaties already concluded.

9. The Brazilian delegation would give its full support to any solutions which the Committee thought fit to adopt with regard to the free access of land-locked countries to the sea. It hoped the solutions proposed would take into account the need for reconciling aspirations and theories with the facts underlying the relations between sovereign States.

10. Mr. TABIBI (Afghanistan) said that the governments of the land-locked countries could adopt an entirely objective approach to various questions of maritime law which did not concern them directly ; they were anxious, however, that the principles governing their own rights should be reaffirmed, for failing that there could be no absolutely comprehensive international convention on the law of the sea. The rights of the land-locked countries had already been the subject of numerous international instruments, among which should be mentioned the Treaty of Versailles, the Treaty of St. Germain-en-Laye of 1919, the resolutions adopted by the Conference of Barcelona in 1921, the General Agreement on Tariffs and Trade, and the Havana Charter of 1948. To those international instruments should be added the resolutions 1028 (XI) and 1105 (XI) adopted by the General Assembly of the United Nations on 20 and 21 February 1957 and many bilateral or multilateral agreements. All those provisions designed to ensure respect for the rights of land-locked States were based on legal reasoning and practical considerations. In that connexion, he recalled the work of such famous jurists as Grotius, Thomas Jefferson, Georges Scelle and Charles Hyde, who had all provided legal justification for the right of access to the sea. Similarly, there were practical reasons for recognizing the right of land-locked States to enjoy transit facilities through the territory of other countries.

11. For all those reasons, the Afghan delegation considered that the Conference should endeavour to codify all the recognized principles relating to the rights of land-locked States.

12. That was the spirit in which the representatives of those States, desirous of making their contribution to a solution of the problem, had held a preliminary confe-

[1] See *Official Records of the General Assembly, Eleventh Session, Sixth Committee.*

rence at Geneva from 10 to 14 February 1958, the proceedings of which were recorded in the memorandum bearing the symbol A/CONF.13/C.5/L.1. He wished to draw the Commission's attention to annex 4 to that document, in which the views of the Afghan delegation were set out, and also to annex 6, which contained the text of the draft articles prepared by the Czechoslovak delegation. The seven principles enunciated in annex 7 might assist the Conference with its drafting work, although that list was in no sense limitative.

13. To sum up the views of his delegation, it was necessary to confer a more precise status on the land-locked States and to prepare an instrument which could do more to ensure the development of international maritime law than the Barcelona Conference had been able to do. The Conference should approach the exalted task of codifying the law of the sea from a practical point of view, it should endeavour to promote fruitful co-operation between those States that enjoyed a favourable geographical situation and their less fortunate neighbours. In conclusion, he wished to pay a tribute to the Governments of Argentina and Brazil, which had already set a praiseworthy example of co-operation by granting their neighbours free access to the sea. That generous gesture should be an encouragement to the Conference.

14. Mr. GEAMANU (Romania) stressed his country's deep interest in the question of access to the sea of land-locked countries. Although it had a coastline itself, Romania had supported the proposal submitted at the eleventh session of the General Assembly to refer to the Conference on the Law of the Sea the complex question of free access of land-locked countries to the sea. In the desire to pursue its policy of international co-operation, the Romanian Government considered that a satisfactory settlement of that question was one of the conditions for the development of harmonious economic relations between all countries. The Romanian delegation would therefore give careful consideration to any proposal for regulation of the matter that would facilitate access to the sea for land-locked countries. He intended to speak again at a later stage in the discussion.

15. Mr. SHAHA (Nepal) said that he wished, first of all, on behalf of his delegation, to thank Sir Gerald Fitzmaurice for having expressed at the second meeting the United Kingdom delegation's deep interest in the proceedings of the Fifth Committee. Such a display of interest by the delegation of a State which was one of the greatest and oldest maritime powers augured well for the success of the Conference. He also thanked the representatives of Argentina, Brazil and Romania for their unequivocal expression of their countries' interest in the cause of the land-locked countries.

16. Nepal was a completely land-locked country, separated from the sea to the south by India and to the north by the Himalayas and China. Its unfavourable geographical situation had prevented it from sharing in modern progress and retarded the growth of its foreign trade. In olden days, Nepal, being situated on the main land route between India and Tibet and central Asia, had enjoyed a flourishing trade with its neighbours. That trade had declined with the beginning of the era sometimes referred to as the " age of steam navigation ". At the present time, Nepal hardly traded with any country but India, the products it imported coming mainly from or through India. He was glad to acknowledge that India had always given Nepal every facility in that field. In July 1950, Nepal had concluded a trade treaty with India, some of the provisions of which had been amended by another agreement concluded in 1957, article 1 of which gave the Government of Nepal an unlimited right to convey goods in transit through Indian territory and ports. Nepal was convinced that arrangements for the exercise of that right would be worked out in due course. In Nepal's view, the right of transit and the right of access to the sea should not be viewed solely from the point of view of a land-locked country's present requirements, but also from that of the country's subsequent economic development.

17. Freedom of the high seas had no meaning for land-locked countries unless the right of access to the sea was first guaranteed. That right was a corollary to and a logical consequence of the concept of freedom of the high seas. Of what earthly use for such countries were grandiloquent statements about the exploitation of the natural resources of the sea for the benefit of mankind and the right of all States to participate in maritime traffic if, in practice, they had no access to the sea? Access of land-locked countries to the sea was bound up with the more general question of the right of transit. That right had been granted to certain land-locked countries by bilateral, and sometimes even by multilateral agreements. Among multilateral agreements, special mention should be made of the Covenant of the League of Nations, the conventions adopted by the General Conferences held at Barcelona in 1921 and at Geneva in 1923, the Havana Charter for an International Trade Organization, and the General Agreement on Tariffs and Trade. But at the time when those multilateral agreements had been adopted, most of the countries in Asia had not yet won their independence, and hence had played no effective part in drafting the agreements. It was easy to understand the importance to such countries of the opportunity afforded them by the present conference to participate in the study of a question which was vital for them and of the greatest moment for their development.

18. It was comforting to note that at the Preliminary Conference held at Geneva all the land-locked countries, despite the special problems facing each of them as a result of their different geographical and economic situations, had nevertheless been unanimous in recognizing and stressing the importance of the present occasion and the opportunities it afforded for a reaffirmation, in connexion with the proposed codification of the law of the sea, of the rights granted under international law to land-locked countries (A/CONF.13/C.5/L.1, para. 11). It was no less comforting that they had agreed on the drafting of seven general principles which were already written into international practice and which the Conference might codify. The land-locked countries which had taken part in the preliminary conference requested the Conference to put into legal written form the principles already applied in international relations. In the opinion of the Nepalese delegation, those principles should be based not only on international customary law and multilateral agreements, but also on bilateral agreements.

19. The countries which had taken part in the prelimi-

nary conference had not expressed themselves as dissatisfied with the arrangements they had made with their neighbours concerning their right of access to the sea and, in taking part in the Conference, they had had no intention of forming a bloc against the coastal States. Their sole purpose had been to enunciate certain principles concerning various aspects of the question on the agenda of the Conference. They were all aware that they needed the co-operation of the States surrounding them for the formulation and implementation of the principle of free access to the sea. Their desire in meeting together to study a question on which information was so rare and so scattered had merely been to further the development and the progressive codification of international law, as laid down in the United Nations Charter.

20. Going on to show that the seven principles recommended by the Preliminary Conference were derived from customary international law and existing multilateral agreements, he cited the 1919 peace treaties, the Barcelona Declaration, the Havana Charter, the General Agreement on Tariffs and Trade and the resolutions adopted by the Economic Conference of the Organization of American States held at Buenos Aires in 1957.

21. With regard to principle V concerning the right of free transit, which was of vital importance to land-locked countries as a condition of their economic survival, and which involved many technical difficulties, the Nepalese delegation thought it desirable that the study of regulations for the carriage of passengers and goods to and from the ports of a coastal State and related questions be entrusted to the Economic and Social Council or to some other competent international body. He thought that the draft regulations prepared might serve as a model for bilateral agreements.

22. The Nepalese delegation also considered that the non-application of the most-favoured-nation clause, referred to in the preamble to the principles enunciated by the Preliminary Conference, might be mentioned among the principles themselves in the interests of the land-locked countries and the coastal States. The Nepalese delegation took the view that the question of free zones and free ports should also be included among the principles.

23. Finally, it would like a suitable procedure to be laid down, in whatever document might contain the principles, for the settlement of disputes concerning the interpretation and the application of the right of access of land-locked countries to the sea. General provisions could be included relating to conciliation, arbitration and recognition of the competence of the International Court of Justice, a special tribunal or a mixed commission. The Nepalese delegation would submit a proposal to that effect, if necessary.

24. As for the form it would like the principles to take, the delegation of Nepal thought they might be embodied in articles on the access of land-locked countries to the sea, to be included in an instrument of broader scope — preferably a convention on the régime of the high seas, as that would ensure the acceptance and ratification of the articles by the greatest possible number of States. Should that solution prove impossible, the principles could be embodied in a separate declaration opened for signature and ratification in the same way as any other instruments the Conference might adopt. As the subject was a technical one, it would perhaps be desirable to request the Economic and Social Council or some other competent international agency to draft detailed regulations concerning the procedures and methods required to give practical effect to the right of transit. Such a draft could provide a model for future bilateral treaties.

25. In conclusion, he stressed that the question of the free access of land-locked countries to the sea merited the special attention of all coastal States and, in particular, that of the great powers and of coastal States adjacent to land-locked countries, which, by co-operating in the effort to solve a problem so vital to the land-locked countries, would have an opportunity of fulfilling the solemn undertaking they had given under Articles 55 and 56 of the United Nations Charter. He hoped that after a wide exchange of views the Committee would be able to recommend the Conference to adopt concrete proposals that would mark an advance in international law.

26. Mr. PECHOTA (Czechoslovakia), after recalling the terms of resolution 1105 (XI) of the United Nations General Assembly, said that it had been the will of the General Assembly, in adopting that resolution, that the rights of the land-locked countries should be given a place in the new codification of the law of the sea. It was the Committee's duty to see that the rights of those countries were recognized on the basis of legal principles, backed by economic, political and moral considerations, to the exclusion of any idea of bargaining in regard to the concessions which coastal States should make to the land-locked countries. In view of the importance of the right of access to the sea for the development of economic co-operation and international trade, it was necessary to confirm the fact that the differences between the position of coastal States and that of land-locked States were continually decreasing; that could be done by proclaiming the principle of the freedom of access of land-locked countries to the sea.

27. In the opinion of his delegation, there could be no doubt as to the the existence of a fundamental right of land-locked countries to access to the sea. In addition to economic and political factors, that right was based essentially on two principles of international law: the principle of the freedom of the high seas and that of the equal sovereign rights and political and economic independence of members of the international community. The draft prepared by the International Law Commission (A/3159, chap. II) already confirmed certain rights common to coastal States and land-locked States. It was necessary to go further, however, and to make no distinction between coastal States and land-locked States in regard to their right to use the sea ; otherwise the principle of the equal sovereign rights of States would be seriously impaired and their economic and political independence dangerously threatened. A land-locked State could not fully enjoy its right to use the high seas unless it could exercise the right of free transit to the coast, the right to use maritime ports and the right of innocent passage through territorial and internal waters. Any restriction in those respects would make the freedom of the high seas illusory. The principle of free transit had been recognized in several international

instruments, in the Covenant of the League of Nations (Article 23, paragraph (*e*)), and in many bilateral and multilateral treaties. Free transit of land-locked States to the sea was not a matter of a servitude but of an inalienable and fundamental right based on international law, and having its origin in the geographical situation of certain countries. It was for that reason that many treaties and international agreements contained provisions on the right of innocent passage of land-locked States and the right of those States to use maritime ports.

28. In addition to general international instruments, many bilateral agreements had recognized the right of land-locked countries to access to the sea. Such agreements would certainly play an important part in the future, as they brought economic advantages both to coastal and to land-locked States.

29. In the desire to contribute to the great task of codifying the law of the sea which was the object of the present conference, the Czechoslovak Government had been one of those which had urged that the law on the free access to the sea by land-locked States should be codified. In particular, it had taken an active part in the Preliminary Conference of Land-locked States, held at Geneva from 10 to 14 February 1958, and the Czechoslovak delegation fully agreed with the conclusions reached there. On that occasion, the Czechoslovak delegation had submitted detailed draft regulations (A/CONF.13/C.5/L.1, annex 6) in which were set out the following fundamental principles which should be embodied in the law governing free access to the sea by land-locked States. Those principles were:

(*a*) The international law now in force recognizes the right of land-locked States to access to the sea; that right derives from the fundamental principle of freedom of the high seas.

(*b*) Each land-locked State enjoys, on a footing of completely equal treatment with coastal States, the right to fly a flag.

(*c*) The vessels flying the flag of a land-locked State enjoy, in the territorial and internal waters of a given coastal State, the same rights as ships flying the flag of other coastal States.

(*d*) Each land-locked State has the right of access to the ports of the coastal State and is entitled to the most favourable treatment as regards the use of port facilities ; under no circumstances must it receive treatment less favourable than that accorded to the vessels of the coastal State as regards access to the latter's maritime ports.

(*e*) Each land-locked State has the right of transit through the territory of the countries between it and the sea and the right to use all means of transport and communications for that purpose under favourable conditions which shall form the subject of an agreement between those States.

(*f*) In view of the peculiar situation of the land-locked States, the conditions of transit between such States and countries of transit are excluded from the application of the most-favoured-nation clause, and the State permitting such transit is not bound to accord the same rights to third States.

(*g*) States of transit or coastal States retain full sovereignty over their territory and over their means of transport and communication ; they also retain the right to take measures to ensure that exercise of the right of free access to the sea does not infringe their legitimate interests of any kind.

The meeting rose at 5.10 p.m.

FIFTH MEETING

Wednesday, 12 March 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. USTOR (HUNGARY), MR. SISOUK NA CHAMPASSAK (LAOS), MR. GERONIN (BYELORUSSIAN SOVIET SOCIALIST REPUBLIC) MR. MÜLLER (SWITZERLAND) AND MR. KUSUMAATMADJA (INDONESIA)

1. Mr. USTOR (Hungary) said he was confident that the Committee's work would be successful. As the secretariat had pointed out in its memorandum (A/CONF.13/11, p. 5), the results of the work on the question of free access of land-locked countries to the sea might well be embodied in the Convention or in one of the instruments which the Conference might see fit to prepare. Such was certainly the opinion of all the representatives at the Conference, since the proposal made by Afghanistan, made at the first plenary session, to give the Fifth Committee the status of a main committee, rather than a special committee of the Conference, had been unanimously adopted.

2. Although the Fifth Committee had not, like the others, the benefit of the preparatory work of the International Law Commission, it had, at least, an excellent study (A/CONF.13/29) by the Secretariat of the United Nations. The drafts prepared by the delegations of Afghanistan and Czechoslovakia (A/CONF.13/C.5/L.1, annexes 4 and 6) would also lighten the Committee's task. He thanked the Swiss Government for having invited the representatives of the land-locked countries to a preliminary meeting at Geneva in February. All that work was an excellent preparation, enabling the Committee to take up its task with confidence.

3. As far as his own country's position was concerned, Hungary, though having no sea coast, had always been interested in shipping and had contributed to its economic and scientific development. Hungary's right to a flag had been recognized by the Treaty of Trianon. The Danube was, for Hungary, a great highway to the sea, and the Danubian fleet had been quite large between the two wars. It had been almost entirely destroyed during the Second World War.

4. Hungary had concluded a number of multilateral conventions relating to the law of the sea and was very keenly interested in the question of free access to the sea of land-locked countries, especially as Danubian shipping was of limited capacity and the river was impracticable for a large part of the year.

5. As early as 1920, the Allied and Associated Powers

had recognized the importance of free access to the sea for Hungary, while the coastal States concerned had granted it the right of free access to the Adriatic in article 294 of the Treaty of Trianon.

6. Hungary regarded codification of the rights of the land-locked countries as a matter of principle, for at the moment its communications with the sea raised no practical problems. The question was satisfactorily settled by the Conventions of Barcelona (1921) and Geneva (1923) and other bilateral agreements. But that did not mean that nothing further should be done and it was important, in an attempt at general codification, to reaffirm the rights of the land-locked countries. The Hungarian delegation, which had taken part in formulating the seven principles of the Preliminary Conference, did not think that those principles should be embodied in a convention as they stood, but considered that they should serve as a basis for the Committee's deliberations.

7. He then recapitulated the main principles underlying the rights of land-locked countries. The rights of those countries to a flag having been recognized by the Barcelona Declaration, no one would oppose the confirmation of that right in a code of the law of the sea ; hence the Committee need not revert to that question.

8. He wished to make a few remarks on the subject of freedom of access to the sea. The Czechoslovak delegation had rightly pointed out in its memorandum (A/CONF.13/C.5/L.1, Annex 6, article 1) that the principle of freedom of the high seas implied the right of any State without a sea coast to free access to the high seas. For in order to enjoy freedom of the sea, such a country must clearly have free access to it. That problem had already been raised and settled by the Romans, and the Emperor Justinian had stated in his *Digesta* that " the use of shores under *jus gentium* is just as public as the use of the sea itself ". Though Roman law could not, of course, be invoked at the present day, its principles could always serve as a guide.

9. The right of transit differed from the right of innocent passage through territorial waters, for the latter could be exercised without any special convention. Passage across the territory of another country required a bilateral agreement, but a State must not be able to refuse outright to negotiate such an agreement without thereby incurring international responsibility.

10. The coastal State naturally retained its full right to regulate the conditions of access to the sea. Moreover, it had every interest in developing its trade and the activity of its ports.

11. In any case, the question was not really controversial, for, as the secretariat had pointed out in its memorandum (A/CONF.13/29), the right of land-locked States to free access to the sea was among the generally accepted rules of international law.

12. Mr. SISOUK NA CHAMPASSAK (Laos) said that owing to its relief and waterways his country, which was enclosed by Viet-Nam, China, Burma, Thailand and Cambodia, was a thoroughfare between the Indian and Chinese worlds, though at first sight it might seem difficult of access. For centuries the main means of access to Laos had been the Mekong. Later, two other routes had been added, via Thailand and via Cambodia ; a seaport would shortly be open to traffic in the latter country.

13. The lack of a coastline had tended to retard the economic and social development of Laos. The country had three roads for carrying its exports and imports. The first connected Laos with Saigon through Cambodia, the second went from Savannakhet to the port of Tourane and the third — the most recent — connected the port of Bangkok to Nongkhay, the terminus of the Thailand railway 60 km from Vientiane, the capital of Laos. For two years, over 64% of the imports of Laos had been brought in by the third road. Despite the improvements made to the road system, however, it was still difficult to keep Laos supplied with goods, in particular because of various legal obstacles. The delegation of Laos hoped the Conference would be able to adopt a convention which would remove those obstacles, thus establishing the economic independence of the country.

14. His delegation would like to comment on the principles enunciated by the Preliminary Conference. It considered that a State's right to use all the routes giving it access to the sea formed an integral part of the right of free access to the sea. The principle that a country should be entitled to make use of every available means of access should be formally established. The exercise of the right of free access to the sea should enable Laos to use, for example, the three or four routes he had just mentioned. It would, in his opinion, be desirable for the Conference to proclaim the right of a land-locked State to have access to the sea by all routes in existence or capable of use.

15. As to principle IV, on the régime to be applied in ports, his delegation thought that the Conference should proclaim the principle that land-locked States were entitled to most-favoured-nation treatment, and should stipulate that any disputes which might arise between a land-locked State and neighbouring States concerning the régime applicable in ports should be settled by judical means, if the States concerned failed to reach agreement.

16. In the opinion of his delegation, principle V, dealing with the right of free transit, should apply to the future as well as the present requirements of land-locked States. It should also apply to the transit of all products necessary for everyday life in the land-locked State. All the transit facilities should be provided for in conventions, which would, of course, contain provisions to safeguard the legitimate interests of the State of transit, and they should also make provision for judicial procedure for the settlement of disputes.

17. In conclusion, he was glad to point out that Thailand had given his country transit facilities and certain customs facilities, while Viet-Nam and Cambodia had been most sympathetic concerning the problems with which Laos was faced.

18. Mr. GERONIN (Byelorussian Soviet Socialist Republic) said that since a sixth of all States were land-locked, the question referred to the Fifth Committee by the Conference was of great importance. It was connected with the maintenance of good-neighbourly relations between all countries and the development of international co-operation and of commercial relations advantageous to all.

19. Although, as was common knowledge, the Byelorussian SSR had no sea coast, it had no difficulty in obtaining access to the sea. Being voluntarily united with the other Soviet Republics in the Union of Soviet Socialist Republics, it enjoyed, as did the other land-locked republics of the USSR, free access to all the sea coasts of the Soviet Union. A solution on the international level to the question of the access to the sea of land-locked countries would help to create those conditions of stability and well-being which were necessary for peaceful and friendly relations among nations in accordance with the terms of Article 55 of the United Nations Charter. It was in that spirit that the Byelorussian SSR had taken part in the work of the Preliminary Conference of Land-locked States held at Geneva from 10 to 14 February 1958.

20. At that conference, the exchanges of views which had taken place between the land-locked countries had shown that they were keenly desirous of having free access to the high seas, so as to be able to maintain close trade relations with other countries.

21. The draft articles prepared by the International Law Commission on the Law of the Sea were based on the principle of freedom of the high seas. A corollary to that principle was the principle of free access to the sea, which was not embodied in any article of the draft. On the other hand, the draft did contain articles — those relating to navigation — which also applied to the land-locked countries — in particular, articles 28, 29 and 30.

22. It should also be emphasized that many of the principles relating to free access of land-locked countries to the sea had been recognized in international law, in particular, by the Declaration of Barcelona of 1921 on the right of land-locked countries to fly a flag. Reference could be made to other multilateral conventions and to bilateral agreements dealing with transit.

23. In the opinion of his delegation, the time was ripe for codifying the rules of free access to the sea by land-locked countries. The principles enunciated by the Preliminary Conference could be taken as a basis for that work. The draft articles submitted by the delegation of Czechoslovakia to the Preliminary Conference were also of the greatest importance.

24. In conclusion, he stated his conviction that a detailed study of the matter would enable the Fifth Committee to put forward proposals acceptable to all States.

25. Mr. SCHALLER (Switzerland) after pointing out that Switzerland, although it enjoyed an international régime affording it access to the sea, had the problems of other land-locked States very much at heart, as it had proved by welcoming the Preliminary Conference to its territory, requested the Chairman's permission for Mr. MÜLLER, a specialist in the law of the sea, to put the Swiss point of view.

26. Mr. MÜLLER (Switzerland) said that the aim of the countries which had participated in the Preliminary Conference had been to facilitate the proceedings of the Conference on the Law of the Sea, and they had accordingly enunciated seven principles which were already part of existing international law. It would be wrong to believe that the conclusions of the Preliminary Conference were binding on the participating States, or that the texts they had adopted constituted a collective claim.

27. He would not repeat the arguments put by the representatives of Afghanistan, Czechoslovakia, Hungary, Laos and Nepal in favour of recognizing the right of land-locked countries to access to the sea, but would merely put the viewpoint of Switzerland, which, although land-locked, was a maritime State with a merchant navy amounting at present to 150,000 tons. In regard to the law of the sea, Switzerland distinguished two main principles: the principle of freedom of the seas and the principle of freedom of communications.

28. As to the first, Switzerland had no particular claims to make; for the Barcelona Declaration of 20 April 1921, which had been ratified by 33 States, including the coastal States adjacent to Switzerland, had recognized Switzerland's right to a flag ; and that right was now confirmed by international custom. Moreover, the provisions of articles 15 and 27 of the draft prepared by the International Law Commission, which dealt, respectively, with the right of innocent passage of ships of all nationalities through a State's territorial waters and with freedom of the high seas for all nations, would afford Switzerland a sure safeguard for its rights. Hence, the Swiss delegation considered that principles I, II and III enunciated by the Preliminary Conference were recognized in international law and therefore raised no problem.

29. As to the régime applicable in ports, twenty-one States, including all the coastal States adjacent to Switzerland, had ratified the 1923 Convention on the International Régime of Maritime Ports, so that Swiss vessels had free access to ports in those countries. In the ports of countries which had not ratified the Convention, they enjoyed most-favoured-nation treatment. Accordingly, Switzerland wondered whether it was really worth while adopting another international instrument, which might not be ratified by so many States and might therefore be interpreted as according less rights to the land-locked States, and whether it was not preferable to seek to increase the number of ratifications. At all events, Switzerland was not in favour of adopting a detailed instrument, on the ground that procedure for applying the principles should be laid down in special agreements. Switzerland merely requested confirmation of equality of treatment and did not seek recognition of advantages which, in its view, were a matter for separate customs and fiscal agreements.

30. So far as freedom of communications was concerned, the Swiss delegation did not regard it as a right deriving from the freedom of the seas, but it nevertheless recognized the importance of the right of transit for land-locked States. Freedom of communications had been recognized in the Convention of 20 April 1921 on freedom of transit, which had been ratified by all the coastal States adjacent to Switzerland. It had also been recognized in the Convention of 1923 on the international régime of railways, which had likewise been ratified by the coastal States adjacent to Switzerland. The Swiss delegation took the view that the right of transit should be reciprocal, and it saw no need to institute a special right of transit for the sole benefit of land-locked States. Switzerland considered that what should be sought was confirmation of that right and an increase in the number of ratifications of the Barcelona

Convention of 1921 on the subject ; for the adoption of a new convention might well result in a considerable curtailment of the right as at present accorded to land-locked States, especially if the aim was uniformity and no account was taken of the special situation of each country.

31. The Swiss delegation wished to pay a tribute to the coastal States adjacent to Switzerland for all the transit facilities they had accorded, which might be said to have brought Switzerland as near the sea as the maritime States. It also wished to state that its co-operation with other land-locked countries in no way implied a renunciation of the rights accorded it in regard to free access to the sea, and in particular to freedom of navigation on the Rhine. In the latter case, Switzerland enjoyed a freedom deriving from a series of international instruments beginning with the Peace Treaty of 30 May 1814, which went beyond freedom of transit, and would become even wider when the works on the Upper Rhine were completed as far as Lake Constance. The International Statute of the Rhine guaranteed not only freedom of navigation, but also complete equality of treatment, freedom of chartering, exemption from taxes and tolls, and the prohibition of restrictions on the coasting trade, and contained no escape clause.

32. He pointed out that, where access to the sea was concerned, each land-locked State was in a special position for which there were historical, political, economic, geographical and technical reasons. It followed that a detailed and uniform convention could not entirely satisfy all land-locked States and all coastal States. That fact had been recognized in the final Act of the Congress of Vienna of 9 June 1815, and it had been wisely decided merely to include the fundamental principles and generally recognized freedoms, while States bordering on the Rhine undertook to settle questions concerning navigation on that river by mutual agreement, in accordance with those principles and freedoms. Instruments relating to navigation on the Rhine, the Danube, the Elbe, the Oder and other waterways, took into account the special features of each region. It would be advisable to follow those precedents and to do no more than codify the general principle of free access to the sea of land-locked countries, while urging adjacent coastal States to agree on procedure for implementing the freedoms recognized in any convention adopted by the Conference on the Law of the Sea. If the Conference was to be successful, it should not undertake too much.

33. Mr. KUSUMAATMADJA (Indonesia) said that Indonesia, a country which had sometimes been described as " an enclave in the sea ", might not appear to be directly concerned with the problems of land-locked countries. Nevertheless, his delegation felt that the problems referred to the various committees of the Conference formed an indissoluble whole and that recognition of the right of free access to the sea of land-locked countries would mark a stage in the history of international law.

34. He did not agree with the view expressed in the First Committee that the question of free acces to the sea should be excluded from the general legal principles, and should only be the subject of special agreements between the States concerned. He was, however, prepared to consider that opinion as a call for caution in stating the general principles.

35. The failure of The Hague Conference of 1930 for the Codification of International Law was partly to be explained by the fact that the principles considered to be recognized at that time were based on premises which were not universally accepted. That conference had had the unfortunate result of confirming the disagreements between the States on the questions discussed.

36. With regard to free access to the sea, however, the Indonesian delegation thought that there was general agreement associated with economic interests which were much more important than any differences arising in practice. There was therefore every reason to believe that the work of the Committee would be successful, thus contributing considerably to the success of the Conference as a whole. An international convention on the Law of the Sea would certainly be incomplete if it did not reaffirm the general principles governing the rights of countries without a sea coast.

The meeting rose at 4.35 p.m.

SIXTH MEETING

Friday, 14 March 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. JOHNSON (UNITED KINGDOM), MR. THIERRY (FRANCE) AND FATHER DE RIEDMATTEN (HOLY SEE)

1. Mr. JOHNSON (United Kingdom) said that his country had a very great interest in the work of the Committee, and hoped that it would be successful.

2. The subject with which the Committee was dealing had not been so well prepared as the other matters confronting the Conference. But at the very outset, the United Kingdom had been quick to realize the importance of the subject, and had been glad that the special problems of the land-locked countries were being studied at the Conference at the level of a main committee.

3. When, in its resolution 1105 (XI), the General Assembly had decided that the Conference should " examine " the law of the sea and recommended that it should " study " the question of the free access to the sea of land-locked countries, the Assembly had been recognizing that the question required a great deal of study, which would fall to the Conference to initiate.

4. The lack of preparation had fortunately been made good to some extent by the secretariat memorandum (A/CONF.13/29), the memorandum submitted by the Preliminary Conference (A/CONF.13/C.5/L.1) and the Chairman's introductory statement at the third meeting of the Committee. Many governments had, however, still not had time to study those documents thoroughly. That fact should impose on the Committee

a certain caution in regard to its work, which did not mean that the work would not produce useful results. But, as the studies of the question before the Committee had lagged behind those of the other matters before the Conference, it might be desirable that the Committee's work should emerge in a different form, less elaborate than that of the other committees.

5. The United Kingdom delegation was happy to learn from a number of statements made in discussion that the question before the Committee gave rise at present to no practical problems or difficulties, that the relations between the land-locked countries and their neighbours were amicable, and that the chief requirement was to confirm the existing legal situation.

6. Although a country of the common-law tradition, the United Kingdom had no inherent objection to attempts to codify the existing law. It feared, however, that an attempt to put into a rigid, universal code principles which had been worked out perfectly satisfactorily by States over the years might prejudice existing arrangements which were working smoothly. That was a real danger which must be avoided.

7. The United Kingdom Government had a special interest in the problem before the Committee for reasons which were somewhat unusual and might not perhaps be very well known. It was responsible for the international relations of a number of land-locked territories. On that point, a correction was required in paragraph 82 of the secretariat memorandum (A/CONF. 13/29). The Convention of 17 June 1950 between the United Kingdom Government and the Government of the Republic of Portugal was intended, not to secure additional outlets to the sea for all the African territories under British administration mentioned in that paragraph of the secretariat memorandum, viz. Bechuanaland, Nyasaland, Southern Rhodesia, Northern Rhodesia, Basutoland and Swaziland, but — as stated in its preamble — to give effect to the desire of the parties " to co-operate fully with a view to the development of the resources of Mozambique on the one hand and of Southern Rhodesia, Northern Rhodesia and Nyasaland on the other ". Those three territories, which had since become the Federation of Rhodesia and Nyasaland, were the only ones affected. He would like to mention in passing that, in the United Kingdom's view, the purpose of an agreement between a land-locked country and its coastal neighbours should never be solely to benefit the former. The United Kingdom had similar responsibilities for the administration of territories that were coastal neighbours of land-locked territories, so had a special opportunity of seeing the problem in its wider aspects and of making a useful contribution to its solution. The United Kingdom delegation therefore regretted that it had not been invited to participate in the Preliminary Conference.

8. The problem under discussion concerned all countries, in so far as it had some bearing on the application of the universal and fundamental principle of the freedom of the seas. There was obviously some relation between the right of access to the sea and the right of innocent passage through the territorial sea and, in particular, through straits. Those two rights were the only rights through which members of the international community were enabled to enjoy legitimate access to the common domain, the high seas. It was in the interests of the international community as a whole, as well as of each of its individual members, that those rights should be exercised by all States. There would be little prospect of land-locked States securing a right of access to the high seas in a world which could not sufficiently protect the freedom of those same seas and which could not even give adequate guarantees of freedom of passage through territorial waters and, where necessary, through internal waters to maritime States. That was not to say that those rights were in all respects derived from the same principle. The right of innocent passage was a well-established customary rule of the law of the sea ; the right of access to the sea belonged rather to the sphere of transit law, in which an important part was played by the principle of reciprocal rights and duties. The former was an unqualified right in the sense that any ship on its lawful occasions might exercise it, while the latter could not be isolated from certain reciprocal or corresponding duties which a land-locked State might owe to its coastal neighbours. Therefore, although the right of access to the sea was an undoubted right, it was a right the exercise of which depended on the conclusion of agreements with the transit countries.

9. A reference was made in the preamble of the seven principles enunciated by the Preliminary Conference (A/CONF.13/C.5/L.1, annex 7) to the most-favoured-nation clause. That clause raised issues of economic and commercial policy which should not be considered by the present conference on the Law of the Sea. Similarly, some of the seven principles were concerned with questions of transit and the use of ports, which were already covered to a considerable extent by various international instruments.

10. In dealing with matters already dealt with in international agreements, the Committee should as far as possible limit itself to drawing the attention of States to the existing instruments and urging wider accession to them. It might well be that the Barcelona and Geneva agreements of 1921 and 1923 respectively, as well as various other international instruments at present in force, did not provide sufficient guarantees of the right of land-locked countries. But that was precisely the sort of question which required a good deal more study. The secretariat might prepare a list of the parties to those conventions. If it should turn out that the number of parties was relatively small in comparison with the number of countries participating in the Conference, consideration might be given to the question whether it would not be wise for the Conference to recommend a wider accession to them.

11. It was well known that the right of land-locked countries to a flag had been recognized in the Declaration of Barcelona of 20 April 1921. A list of the States which had ratified that declaration should also be available. In that connexion, paragraph 157 of the secretariat memorandum (A/CONF.13/29) gave a useful reminder that at Barcelona it had been thought desirable to put the right of land-locked countries to a flag in the form of a declaration rather than of a convention lest, if the convention were denounced, the status of ships flying the flags of such countries should be called in question. Care should be taken lest rights already enunciated be prejudiced through anxiety to reiterate the rights of land-locked countries.

12. It was true, of course, that the right of land-locked countries to a flag and many other rights (and duties) were expressed — or at any rate implied — in some of the draft articles prepared by the International Law Commission. The United Kingdom fully supported the reference in those articles to " all States ", as taking care of all interests. Even so, if a convention containing those articles or similar texts was drawn up at the end of the Conference, it had to be remembered that conventions were usually subject to denunciation, and were not necessarily the best form for recording the long-established rights of land-locked countries. That was a point he would urge all delegations to bear in mind.

13. Mr. THIERRY (France) deduced from the statements so far made that the difficulties which the Fifth Committee would have to solve were no easier than those of the other committees of the Conference. It might seem paradoxical that it should be difficult to codify the law on the hitherto always satisfactory relations between land-locked States and their maritime neighbours.

14. It was equitable, everyone agreed, that land-locked States should be able to use the domain of the sea on a completely equal footing with other States, to have access to the sea by every possible way, to use ports and to enjoy all the facilities that their economic development required. It was entirely just that international co-operation should compensate for disadvantages due to the geographical situation of land-locked States. But, from the statements made by representatives of land-locked States, it appeared that the present law completely satisfied those States. Switzerland, in spite of its geographical situation, was a maritime State enjoying facilities for access to the sea based on rules of European law which had worked perfectly since 1815 ; and Bolivia had concluded agreements with Argentina, Brazil and Chile that might be taken as models for a fair statute on the relations of land-locked States with their maritime neighbours. The treaty concluded on 13 January 1956 between Poland and Czechoslovakia was another example of an agreement satisfying the interests of the parties.

15. The difficulties which arose were of two sorts. Some were theoretical, being merely the difficulties of codification itself. The question was to determine which principles of positive law covered the particular rules applied in practice, and how those principles should be expressed. On this point there was a divergence of opinion amongst the members of the Fifth Committee. Czechoslovakia maintained that the principle of freedom of transit was a simple corollary of the freedom of the high seas, whereas the Swiss representative regarded freedom of transit as a principle deriving from conventional international law — from treaties relating to transit. For others, freedom of transit was an autonomous rule, distinct from that of freedom of the high seas, but nevertheless forming part of general international law. One could also consider what place there was in international law for the controversial notion of international servitude held by certain authorities. The difficulty which the Fifth Committee would have with these problems would be increased by its lack of preparatory studies.

16. The second category of difficulties referred to the attitude which the Committee might take towards the positive law when it had succeeded in systematizing this. Should a general convention be drawn up which, whilst relying on the data of positive law, would to some extent take the place of it and constitute for the future a charter of the relations between land-locked States and their neighbours? Should the Committee, on the other hand, restrict itself to stating certain principles of positive law, or principles intended to supplement and improve it? Should some other solution be adopted in order to improve the situation of land-locked States? It was important that, in order to solve these difficulties, the Committee should fix its aims and define the nature of its task.

17. The French delegation wished to state its position regarding these two types of difficulty. In regard to the former, which concerned the content of the law to be codified, although land-locked States had, under the principle of equality of States the same rights as all others regarding the use of the public domain of the sea, as was laid down in articles 27, 28 and 49 of the International Law Commission's draft, there was still great uncertainty about freedom of transit, which moreover was not really part of the law of the sea. Freedom of transit was essentially a system of obligations binding the States which granted transit and capable of limiting their sovereignty. One might ask whether this sovereignty was limited by a general rule independent of any definite engagement, or whether freedom of transit rested on the consent of the States of transit. The States party to the General Agreement on Tariffs and Trade and the States which took part in the Barcelona Conference of 1921 considered freedom of transit rather as a conventional right created by multilateral or bilateral treaties. That was, in his opinion, the positive law. States could not be obliged to negotiate or agree in matters of freedom of transit, for that would conflict with their sovereignty.

18. The French delegation was, however, prepared to endorse the affirmation by the Conference of the general principle of freedom of transit, provided that the freedom did not derogate from the sovereignty of the State granting it; for in the present state of international law the manner of exercise of that freedom could be determined only by agreements concluded between States.

19. That led him to explain his delegation's view of the difficulties of the second category and to consider the value of a general convention. The French delegation held that the preparation at the present time of a universal convention concerning land-locked States was inadvisable and premature, for three reasons. First, the necessary preliminary work had not been carried out and the interpretation of the positive law was too uncertain. Secondly, the Conference had before it a mass of conventional texts, the codification of which raised problems very different from those of the codification of customary law. Thirdly, it was unlikely that a convention drawn up by the Conference could be sufficiently detailed to allow for the different situations of all the land-locked States.

20. His delegation would utter a warning against the risks of a declaration of the rights of the land-locked States based on the seven principles formulated by the

Preliminary Conference, for vague principles might well be superimposed upon satisfactory conventional rules. Moreover, the seven principles were not the sole means of formulating the freedoms of land-locked States and the subsequent discussion might show that many maritime States regarded those principles as an expansion rather than as a codification of the existing law.

21. In conclusion, he hoped that the Conference would achieve solid, practical results ; the French delegation thought that in drawing attention to some shoal water that lay ahead it had made a useful contribution.

22. Father DE RIEDMATTEN (Holy See), recalling his reference at the Preliminary Conference to the agreements concluded by the Holy See with the Italian Government safeguarding freedom of transit through Italian territory, expressed the entire satisfaction of the Holy See at the application by Italy of those agreements. He had also pointed out at that conference that the Pontifical Commission for the Vatican City State had by decree of 15 September 1951 made rules governing navigation under the flag of the Holy See.[1]

23. The seven principles formulated by the Preliminary Conference in no way committed participating States and could not be regarded as an expression *ne varietur* of their position. Those States remained free to propose limitations or additions to those principles. As they stood, however, his delegation considered that they constituted a useful working basis.

24. It was to be regretted that the summary records of the Preliminary Conference (A/CONF.13/C.5/L.1/Add.1), particularly that of the seventh meeting, were too short, and failed to give an accurate idea of the debate. The discussion on principles III and IV, in particular, should have been reported in greater detail. In principle III, " coastal State " meant any State possessing a coastline; and in principle IV, the same term applied to the coastal State through whose territory the land-locked State had access to the sea. The summary record gave the impression that principle IV had been proposed by the Holy See, but it had not. His delegation had confined itself to submitting proposals concerning the form of the first paragraph of principle V simply in order to facilitate the unanimous agreement of the participants.

25. He was glad to note that, according to the statements made hitherto in the Fifth Committee, the land-locked States had met with the fullest understanding on the part of their neighbours and were satisfied with the bilateral agreements they had concluded with those States. It seemed that the Conference should not find it too difficult to adopt an instrument, whatever form that might take.

The meeting rose at 12 noon.

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[1] Acta Apostolicae Sedis — supplemento per le leggi e disposizioni dello Stato della Città del Vaticano. N.LXVII — Decreto della Pontificia Commissione per lo Stato della Città del Vaticano concernente la navigazione marittima sotto bandiera dello Stato della Città del Vaticano.

SEVENTH MEETING

Wednesday, 19 March 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. KING (UNITED STATES OF AMERICA), MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MR. OCIOSZYNSKI (POLAND), MR. STOYANOV (BULGARIA), MR. PERERA (CEYLON), MR. BACCHETTI (ITALY), MR. SCHEFFER (NETHERLANDS) AND MR. EL YAFI (UNITED ARAB REPUBLIC)

1. Mr. KING (United States of America) emphasized the interest of his government displayed in the problem of land-locked States. Although their free access to the sea concerned many other countries, including his own, it was of vital and immediate interest only to a limited number of States. Since the problem was different in each case, it would be difficult to solve by establishing general rules, and the usual approach was a bilateral agreement.

2. He thanked the Brazilian representative for drawing the Committee's attention to the resolutions adopted at the Economic Conference of the Organization of American States held at Buenos Aires in 1957. In those resolutions, the Conference had recommended States members of the organization to grant land-locked countries the greatest possible transit facilities, and had also recommended that the interested States should study the possibilities of reaching, to the extent permitted by their international commitments, reciprocal agreements that would grant land-locked countries the greatest possible trade advantages.

3. Unfortunately, the Fifth Committee, unlike the other committees, had not before it any draft articles prepared by the International Law Commission. In the absence of draft articles, the Committee had declarations made to the Sixth Committee of the United Nations, at the Eleventh Session of the General Assembly and to the Committee itself by representatives of land-locked countries, States of transit and other countries, and also the list of principles formulated by the Preliminary Conference of land-locked States (A/CONF.13/C.5/L.1, annex 7). It should not be forgotten, however, that those principles did not reflect the unanimous opinion of participating States, and that they did not represent claims or demands presented by a bloc, but were designed solely to advance the codification of international law.

4. On the question of what constitutes international law with respect to the question under discussion, he agreed with a number of the preceding speakers, and with the great American jurist Charles Cheny Hyde, that any duty which a State might have to grant a land-locked country access to the sea did not spring from general international law, but rather from treaty arrangements between the parties.

5. His delegation took the view that the Committee should distinguish between what the law of nations was

at the present time, and what its members thought that law ought to be.

6. His delegation believed that the principle of the freedom of the seas was one of the major equalizing influences within the community of nations, and had given smaller States an opportunity to offset their inferiority in size. It would therefore carefully consider all proposals made in the Committee for assuring land-locked States the equitable enjoyment of the benefits of the freedom of the seas. It reserved the right to make further comments on such proposals.

7. Mr. SHAHA (Nepal), to prevent any misunderstanding, observed that, contrary to the statement by the United States representative, the seven principles formulated by the Preliminary Conference did indeed represent the unanimous opinion of the participants, as was clear from document A/CONF.13/C.5/L.1, paragraph 14, first sentence.

8. Mr. PFEIFFER (Federal Republic of Germany) said that the discussions in the Fifth Committee had had the great merit of drawing attention to the importance of free access to the sea for all land-locked States. He too regretted that the Committee's difficult task had not been facilitated by the preparation of detailed documentary material. He regretted it all the more because the Committee's duty was to make a conscientious and detailed study of all aspects of the subject, in dealing with which it would be dangerous to improvise. There was no need for excessive haste, since nearly all speakers had declared that, since the existing situation was satisfactory, the question was not so urgent as many others before the Conference.

9. His delegation was glad that the present state of affairs was satisfactory, because his country had four land-locked neighbours. It was therefore well acquainted with the needs and desires of land-locked countries, and also understood the needs and desires of the coastal States.

10. His delegation had advocated in other committees the adoption of regional conventions, and wondered whether such conventions might not also provide satisfactory solutions, appropriate to the particular situation of the signatories, for the problem of access of land-locked countries to the sea.

11. With regard to the difficulties of codifying the existing international law governing access to the sea by land-locked countries, his delegation endorsed the arguments advanced by the representatives of the United Kingdom and France at the Commission's sixth meeting. It shared their misgivings regarding a dogmatic assertion of the right of free access to the sea such as that stated by the Preliminary Conference in principle I, and had the same objections as they had to the general application of a most-favoured-nation clause.

12. Mr. OCIOSZYNSKI (Poland) also regretted that for its study of the question referred to it by the Conference the Fifth Committee, unlike the other committees, had not before it a text prepared by eminent jurists. It therefore had a more complicated and difficult problem of codification procedure. Many questions might involve it in a very complicated procedure if it studied them from the point of view of the progressive development of international law.

13. However, the Committee was not wholly without material. To guide it in its task, it had the extremely useful documents prepared by the secretariat, and the additional information presented during the general debate. It also had the list of principles drawn up by the Preliminary Conference. Although some might regard that list of principles as a one-sided view of a group of directly interested States, it was admittedly the first attempt of the kind to formulate certain basic principles relating to the problem before the Committee. His delegation saw no reason why it should not serve as a basis for the Committee's work.

14. The Committee could also refer to instruments of incontestable value and fundamental significance regulating certain aspects of free access to the sea for land-locked countries: the Barcelona Declaration, in which the right of States without a seaboard to fly a maritime flag was recognized; the Barcelona Conventions of 1921; and other multilateral and bilateral agreements listed in the memorandum by the secretariat (A/CONF.13/29 and Add.1) and in the report of the Preliminary Conference (A/CONF.13/C.5/L.1). Those instruments, despite their diverse character and scope, would no doubt enable those taking part in the Conference to determine which of the rules they embodied could be codified as general rules of international law, and which, on the other hand, could be laid down only in bilateral agreements because special geographical, technical and economic conditions had to be taken into account.

15. The Committee certainly had a difficult task, but he hoped that all the participating countries would make every possible effort to reach a solution which would guarantee effective access to the sea for land-locked countries and promote international co-operation.

16. In his delegation's opinion, the high seas should be used by all States on a footing of equality, and it was therefore essential that countries whose geographical situation deprived them of a coast should have access to the high seas. To impose restrictions upon them in that respect would impair the equality between States in the use of the high seas. That rule was supported not only by all jurists but also by the fact that a steadily increasing number of merchant vessels now sailed the high seas under the flags of land-locked countries. It was also supported by article 27 of the International Law Commission's draft (A/3159), which meant that all land-locked States had the right to build, purchase, possess and operate ocean-going ships, to take part in international maritime trade, and to be parties to international agreements such as conventions on the safety of shipping and conventions governing the working conditions of seamen.

17. Naturally, in order to exercise their right to sail and use the high seas, land-locked countries must first have access to the coast. That meant that they had to be able to send and receive goods across the territory of a coastal State. It might be asked, with codification in view, whether the transit régime fell within the scope of the Conference. His delegation felt that it would be a mistake to pay much attention to that purely formal question, since, for many years, a practical solution to the transit problem had been provided in the form of numerous bilateral agreements. Among those were the

bilateral agreement concluded between Poland and Czechoslovakia in 1956, containing provisions concerning the recognition of ship's documents, customs exemption, and the granting of the most favoured terms for the use of inland waterways and railways, subject to reciprocity. He was glad to note that the Czechoslovak Republic found that agreement entirely satisfactory. Other speakers had said that their countries were satisfied with bilateral agreements concluded with coastal States. Such agreements had the great advantage that they could be adapted to the particular needs of States.

18. Replying to the objections of those who held that bilateral agreements did not always satisfy the needs of land-locked countries because the coastal State was in a stronger bargaining position, he said that, first, every coastal State liked to secure the greatest possible flow of transit goods through its ports. Furthermore, today maritime traffic required the construction and operation of costly facilities, in the construction of which the participation of land-locked States could be ensured only by bilateral agreements. Lastly, the transit facilities which a coastal State granted in its ports to another State could not derogate from its sovereignty, because that sovereignty was the basis on which it would consider the needs of a land-locked State when concluding bilateral agreements.

19. His delegation considered that if the Conference succeeded in codifying certain general principles embodied in existing agreements or applied in practice, which might be accepted by a large number of States and which would be applied to the benefit of all countries, its action would demonstrate the progressive nature of such a body of rules. Such a codification, added to the provisions of bilateral agreements laying down detailed rules governing the relations between the countries concerned, would provide an effective system for solving many problems, promoting co-operation among all countries and contributing to their economic development.

20. He hoped the Conference would be able to adopt a final text containing general principles or even to incorporate some appropriate general principles in the convention on the law of the sea.

21. Mr. STOYANOV (Bulgaria) said the Bulgarian delegation thought it fair that land-locked countries should have free access to the sea. It was therefore glad the Conference had that question on its agenda. The study of the question was difficult, especially because the International Law Commission had not dealt with it ; moreover, there would be difficulty in using, as a basis for the elaboration of rules acceptable to all countries, bilateral agreements concluded between countries whose situations were very different. To a certain extent, however, the Commitee's task was made easier by the list of principles enunciated by the Preliminary Conference and the draft submitted by Czechoslovakia during that conference (A/CONF.13/C.5/L.1, annex 6).

22. Although it was not easy to reconcile the interests of the coastal countries and those of the land-locked countries, the Committee should make every effort to prepare an international document recognizing the right of the land-locked countries to free access to the sea. The document would include the most general principles relating to the rights and indispensable facilities to be granted land-locked States and to the obligations which would rest upon those States in order to safeguard the principle of mutual advantage.

23. In practice, bilateral agreements would of course have to be concluded to prescribe the procedure of transit and the establishment of free zones in the ports. Furthermore, the document to be prepared by the Conference would be effective only if adopted by a large number of countries, and particularly by a large number of coastal countries, so that its provisions must be sufficiently flexible to be capable of being applied everywhere and accepted by all.

24. The Bulgarian delegation was prepared to examine attentively any proposal likely to contribute to the solution of the problem of freedom of access to the sea for land-locked countries.

25. Mr. PERERA (Ceylon) emphasized his country's very great interest in the task undertaken by the Committee's work and recalled General Assembly resolution 1028 (XI), which dealt with the need of land-locked countries for transit facilities and thus by implication with their access to the sea. Paragraph 3 of General Assembly resolution 1105 (XI) also called for study by the Conference of the question of the free access to the sea of land-locked countries. The debate at the eleventh session of the General Assembly of the United Nations had revealed the desirability of consolidating the existing laws and practices relating to the question and, if necessary, of formulating new laws in keeping with contemporary political, economic and social forces.

26. The Committee had before it valuable documents prepared by the secretariat and by the Preliminary Conference, and other documents submitted since the opening of the Conference. It could not therefore be argued there was insufficient material on the subject.

27. His delegation had noted that the Committee's discussion had been very objective, that there was a consensus of opinion among delegates, that the practical problems involved were not insuperable and, lastly, that the coastal States were extremely anxious that a convention should be drawn up and were prepared to do everything possible for the achievement of that end.

28. The seven principles enumerated by the Preliminary Conference provided a rational analysis of the problem. It should be noted that the land-locked countries were representative of three continents; that fact, both in theory and practice, endowed the problem with the necessary universality.

29. Although the International Law Commission had not proposed a code for the land-locked countries, some of its comments (A/3159, chap. II, para. 29) were relevant to the question under discussion.

30. The Preliminary Conference had achieved certain results which were not inconsistent with existing rules and conventions. The present problem was how to fill the gaps. In the opinion of his delegation the Committee's debates had merely confirmed what the International Law Commission had considered to be desirable (A/3159, chap. II, para. 31).

31. With respect to first principles, it must be admitted that there was a natural connexion between the right

of access to the sea of land-locked countries and the freedom of the sea. The desire of the land-locked countries to assure themselves of certain rights was therefore legitimate and warranted by practices which had been followed for centuries. The Committee should therefore determine whether existing agreements satisfied those countries. A system based on existing practice rather than a code of international conduct was obviously unsatisfactory; furthermore, the Conference should give effect to Article 13 of the Charter.

32. The conferences at Barcelona (1921) and Geneva (1923) had had limited objectives in view. Nevertheless, even before the Second World War, the need to unify regulations dealing with those subjects had led to the Geneva Conference of 1930, which had drafted three conventions on inland navigation. Since the end of the Second World War, several land-locked countries had begun to engage in maritime commerce. The preparation of a draft code on free access to the sea was therefore necessary owing to the inadequacies of previous conventions and the increasing participation of land-locked countries in maritime commerce.

33. The Committee had before it a number of proposals, including the draft submitted by the Czechoslovak delegation (A/CONF.13/C.5/L1, Annex 6). The Ceylonese delegation supported the first ten articles of that draft. It reserved its right to make detailed observations at a later date but felt that article 10 should allay the vague fears that some coastal States might entertain. That article did not abrogate existing laws and conventions. It was in conformity with the spirit and the letter of General Assembly resolution 1105 (XI). It met the reasonable claims of a group of States — namely, the land-locked countries — which were not so favourably placed as the coastal States. His delegation reserved its right to express its views on article 11 at a later stage, but hoped that in any universally accepted convention an article on the settlement of international disputes would prove to be unnecessary.

34. Mr. BACCHETTI (Italy) said that his country attached great importance to freedom of international trade. As a maritime country, it had concluded with neighbouring States, Switzerland and the Holy See, agreements which were most satisfactory to the parties.

35. The problem of free access to the sea for land-locked countries had never really been studied by eminent authorities in the past. The documents submitted by Czechoslovakia, Afghanistan (A/CONF.13/C.5/L.1, annex 4) and Bolivia (A/CONF.13/29/Add.1, additional information concerning paras. 77-81) were therefore valuable, whether their ideas were accepted or not. Their attitude was due to the present satisfactory state of affairs and the multiplicity of international agreements, whereas customary law was inadequate and vague. No important problem arose *de jure condito*.

36. The Italian Government felt that the question could not be examined from a new angle unless adequate preparatory studies were carried out, and reserved its position accordingly. One might well ask whether an attempt should be made to establish a body of rigid principles in a sphere in which both authors and decisions were far from being unanimous. Though the interest of the land-locked States in having access to the sea was beyond doubt, the same could not be said of the existence of a genuine subjective right of access to the sea. That being so, the discussions might well not prove very fruitful.

37. As the Swiss representative had remarked, the increase in the number of ratifications of the Barcelona and Geneva conventions constituted a remarkable step forward. In some cases, however, special rules were better suited to special situations. The Swiss representative had very aptly pointed out that it might be dangerous to disturb the present equilibrium. To obtain a real improvement in relations between the land-locked and the maritime countries, a compromise must be struck between their respective demands by adopting a liberal approach. The declaration and certain resolutions of the Economic Conference of American States held at Buenos Aires in 1957 might be studied to advantage and possibly adopted by the Conference, since they combined the precision and flexibility called for in so complex and thorny a question. Everything was capable of improvement, but " striving to do better oft we mar what's well ".

38. Mr. SCHEFFER (Netherlands) observed that for a variety of reasons, geographical, commercial and historical, the Netherlands had the greatest interest in the freedom of communications and transit. It was therefore prepared to recognize the right of land-locked States to free access to the sea, and to the full use of the rights enjoyed by maritime States.

39. The Netherlands delegation had read with great attention the valuable documents prepared by the secretariat (A/CONF.13/29 and Add.1) and that of the Preliminary Conference (A/CONF.13/C.5/L.1). It would comment on the principles enunciated by the land-locked States under the aspects of their legal foundation, their content, and the form to be given to the results of the Committee's deliberations.

40. His delegation did not agree that all seven principles enunciated by the Preliminary Conference formed part of existing international law. The right to fly a maritime flag and the right of navigation undoubtedly formed part of it and were included in the International Law Commission's draft (A/3159).

41. On the other hand, the draft codification submitted to the Conference dealt only with the régime of the high seas and that of the territorial sea; it did not explicitly deal either with the régime of internal waters or that of maritime ports. During the discussions in the Second Committee, the Netherlands delegation had stressed that, by its very nature, the right to use the high seas for navigation included in principle the right to carry goods and passengers between the different ports of the world. In its opinion the freedom of the seas included passage through internal waters and access from the sea to maritime ports. It was, however, not so clear whether the right of free access to such waters and ports from the land could be similarly based on the principle of the freedom of the seas. No premature decisions should be taken on those quite complex questions in the absence of any preparatory study by the International Law Commission.

42. It could not be denied that there was a fundamental difference between the sea, which was not subject to the sovereignty of any State, and the land, which was divided between a large number of sovereign States. It

seemed very doubtful whether the sovereignty of a State over its land territory was limited by the right of transit in the same way as the sovereignty of the coastal State was limited by the rights of innocent passage through the territorial sea. The right of transit was part of what was known as *jus communicationis,* which, though highly desirable, was not universally accepted as an undeniable and fundamental principle of international law.

43. It was for the Committee to see whether the time had come to declare that the right of transit formed part of existing international law. But, if such a declaration was made, it would have to specify that the right was enjoyed by all States subject to reciprocity.

44. The Netherlands delegation would like some elucidation of the considerandum contained in the preamble to the principles, to the effect that other States which are not placed in the same geographic situation should not be requested to apply the most-favoured-nation clause. It could, however, accept the first three principles and considered that there must be a genuine link between the vessel and the State whose flag it flew. It could also accept principle IV on condition that the same treatment was accorded to maritime States. Principle V should be broadened and the right made subject to reciprocity. His delegation saw no objection to principles VI and VII.

45. Since the Committee had not the benefit of any work by so authoritative a body as the International Law Commission, it would be better not to attempt to frame a detailed convention but to adopt a declaration stating a few general principles which should assist States in negotiating agreements with their neighbours. Accession to existing multilateral conventions, such as the Barcelona and Geneva conventions and the General Agreement on Tariffs and Trade, should also be recommended. The declaration should emphasize the vital importance of the freedom of the seas and of free access to the seas for the development of trade between all nations.

46. Mr. L. EL-YAFI (United Arab Republic) declared that the delegation of the United Arab Republic would spare no effort to establish with other States equitable bases for the law of the sea. The Conference could meet the legitimate hopes and claims of all members of the international community and especially of the land-locked States, which were entitled to access to the sea and to free navigation upon it and must enjoy complete equality with other States.

47. The sea was an international public domain, destined for the common use of organized communities. Its use must be governed by a body of rules fixing the rights and duties of all and excluding any monopoly either in peace or war. Such a written and constructive set of rules must leave every State free to take all necessary steps to police its shipping.

48. His delegation supported generally the Czechoslovak draft articles on access to the sea of land-locked countries, which could serve as a basis for the formulation of fundamental principles. It would in due course submit two amendments. The first related to the drafting of a universal declaration which would serve as a preamble to the Czechoslovak draft and enunciate the right of free access to the sea for all countries, the right to fly a flag, the right of transit by all means of communication, the principle of equality of rights and duties for all, and the right of all to use submarine resources. The second related to the principle of the settlement of disputes either by a permanent international organ under the United Nations or by the International Court of Justice.

The meeting rose at 4.55 p.m.

EIGHTH MEETING

Thursday, 20 March 1958, at 3.25 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. GUEVARA ARZE (BOLIVIA), MR. OHYE (JAPAN), MR. DRAGUSTIN (YUGOSLAVIA) AND MR. TABIBI (AFGHANISTAN)

1. Mr. GUEVARA ARZE (Bolivia) said that his delegation would support compromise solutions. He hoped that the Conference would bear in mind the lessons of The Hague Conference of 1930 for the codification of international law, which had been a failure although agreement had been reached on various important points, and would decide that at least the principles confirmed by custom, practice and treaties should be codified in the future convention on the law of the sea.

2. Bolivia was situated in the middle of South America ; its river system was connected with the basins of the Amazon and the River Plate and other routes of communication linked the country to the Pacific. It had therefore been interested at all times in the law relating to international rivers and lakes ; but its main concern had been access to the Pacific Ocean. Furthermore, the railways and roads of neighbouring States converged on Bolivian territory. Another question to be settled was that of the use of pipelines to convey Bolivian petroleum to the sea.

3. Bolivia imported from overseas more than 30% of the foodstuffs consumed in the country, and more than 90% of its foreign currency earnings were accounted for by its exports of minerals, which were likewise carried by sea. It was the third-largest producer of tin in the world, and any difficulty in the transport of tin ores would adversely affect industry in other countries.

4. It was only since the Pacific War of 1879 that Bolivia had been a land-locked State. The Treaty of Peace and Friendship concluded with Chile in 1904 had accorded to Bolivia in perpetuity the fullest and most unrestricted freedom of commercial transit through Chilean territory and had authorized Bolivia to establish customs offices in the Chilean Pacific ports. The clauses in question had been confirmed by the Treaty of Commerce of 1912.

5. In consequence of its experiences during the Chaco war, when it had had difficulty in importing arms and supplies for the army — the supplies not having been

recognized as " merchandise " — Bolivia had in 1937 entered into another convention with Chile, which recognized freedom of transit in respect of passengers and every kind of freight without exception.

6. After a judicial decision had been rendered in Chile authorizing private persons to seize goods consigned to the nationalized mines of Bolivia, the States concerned had signed in 1953 the Declaration of Arica, which stated that consignments in transit to Bolivia through Chile would not be subject to the jurisdiction of the Chilean authorities.

7. With regard to pipelines, the Treaty of Economic Co-ordination concluded by Bolivia and Chile in 1955 stipulated that the governments of the two States would grant each other every facility for the construction, maintenance and operation of the installations required for the conveyance of Bolivian petroleum to a Chilean port.

8. The system set up under the agreements he had mentioned was functioning normally. Nevertheless, the Bolivian people would continue to yearn to possess a part of the Pacific coast.

9. The excellent memorandum prepared by the secretariat (A/CONF.13/29 and Add.1) reproduced the essential terms of the agreements which Bolivia had concluded with its other neighbours for the purpose of establishing a system of free transit based on reciprocity.

10. The conclusions to be drawn from his remarks were that the regulation of Bolivia's right of access to the sea concerned all countries in South America ; that that right had been confirmed by numerous treaties ; that the system established under those instruments was comparable to that established by treaties concluded by other land-locked States (and hence it could be said that there was a body of common rules concerning the right of free access to the sea) ; and that the difficulties experienced by Bolivia proved how urgent it was to codify in an instrument applicable throughout the world the rules at present embodied in bilateral agreements.

11. The part of the law of the sea which concerned land-locked States should deal, first, with the universally accepted absolute equality of land-locked and coastal States for the purposes of freedom of navigation, innocent passage, fishing on the high seas and the laying of cables and pipelines. It had been said that articles 15, 27, 28, 49 and 61 of the International Law Commission's draft, which covered those questions, referred by implication to the position of land-locked States ; but the Commission had not apparently intended them to be interpreted in that way. It should therefore be explicitly stated in the convention or its commentaries that those articles in fact also related to land-locked States.

12. Secondly, the right of free access to the sea of land-locked countries should be studied, as recommended in General Assembly resolution 1105 (XI) ; the Assembly had recognized the need of land-locked countries for transit facilities and, in resolution 1028 (XI), it had invited Member States to accord them such facilities.

13. The right of free access to the sea of land-locked countries comprised the right of free transit through the territory of the coastal State for persons and goods, irrespective of the mode of transport used ; exemption from the coastal State's customs regulations and duties and from any payment other than payment for services rendered ; exemption from the coastal State's jurisdiction over goods in transit ; the use of port installations on the same footing as the coastal State itself ; and the right of innocent passage in the internal waters of that State.

14. Certain delegations maintained that the latter right of land-locked States was not inherent in the right of free access to the sea and that the Conference should therefore not deal with it. To accept that argument would be to deny land-locked countries that right of free access to the sea which was recognized in practice and under existing treaties.

15. The problem of transit was a special problem in the more general context of the right of access to the sea. The freedom of transit referred to in the conventions of Barcelona (1921) and Geneva (1923) was based on reciprocity. The same was not necessarily true of the freedom of transit as an element of the right of access to the sea. That was a special right which was the core of the right of free access to the sea of land-locked countries. As the latter right was a necessary part of the law of the sea, the Conference could not postpone its codification.

16. The existing agreements did not constitute universally valid international law. Besides, they could be denounced. Hence, access to the sea depended at the moment on the consent of the coastal State. Nor was it always easy to apply the agreements. The Conference should therefore embody in the law of the sea rules which would protect the right of free access to the sea of land-locked countries, in the interests of international peace and prosperity. It was true that the Conference did not have at its disposal any studies by the International Law Commission on the question ; but the problem was less complicated than others. The secretariat memorandum (A/CONF.13/29 and Add.1), the statement made by the Chairman of the Committee (A/CONF.13/C.5/L.2) at the third meeting and those made by delegates, together with the memorandum of the Preliminary Conference (A/CONF.13/C.5/L.1), provided an adequate basis.

17. The right of free access to the sea of land-locked countries should be embodied in the positive international law, of world-wide validity, for otherwise the principle of the legal equality of States, the right to independence and the principle of the freedom of the high seas would be disregarded.

18. Mr. OHYE (Japan) assured the Committee that his country appreciated the importance of the problem of free access to and use of the sea by non-coastal States.

19. The freedom of the high seas, the corner-stone of the régime of the sea, had been established for the purpose of promoting the interest and welfare of the entire international community. In other words, the high seas were open to all nations alike, whether land-locked or coastal. There was no doubt that the land-locked countries were entitled to enjoy to the fullest extent all rights inherent in the freedom of the high seas. In that connexion, free access to the sea by the land-locked countries could be recognized as a matter of principle. The Japanese delegation considered, however, that free access to the sea by such countries should be worked

out by agreement with their neighbouring coastal States, and it had been gratified to learn that the question had been satisfactorily resolved by agreement in so many cases. It hoped that all land-locked countries would be able to enjoy fully the benefits of the seas.

20. The Japanese delegation felt that the result of the efforts of the Committee should be embodied in a declaration.

21. Mr. DRAGUSTIN (Yugoslavia) said that, if the study of the problem of free access to the sea of land-locked States had been tackled earlier, the Committee would have much less difficulty in solving it. The preparatory work at the Committee's disposal was clearly inadequate. At the same time, it was true that certain aspects of the problem had been dealt with in past multilateral instruments, such as the Barcelona Convention on Freedom of Transit (1921) and the Barcelona Declaration recognizing the Right to a Flag of States having no Sea-coast. In addition, there were bilateral and multilateral agreements governing the right to a flag and the use of ports.

22. Yugoslavia, which was a party to a large number of conventions concerning the right of free access to the sea of land-locked States and which had recognized the right in practice, was ready to co-operate constructively in the Committee's quest for a solution. In order to develop friendly relations with its neighbours and to increase the volume of goods passing through its territory, his country granted its neighbours all the necessary facilities. Indeed, the volume of goods traffic through Yugoslavia was increasing year by year.

23. Commenting on the principles enunciated by the preliminary conference and on the manner in which they were interpreted, he said, first, that the application of the principles without reciprocity would impose on coastal States certain obligations from which they would be unable to obtain their release if, by reason of some malpractice, they should wish to discontinue the system.

24. He could not agree that the principle of free access to the sea of land-locked States was a necessary consequence of the fundamental principle of freedom of the high seas, for the sovereignty of the coastal State extended not only to the territorial sea but also to internal waters, which it could close to foreign vessels.

25. He quoted in support of his view the opinion expressed by the Institute of International Law at its Amsterdam session in 1957 that with the exception of rights of passage established by usage or by agreement, the coastal State could refuse foreign vessels access to its internal waters, unless such vessels were in danger. The right of free access to the sea granted in bilateral agreements or recognized in a collective declaration was a concession that the coastal States made to land-locked States. The right of free access to the sea of land-locked States, like the right of transit, did not pose the same problems as other rights in the sea, because it touched on the internal regulations of States. So far as that right was concerned, it would perhaps be better to amend the conventions in force or to ask States which had not yet done so, and in particular land-locked States, to accede to them, for it seemed to be impossible to work out a single instrument which would apply to all countries.

26. The land-locked States, misinterpreting the privilege granted to them when they were given free access to the sea, were apparently claiming more extensive general rights than those enjoyed by the coastal States. It should be borne in mind, however, that that access was subject to the consent of the coastal State ; the privileges granted should be based on reciprocity. But the land-locked States were asking for the benefit of a public law servitude, on the grounds that the country of transit gained an economic advantage from transit. That was not always the case. The exercise of the right of transit might, for example, necessitate investments on the part of the coastal State which the latter might not be disposed to make in the absence of long-term bilateral agreements ; furthermore, it was not inconceivable that the land-locked State might divert its traffic, in which event the economy of the coastal State might suffer. In additon, a whole series of administrative and economic measures had to be adopted to ensure the proper through-traffic of goods, and those measures had to be carefully studied and worked out by the States concerned.

27. For all these reasons, the Yugoslav delegation — which was in favour of granting land-locked States free access to the sea under reasonable conditions, because such access was based on economic necessity and was a means of ensuring international co-operation in the spirit of the United Nations Charter — was of the opinion that the principle of free access should be proclaimed and recommended in a resolution to be adopted by the Conference, it being understood that the conditions governing the exercise of the right would be the subject of bilateral agreements.

28. Mr. TABIBI (Afghanistan) stated his delegation's position on several of the questions raised in the Fifth Committee.

29. It had been said that the study of the right of free access to the sea of land-locked States had not been adequately prepared. Yet, it was surely correct to say that several of the draft articles submitted by the International Law Commission dealt with the right, articles 15 and 27 directly, and articles 28 and 49 indirectly. It was perhaps regrettable that the Commission had not specified the fundamental principles of free access to the sea of land-locked States which derived from the freedom of the high seas, and which the Conference would have to insert into whatever instrument it adopted. It had been possible to formulate the text of the seven principles much more quickly than that of the seventy-three draft articles of the International Law Commission because it had offered fewer technical difficulties. The working out of the principles had not required long preparation.

30. That had been well understood by the members of the Sixth Committee of the United Nations General Assembly when they had adopted unanimously paragraph 3 of resolution 1105 (XI), embodying a proposal of which his delegation had been one of the sponsors which recommended that the Conference on the Law of the Sea should study the right of free access to the Sea of land-locked countries. Nor had the General Assembly

itself believed that there was insufficient preparation, for it had implied that one of the committees of the Conference would be expected to prepare a legal instrument on the subject. The Conference had no power to reverse a decision of the General Assembly; on the contrary, it had a duty to implement the decision and, in so doing, it should in his delegation's view bear in mind the provisions of General Assembly resolution 1028 (XI) which invited " the governments of Member States to give full recognition to the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries ".

31. To assist the Conference, the secretariat had prepared a most useful memorandum (A/CONF.13/29 and Add.1) in conformity with the provisions of paragraph 3 of resolution 1105 (XI), in which the General Assembly recommended " that the Conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties ". In addition, the Conference had before it the memorandum submitted by the Preliminary Conference of land-locked States (A/CONF.13/C.5/L.1) setting forth principles of international law which, in the unanimous opinion of the twelve countries participating in that conference, governed the right of free access to the sea of land-locked countries. He observed that the International Law Commission had worked on its draft articles not, as had been said, at all its sessions, but only at its fifth and eighth sessions.

32. Some delegations had said that the codification of certain principles already recognized in international instruments would not perhaps be to the advantage of land-locked States. In that connexion, he pointed out that several of the international instruments in question — those signed at Barcelona, for instance — had been ratified by no more than a few States and that they did not adequately protect the interests of land-locked States. Furthermore, as the representative of Ceylon had said at the Committee's seventh meeting, those instruments were concerned with specific but narrow questions. Besides, many of them were very old and an historic conference such as the present should replace them by others which would contribute to the development of international law, particularly since the signatories of the instruments relating to the rights of land-locked countries were mainly European countries. Surely there was little danger in reaffirming in more explicit language the rules of law applying to land-locked countries? Such a reaffirmation would be one means of improving relations not only between land-locked States and their coastal neighbours, but also between all countries of the world, as had been pointed out by the United Kingdom and United States representatives. The former had noted that, while the claims of land-locked countries to free access to the sea came under a different branch of international law, there was an obvious connexion between the right of free access to the sea and that of innocent passage through the territorial sea. To deny that would signify that the freedom of the high seas was meaningless so far as the land-locked countries were concerned. Grotius had already, in his *Mare Liberum,* recognized the right of innocent passage.

33. The Conference was not concerned with codification pure and simple. From a careful study of the seventy-three draft articles prepared by the International Law Commission it was evident that they were not simply a codification of traditionally accepted principles of international law; they often extended those principles with a view to promoting the development of international law, in conformity with Article 13 of the Charter. Article 2 of the draft, for example, recognized the sovereignty of the coastal State in the air space over the territorial sea. Article 13 of the United Nations Charter attached equal weight to the codification and to the progressive development of international law. It would therefore be wrong to believe that the Conference and the International Law Commission should confine themselves to codifying international law, a limitation which would in fact be at variance with the purposes formulated in the United Nations Charter. Further, as Professor Brierly had said at the meeting of the Committee on the Progressive Development of International Law and its Codification, held from 12 May to 17 June 1947, codification could not be limited to declaring existing law, since the latter was often uncertain and there were gaps in it. Accordingly, if the codification of the right of free access to the sea of land-locked countries (and there was nothing against codification) demanded that the Conference should fill some of those gaps, its object in so doing should be that the final instrument to be adopted could have a wider and more effective application.

34. There had been some reference in the discussion to the possibility of referring back to the International Law Commission for more detailed study the whole question of free access to the sea of land-locked countries. His delegation believed that no such possibility existed, since the General Assembly had expressly recommended the Conference to reach a decision on the matter.

35. Finally, he thanked the representative of the Netherlands, a country which had steadfastly upheld the principles of law, particularly in regard to the freedom of the high seas and free access to the sea, for having displayed so great a comprehension of the problems of land-locked countries and for having proposed an extension of the seven principles formulated by the Preliminary Conference.

36. Mr. SHAHA (Nepal) asked to speak on a point of order. The Yugoslav representative had said that land-locked countries were in effect claiming more extensive general rights than those enjoyed by coastal States. His delegation could not accept that statement, which indeed the Yugoslav representative had made no effort to substantiate. He was still convinced that the seven principles formulated by the Preliminary Conference were indeed an expression of existing international law. If the opportunity arose, he would reply in greater detail to the Yugoslavian representative.

The meeting rose at 4.50 p.m.

NINTH MEETING

Monday, 24 March 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. SAVELIEV (UNION OF SOVIET SOCIALIST REPUBLICS), MR. CARDONA (MEXICO), MR. BEN SALEM (TUNISIA), MR. KANDAN (TURKEY) AND MR. MARTINEZ MONTERO (URUGUAY)

1. Mr. SAVELIEV (Union of Soviet Socialist Republics), recalling his government's attachment to the policy of co-existence and collaboration among all States, irrespective of their economic and social systems, said that the Soviet Union was anxious to make a positive contribution to the solution of the main problems of the international law of the sea. In that spirit, the Government of the Soviet Union, a maritime Power whose coasts were washed by several seas, was ready to support the aspirations of the land-locked countries for free access to the sea. In 1815, when the Congress of Vienna was being prepared, the Russian delegation had put forward proposals to the effect that the principle of free access to the sea should be coupled with that of the freedom of the high seas and that in seaports free zones should be established for the benefit of land-locked countries. In modern times, the Soviet Union, in keeping with the same policy, had in June 1955 concluded an agreement with Afghanistan settling the question of transit in the best interests of both Governments. Under that agreement, goods exported or imported by Afghanistan whatever their origin or destination could use the ports and the extensive means of communication in the Soviet Union free of all duties and charges; goods in transit, moreover, enjoyed the lowest freight rates, and the formalities were reduced to a minimum. Similar agreements had been concluded with the Governments of Czechoslovakia and Hungary.

2. He noted that all land-locked countries had concluded with the adjacent coastal States agreements in order to ensure free access to the sea. Previous speakers had all recognized the principle of free access to the sea; that principle should now be confirmed and codified. After the General Assembly had been so sympathetic to the requests for a study by the Conference of the problem of access to the sea of land-locked countries, the Committee could surely not fail to bring those studies to fruition and to draft provisions regulating the right of access to the sea. It should not be difficult to prepare international rules governing free access to the sea, for the Committee had the necessary time and documents at its disposal.

3. The International Law Commission's draft (A/3159) laid down certain principles, including the principle of the freedom of the high seas. Since the right of access to the sea derived from that principle, a convention on the law of the sea would not be complete and sound unless it also confirmed the principle of freedom of access to the sea for land-locked States. In his opinion, there was no likelihood that an instrument stipulating access to the sea for such States would complicate the situation or impair existing international agreements. Some representatives had said that the question of the transit of goods to the sea should be linked with that of international transit. That view was not shared by the U.S.S.R. delegation, which considered rather that the study of the right of access to the sea should not be complicated by any attempt to link the right of access to the sea with a much more complex and much more controversial question. The Committee had before it a draft, comprising seven articles (A/CONF.13/C.5/L.1, annex 6), prepared by the Czechoslovak delegation at the Preliminary Conference of Land-locked States. Once in final form, that draft would, in his delegation's opinion, enable the Conference to bring its work to a successful conclusion.

4. Mr. CARDONA (Mexico) said that the right of access to the sea of land-locked States was recognized virtually unanimously, and that the treaty provisions governing relations between land-locked and adjacent coastal States in that respect were in many cases very satisfactory.

5. Several speakers had stated that the Committee's proceedings might give rise to legal, legislative and practical difficulties and dangers. He hoped that the spirit of co-operation which had been very much in evidence would produce agreement. Mexico was certainly anxious to assist in the quest for a solution in keeping with the aims of universal justice.

6. He pointed out that certain States represented at the Conference were not parties to the international conventions in force and hence the provisions of those conventions did not apply to them; he also referred to the many treaties concluded between coastal States and land-locked States on the subject of freedom of access to the sea for the latter. The systems provided under those treaties differed from country to country: while some were entirely satisfactory, others showed unintentional gaps that should be filled.

7. It was desirable that the Committee should standardize the rules concerning the right of access of land-locked countries to the sea. The bilateral treaties, which contained only particular provisions dealing with specific cases, could not constitute a source of universally applicable rules of international law. Furthermore, the situation created by the recognition of the principle of free access of the land-locked countries to the sea affected not only those States and their neighbours but all States, and for that reason general rules were needed.

8. The Committee should weigh carefully the objections to the idea of drafting a convention; at the same time it should not forget that the Conference's function was to codify, which meant, as indicated in General Assembly resolution 1105 (XI), that it was to adopt one or more international conventions. The Committee should therefore concentrate on preparing a draft convention. During the detailed consideration of such a draft it would have ample opportunity for exploring ways and means of overcoming the difficulties which had been pointed out.

9. The example of the American States in the matter of extradition would serve to illustrate his point. Although they had almost all concluded bilateral extradition treaties amongst themselves, they had nonetheless adopted a multilateral convention on the same question

enunciating the general principles to be followed. It was that sort of draft instrument that the Committee should, he thought, prepare for submission to the Conference.

10. His delegation also thought that the Committee might study measures to be recommended to ensure that newly established States had direct access to the sea.

11. Mr. BEN SALEM (Tunisia) said that Tunisia, appreciating the concern of the land-locked countries, took a keen interest in the Committee's work. His delegation regarded the right of land-locked countries to free access to the sea as an essential element in the harmonious relations which should be established within the international community in order to ensure the well-being of the peoples and co-operation between nations on terms of equality, more particularly in economic and commercial matters.

12. The right to a flag flowed logically from the principle of the freedom of the seas, under which all States enjoyed the right of free navigation and of free exploitation of the high seas. By virtue of that right of free navigation, ships flying the flag of a land-locked country should enjoy, in territorial and internal waters and in ports, the same advantages and privileges as were granted to the vessels of other countries.

13. The right of freedom of transit raised the most difficult problems. In the opinion of his delegation, that right was the logical consequence of the rights previously mentioned, the right which made the effective exercise of the others possible. Some speakers had said that the right in question was comparable to a servitude in civil law, a right *in rem* vested in the land-locked State and exercisable over the territory of the State of transit. Others thought in terms of a contractual obligation; yet others had said that the right was a rule of international law. There was something of all three elements in the right of transit, and that was no doubt why it was more difficult to reach agreement on the point. In its endeavours to secure agreement the Committee should separate the legal aspect from the practical aspect of the problem. From the legal standpoint, the enunciation of the principles involved did not seem likely to cause any difficulties. Tunisia fully subscribed to those principles and in general supported the draft articles submitted by Czechoslovakia. The difficulty was how to give tangible expression to the principles; whereas the land-locked countries wanted them to be embodied, as universal rules, in an international instrument, the coastal States took the view that their prior consent was required in each case.

14. The Tunisian delegation sincerely hoped that all sides would display the utmost good sense in order that a solution might be found.

15. Mr. KANDAN (Turkey) noted that the statements of all the speakers who had preceded him had borne testimony to the understanding of their governments for the situation of the land-locked countries and their anxiety to have access to the sea. The question being one of vital importance for the expansion of world trade, bilateral and multilateral treaties had been concluded with a view to solving the problem of access to the sea regionally and even on a world-wide scale. The problem of access to the sea was one of finding the most appropriate solution, since the position of the land-locked countries varied from case to case. While it was of course possible to prepare a general convention concerning access to the sea, it should be remembered that by its resolution 1105 (XI) of 21 February 1957 the General Assembly recommended the Conference to study the problem of free access to the sea as established by international practice of international treaties. The Conference was therefore competent to decide whether a general convention on the matter was both possible and desirable.

16. He thought, however, that a distinction should be drawn between the right of free transit and the other principles enunciated by the Preliminary Conference of Land-locked States. As some representatives had pointed out, the right of free transit was not a necessary corollary of the freedom of the high seas, and did not therefore come within the competence of the Conference on the Law of the Sea. In addition the question of the right of transit had been regulated by the countries concerned in bilateral agreements and treaties which were still in force ; the Government of Turkey, for instance, had ratified the Barcelona Convention on Freedom of Transit, and had concluded a transit agreement with Iran which was working in a manner satisfactory to both sides. Finally, the Committee had hardly enough time to draft a convention on the right of land-locked countries to access to the sea and, moreover, was not adequately briefed for the purpose.

17. In view of all those considerations, his delegation would prefer the Committee to confine itself to a reaffirmation of the principles enunciated earlier by the Preliminary Conference.

18. Mr. MARTINEZ MONTERO (Uruguay) said his country had a great interest in the questions of access to the sea for land-locked countries. He sincerely hoped that the Conference would adopt rules based on the principles formulated by the Preliminary Conference and satisfactory to all States, whether land-locked or maritime.

19. The preparatory documents submitted to the Committee should, in his opinion, provide a satisfactory basis for its work.

20. He recalled that in the 1860s Uruguay had enacted legislation granting transit facilities to land-locked countries and port facilities at Montevideo for the vessels of all countries. With the object of improving communications between land-locked countries and the outside world, Uruguay had placed its rivers under a special régime at a time when the Mississippi and the Danube, for instance, had still been regarded as internal waterways. Uruguay was proud to have been a pioneer in that respect.

21. Uruguay had long recognized the right of free transit ; a large part of the State of Rio Grande do Sul, in Southern Brazil, for example, had free access to the sea through Uruguay.

22. With reference to the free zones mentioned in the draft submitted by Czechoslovakia to the Preliminary Conference, he said that under an Act of 20 June 1923, Uruguay had set up in its ports free zones, whose operation gave general satisfaction.

23. He was convinced that remedies could be found for

the unfavourable geographical position of the land-locked States.

The meeting rose at 12.10 p.m.

TENTH MEETING

Tuesday, 25 March 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

STATEMENTS BY MR. PECHOTA (CZECHOLOVAKIA), MR. SRESHTHAPUTRA (THAILAND), MR. COMAY (ISRAEL), MR. DARA (IRAN), MR. MELO LECAROS (CHILE), MR. BHUTTO (PAKISTAN), MR. SEN (INDIA), MR. BUU-KINH (REPUBLIC OF VIET-NAM), MR. VELILLA (PARAGUAY), MR. RODRIGUES (PORTUGAL), MR. SHAHA (NEPAL) AND MR. BOURBONNIERE (CANADA)

1. Mr. PECHOTA (Czechoslovakia) said that he had been glad to note that all speakers had been in favour, sometimes with certain reservations, of seeking a solution to the question of access to the sea of land-locked States, in the interest not only of those States themselves but also of the international community at large. His own object was to clarify certain important points mentioned by various delegations.

2. One of the main points raised had been whether the right of access to the sea for land-locked States could or should be codified in connexion with the regulation of the régime of the sea. The Czechoslovak delegation was convinced that the Conference was fully entitled to conduct its proceedings in such a way as to provide a sound and lasting basis for relations between nations. Since the principle of the freedom of the high seas was admitted to be universally valid, no State could be deprived of the right to use the high seas, and accordingly of the particular rights inseparable from that general right. The practical as well as the theoretical validity of this assumption was obvious, thanks to the universality of the principle of the freedom of the high seas. Without such particular rights, the right to use the high seas would be devoid of reality for many countries. Those particular rights included the land-locked States' right of passage through the territorial waters of the adjacent coastal States, the right to use those States' ports, and the right of transit. The Czechoslovak delegation was therefore unable to share the view of those who considered such particular rights to be entirely without legal foundation.

3. The right of transit had given rise to a very large number of comments. It had even been held — and the view was of course one which the Czechoslovak delegation could not support — that transit to the sea was not an integral part of the right of access to the sea. Admittedly, the idea that transit conditions should be laid down in bilateral agreements was entirely correct. Bilateral agreements played a very important part in the regulation of the right of access to the sea of land-locked countries, and would continue to play such a part in the future even if the right were enunciated in a general instrument. It was likewise true that bilateral agreements were the best means of harmonizing the respective rights and obligations of the parties, and gave the necessary protection to the transit States' sovereignty. If the sovereignty and legitimate interests of the coastal or transit State were not duly protected, the regulation of the right of access to the sea of the land-locked States would have a unilateral flavour incompatible with the general principles governing relations between sovereign States.

4. However, the Czechoslovak delegation considered that the existence of bilateral agreements was no justification for assuming that land-locked States had no special right of transit to the sea, or that such right was part of the general right of transit which, as the Netherlands representative had pointed out, although highly desirable, was not universally accepted as a basic and irrefutable principle of international law. To deny land-locked States the right of transit to the sea was in fact to refuse to apply to them the principle of freedom of the high seas. Freedom of transit to the sea was granted to land-locked States in order to enable them to use the high seas on an equal footing with the maritime States. The right of transit of land-locked States was undoubtedly one of the series of questions which the Conference had to solve.

5. Another problem was the non-application of the most-favoured-nation clause to the provisions granting land-locked countries right of access to the sea. In the Czechoslovak delegation's view, such non-application was the logical consequence of the special character of the right of transit to the high seas, which was granted to a land-locked country for the sole purpose of offsetting the inequality due to its geographical situation. The automatic extension of the special rights comprising it to third States would not achieve the desired result: it would be unjust to the land-locked State, and still more unjust to the transit State. In the light of various doctrinal and historical precedents, he stated categorically his delegation's view that it was theoretically and practically legitimate and reasonable not to apply the most-favoured-nation clause to all the special rights of land-locked States, whether those were fundamental rights or granted under bilateral agreements. To disallow such an exception to the clause would imply a simultaneous refusal to recognize the special features of the right of transit to the high seas and, hence, the very right of access to the sea.

6. The Czechoslovak delegation was convinced that the Committee would not shelve any of the important problems which it was called upon to solve.

7. Mr. SRESHTHAPUTRA (Thailand) said that his country's interest in the question of freedom of access to the sea for land-locked countries was proved by its signature of many international agreements, including the Barcelona Conventions of 1921 and the Convention and Statute of 1923 on the International Régime of Maritime Ports. Thailand had also concluded an agreement with Laos to grant that State access to the sea in accordance with the principles laid down in the Barcelona Convention on freedom of transit. In addition, the Thailand delegation had supported General

Assembly resolutions 1028 (XI) and 1105 (XI), which were the reasons for the present conference.

8. Thailand had therefore abundantly proved its desire to co-operate with land-locked States. He wished nevertheless to stress that, while his government was at all times prepared to give every consideration to requests by land-locked States, it was also anxious to safeguard Thailand's own legitimate interests. Land-locked countries normally tended to interpret the principle of freedom of the high seas as authorizing them to claim right of access to the sea. While it had no objection to the principle of free access to the sea for land-locked countries, the Thailand Government held that that principle was not accepted by all countries and that the principle of freedom of the high seas could not be interpreted in all cases as a justification of the right of transit. Certain delegations had wished to put the right of transit on the same footing as the right of innocent passage. The Thailand delegation rejected that view, on the ground that there was a difference between the right of transit and innocent passage in that, whereas the right of innocent passage could be exercised without the express agreement of the coastal State, the exercise of the right of transit was subject to authorization by the coastal State, which alone could grant passage. He would not embark on a lengthy consideration of that question, which had already been dealt with by other delegations, but would merely state that in the opinion of his goverment a land-locked country possessed no inherent right of transit across a neighbouring country. That right could be granted only under an agreement between the parties. That was why, incidentally, international legislation was less advanced on that point than in relation to the others.

9. It did not seem that the time had come to codify the principle of the free access to the sea of all land-locked countries ; as they had all in practice been given access to the sea under bilateral or multilateral agreements, and as most of them seemed to be satisfied with present practice, there was no reason for undue haste in framing principles. In the meantime, the land-locked countries should endeavour to improve their positions by acceding to some of the existing conventions and agreements relating to the right of transit and the freedom of access to the sea, rather than try to frame new conventions. At the present juncture, the Conference should not attempt to achieve anything more than an agreement on the broad principles governing the rights of land-locked States.

10. Mr. COMAY (Israel) felt that it was not necessary to specify precisely the theoretical bases of certain rights before formulating them. It was sufficient to regard access to the sea as an aspect of the right to utilize the high seas, and to state rules in the light of the practice of States. That was what the Preliminary Conference of Land-locked States had wisely done in its report (A/CONF.13/C.5/L.1).

11. His delegation took the view that, while the principles had an independent place in international law, they could be implemented only through agreements. As the French representative had pointed out, no one but the parties themselves could take into account all the technical, financial and legal aspects of the situation in which one country used another country's ports and transport facilities. A draft code could not replace direct negotiation and the conclusion of agreements, but it would provide an international basis for the negotiation of such agreements and a framework of rules which would be incorporated in treaties and agreements. A problem might arise, however, if a coastal State or a State of transit refused to enter into a contractual agreement or to apply the essential principles which were submitted for consideration by the Conference. That might happen where a State attempted to exploit its geographical situation as a means of exerting pressure on a neigbouring State or of subjecting it to political blackmail. Such situations were not unknown at the present time, and might occur again in the future. It was therefore essential to lay down standards of conduct for States, even if it was necessary to postpone until a later stage the study of the legal machinery for the settlement of disputes.

12. There was a serious weakness in principle VI as enunciated by the Preliminary Conference, which entitled the State of transit to protect what it regarded as its " legitimate interests " but did not even include a provision against discriminatory measures. The principle as it stood afforded scope for political abuses. The delegations of Czechoslovakia and Afghanistan at the Preliminary Conference had also been concerned with that question. In his own delegation's view, provisions should be introduced into the instrument finally adopted by the Conference to fill the gap.

13. Although the right of innocent passage was within the purview of the First Committee, his delegation wished to speak on it because at least two aspects of the rights inherent in navigation were of especial interest to the land-locked States. To begin with, States whose ships were obliged to cross the territorial sea of another State in order to reach the high seas depended primarily on the rules governing the right of innocent passage. In that connexion, there were gaps in the text of article 17 of the International Law Commission's draft. The right of a coastal State to suspend the right of innocent passage was not precisely defined and was based on criteria that were not sufficiently objective ; moreover, the text failed to specify that the right of suspension could be exercised only on condition that measures were taken to avoid any discrimination. In general, the draft code failed to make sufficiently clear that the right of innocent passage was a right independent of the coastal State's sovereignty and in no way subordinate to it. Secondly, there was the question of land-locked countries' river ports situated on navigable waterways with access to the sea. In that case, freedom of access to the sea meant freedom of access to seaports : where the route to a port crossed the territorial sea of another State, that State should not be entitled to suspend the exercise of the right of innocent passage ; moreover, freedom of access to seaports should extend beyond the territorial sea and include international navigable waterways. In that connexion, the land-locked countries should, in his delegation's opinion, study closely the draft articles at present before the First Committee.

14. The Barcelona Convention of 1921 and the Convention signed at Geneva in 1923 had been concluded pursuant to the provisions of article 23 (*e*) of the Covenant of the League of Nations, and there

were no similar provisions in the Charter of the United Nations. It was therefore important to prepare, under the auspices of the United Nations, a set of general principles to which the provisions of the Barcelona Conventions and other conventions and agreements could be related. The text of the conventions signed at Barcelona and Geneva did not appear to provide for the free accession of all the States Members of the United Nations represented at the Conference on the Law of the Sea, particularly those which had recently achieved independence. The accession clauses should be brought into line with United Nations practice.

15. Mr. DARA (Iran) considered that the instructions given to the Conference by the General Assembly regarding the freedom of access of land-locked countries to the sea were naturally different from those regarding the action to be taken on the International Law Commission's draft. He further considered that the question of free access to the sea of land-locked countries should be studied just as thouroughly as the other parts of the conference programme, since it involved two intrinsically different and conflicting concepts, and an attempt should be made to reconcile them. One was the concept of state sovereignty, which presupposed the conclusion of bilateral agreements ; the other was the concept of the access of land-locked States to the sea, and it would not be possible in practice to reconcile those concepts by a universal declaration.

16. The Iranian delegation reserved all its rights, and could not commit itself before studying thoroughly all aspects — particularly the political, geographical and economic aspects — of the question.

17. Mr. MELO LECAROS (Chile) considered that the material presented for examination by the Committee had been well studied by the Preliminary Conference of Land-locked States, which had been able to deduce some clear and firm principles. The right of land-locked States to communication with the high seas had been recognized by all speakers in the Committee. It remained to give formal expression to that unanimity. The only divergence of opinion related to the origin of the right of land-locked States to free access to the sea. It was apparently moral imperatives which required recognition of the right in question, for that right was essential to the very existence of the land-locked States, besides being in accordance with the interests of the maritime States themselves.

18. Chile's interest in the question was explained by the presence on its frontiers of the land-locked State of Bolivia. Under agreements between Chile and Bolivia, Bolivia was given transit rights in respect of the movement of persons and goods in both directions through Chilean territory, and was permitted, among other things, to establish customs offices at Chilean ports. Bolivian transport operations through Chilean territory were efficiently handled by railway lines carrying essentially transit traffic. Pipelines would take Bolivian oil to the Chilean port of Arica. Such were the happy results of a policy conducted in a spirit of understanding and friendship.

19. Subject to certain reservations which it would formulate in due course, the Chilean delegation approved the principles enunciated by the Preliminary Conference in its report.

20. Mr. BHUTTO (Pakistan) said his delegation had examined with profit the report of the Preliminary Conference of Land-locked States and the statement made by the Chairman at the 3rd meeting. However, the question of the freedom of access of land-locked States to the sea had not been studied by the International Law Commission, and consequently governments had not had the opportunity to present their observations. Such questions must be dealt with cautiously and in stages ; it was unnecessary to emphasize the wisdom of a patient approach. His delegation therefore considered that it would be useful and in accordance with normal practice to refer to the International Law Commission not only the question of the freedom of access of land-locked countries to the sea, but also the wider question of transit rights as a whole. That procedure seemed the more advisable since the land-locked countries had stated quite frankly that they were not confronted with any practical problems requiring immediate solution.

21. His delegation had combed international law in vain for the right or series of rights which land-locked countries sought to arrogate to themselves. An eminent jurist had even expressed the opinion that a State owed no legal duty to another to yield to it privileges of transit across its territory. Consequently, it would be dangerous to submit to a concept of international law that sought the recognition of rights by analogy. On the one hand, there were the seven principles proclaimed by the land-locked countries, and on the other was the fundamental and universally recognized principle of national sovereignty, which transcended all ancillary considerations. Nevertheless, his delegation would refrain from making any premature suggestions for the solution of that conflict of principles. It fully sympathized with the position of land-locked countries and the difficulties arising from their geographical situation, but if the land-locked countries claimed the right of transit to the sea across the territory of a coastal State, they must also admit that that same right should be granted to countries which were geographically divided and whose parts were separated by alien territories. Thus any country placed in a difficult geographical situation, whether land-locked or not, would have the right of transit. The dictates of justice and equity would grant countries whose territories were split up a right of transit by means of a corridor running through the territory of another State or States.

22. The relations between land-locked countries and States of transit were satisfactorily regulated by bilateral and multilateral treaties. The obligations devolving from those treaties constituted the safest guarantee. The sanctity of a contract voluntarily arrived at was infinitely better than a contentious, nebulous right. It was paradoxical, and even tragic, that the land-locked countries considered that their interests would be better served by departing from such a favourable situation.

23. There seemed to be an impression that the issue was confined to land-locked countries, but that impression was wholly wrong. The question concerned all States, but especially maritime States, for it was they who were called upon to sacrifice a part of their sovereignty despite perfectly satisfactory existing arrangements. If the land-locked countries could demand recognition of a collective right by announcing a

common denominator of agreement, the maritime and transit States should also be given an opportunity to come together and pronounce their collective views.

24. In accordance with resolution 1105 (XI), by which the General Assembly had invited the Conference to study the question of free access to the sea of land-locked countries, his delegation was quite willing to study the problem in all its details, but there seemed to be an obsession on the part of certain delegations to stampede the Conference into accepting certain rules. It should be reiterated that the formulation of such rules was premature and exceeded the recommendations of the General Assembly. He had deliberately refrained from going into the merits of the seven principles enunciated by the Preliminary Conference because he considered that they had not been given sufficient study.

25. Mr. SEN (India) said that his government had always upheld the principle of the freedom of the high seas, which should be open to all States without any distinction. However, the question of the right of land-locked States involved a host of extremely complex problems, for there might be conflicts between the rights of those States and the sovereignty of the countries of transit. In view of that situation, the Commission should proceed with great caution. Reviewing the terms of General Assembly resolution 1105 (XI), he drew attention to a certain inconsistency between the provisions of paragraph 2 and those of paragraph 3. While paragraph 3 referred to the question of free access to the sea, as established by international practice or international treaties, paragraph 2 provided that the Conference might embody the result of its work in one or more international conventions or such instruments as it might deem appropriate. In his delegation's opinion, the Conference should consider only the question of free access to the sea by land-locked States and should refrain from codifying that principle in an international convention or other similar instrument. There was a wide difference between the freedom of the high seas and the right of access to the sea, which depended on transit. The former right was in fact an established principle of international law, whereas the latter was governed by the sovereignty of the coastal State.

26. Reviewing the principles formulated by the Preliminary Conference of Land-locked States, he pointed out that the first principle (Right of free access to the sea) contained in annex 7 of the Preliminary Conference's report was drafted in too general terms ; as a result the text lacked precision and its implications were difficult to grasp. If it implied recognition of the right of transit, it would hardly be acceptable to the Indian delegation.

27. On the other hand, his delegation fully accepted the principles concerning the right to fly a maritime flag and the right of navigation. The fourth principle (Régime to be applied in ports) introduced a new concept. It was true that the freedom of the high seas implied that land-locked countries enjoyed the same rights on the high seas as other States in respect of navigation, but there could be no question of granting them the most favoured treatment embodied in the fourth principle as drafted by the Preliminary Conference. His delegation was prepared to accept the Preliminary Conference's fifth principle (Right of free transit) ; and in that connexion he recalled that on 13 February 1950 the Indian Government had concluded a transit agreement with Nepal. The right of free transit, however, did not preclude the levying of certain taxes or charges, which were necessary in order to prevent unscrupulous traders from exploiting the situation for their own benefit. His delegation could accept the sixth and seventh principles dealing with the rights of transit States and existing and future agreements, but with certain reservations concerning the exercise of the right of transit.

28. His delegation held the view that all coastal States should conclude agreements with land-locked countries. The acceptance of the principle of free access to the sea by land-locked countries did not, however, seem to require its immediate inclusion in a general convention. The General Assembly should be asked to refer the question for consideration by the International Law Commission with a view to a solution that would reconcile the interests of all concerned.

29. Mr. BUU-KINH (Republic of Viet-Nam) thought that, in order to ensure their economic development, the right of access to the sea of land-locked countries should be recognized without question. That right should not be regarded exclusively from the standpoint of the land-locked countries, and its exercise should not prejudice the law and order, security and vital interests of the coastal State.

30. In the present legal situation, the methods of application of the principle of the freedom of transit should be governed by agreements concluded in a liberal spirit. Such a spirit governed the relations between Viet-Nam and Laos, which latter enjoyed the most liberal right of transit on entry and exit both for goods and persons. Viet-Nam intended to improve its means of communication in order to facilitate transit, and an agreement between his country and Laos would determine the methods of application of the principle of free access to the sea.

31. In the Committee, divergencies of view had been revealed on two points. The first, a theoretical one, was the basis of the principle of free access to the sea ; the second, a practical one, was the usefulness and wisdom of drafting a general convention. In order to settle that point, a number of questions arising out of it should be borne in mind : whether the subject was suitable for codification ; whether the existing international instruments provided sufficient safeguard for the interests of the land-locked countries ; whether, instead of concluding a general convention, it would not be better to increase the number of ratifications of the 1921 Barcelona Convention on freedom of transit ; whether the Preliminary Conference's report could offset the lack of any real preparatory work ; whether the most-favoured-nation clause should not be given prior study by a competent body ; whether it was possible to apply the provisions of a single instrument to the specific circumstances of each of the land-locked countries without diminishing the rights of some of them ; whether international relations would be improved or not by the preparation of a convention ; and whether a general declaration, stating principles in flexible forms of words

and exempt from denunciation, would not be the best solution.

32. The Viet-Nam delegation hoped that in spite of the technical difficulties, and bearing in mind existing situations, the Committee would reach a wide measure of agreement.

33. Mr. VELILLA (Paraguay) said that Paraguay was a land-locked country which enjoyed the right of free access to the sea by means of international rivers which flowed into the Atlantic. That right had been confirmed and developed through treaties signed with Argentina and Brazil; he would in particular draw attention to those by virtue of which free ports and duty-free warehouses had been established, thus giving practical effect to his country's right of free access to the sea.

34. In his delegation's opinion, it was the duty of the Conference to establish the right of free access to the sea of the land-locked States, already recognized by the law of nations and confirmed by international usage and by existing conventions, by giving it the standing of a rule of universal international law. The bilateral or multilateral treaties between land-locked States and their coastal neighbours followed different lines in accordance with the special needs of the parties, but all of them recognized without question that fundamental right. It could therefore be stated that the right of free access to the sea by land-locked States formed part of existing international law; that, if it did not, the principle of legal equality between States would disappear and the right of land-locked States to freedom of the seas would be meaningless. To question that right would indicate not merely that international law had failed to progress but that it had suffered a serious set-back.

35. His delegation was convinced that, in spite of the doubts voiced by several delegations with regard to the nature of the right of free access to the sea by land-locked States — and hence of the right of free transit — a just solution could be found, benefiting all the peoples of the world and increasing the prestige of the States taking part in a conference the purpose of which was to codify the law of the sea.

36. Mr. RODRIGUES (Portugal) expressed his satisfaction at the interest taken by almost all delegations in the question of free access to the sea by land-locked States. His delegation wished also to make a contribution to the discussion, and assured the Committee of its wish to take part in the search for a positive solution. It was in this spirit that the Portuguese delegation, in the debates in the Sixth Committee of the General Assembly of the United Nations, had supported the draft resolution [1] which provided for the examination of that question by the Conference. It was indeed not easy to reach a solution of that question which would reconcile all the interests of the States concerned. Nevertheless, it was to be hoped that the Committee would find a reasonable compromise between the desires of some States and the legitimate rights of others, all the more so as a number of land-locked countries already enjoyed appreciable advantages granted to them by coastal States under bilateral or multilateral agreements. For that reason his delegation was entirely in agreement with those speakers who had suggested that, in view of the lack of preparatory work, the Committee should merely recommend that the International Law Commission should continue work on the subject.

37. Mr. SHAHA (Nepal) reminded the Committee of the memorandum distributed by the Secretariat concerning the method of work and procedures of the Conference (A/CONF.13/11). Paragraph 2 of that document noted the terms of resolution 1105 (XI), by which the Conference on the Law of the Sea should embody the results of its work in one or more international conventions or such other instruments as it might deem appropriate; and study the question of free access to the sea as established by international practice or treaties. In paragraph 3, the Secretariat pointed out that the distinction between those two tasks was not a fundamental one, but arose merely from the circumstances under which they were allotted to the Conference. Again, in paragraph 6 it was stated that, while resolution 1105 (XI) of the General Assembly contained no specific recommendation to the Conference to embody in an international convention or other instruments the results of its study of the question of free access to the sea of land-locked countries, there would at the same time appear to be no reason why the Conference should not embody the results of its work in a suitable instrument, if it considered it appropriate to do so. His delegation felt that it should quote those comments of the Secretariat to delegations who stated that it was too early to embody the rights of land-locked States in an international convention.

38. Mr. BOURBONNIERE (Canada) noted with satisfaction that, generally speaking, the land-locked States experienced no difficulty in obtaining access to the sea, and that coastal States did everything in their power to facilitate the transit of merchandise proceeding from or towards those States. The Canadian Government would do all that it could to secure to land-locked States access to the high seas and the use of all its resources.

The meeting rose at 6 p.m.

ELEVENTH MEETING

Saturday, 29 March 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Study of the question of free access to the sea of land-locked countries *(continued)*

General debate (continued)

1. Mr. TABIBI (Afghanistan) regretted that the Pakistan representative in his statement at the 10th meeting had not approved of the efforts of the land-locked countries to win recognition for the rules of law which should govern the access of those countries to the sea and free transit for persons and goods. He also regretted that that representative had expressed views in

[1] See *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 53, document A/3520, para. 14, sub. paragraph iv.

contradiction with promises recently made by members of the Pakistan Government.

2. The absence of any reference in his previous statements to the difficulties encountered by Afghanistan in the matter of transit should not cause the Committee to conclude that the Afghan Government was perfectly satisfied with the existing state of affairs. The transit treaty concluded with the United Kingdom about forty years previously had lapsed when Pakistan and India had acquired independence in 1948. As yet, Afghanistan had been unable to persuade Pakistan that the treaty should be replaced by another instrument regulating the question of transit. On the initiative of Afghanistan, the Economic Commission for Asia and the Far East had adopted a resolution [1] recommending that every transit facility be accorded to land-locked countries; unfortunately, however, that recommendation had not brought any improvement in Afghanistan's difficult position. What was more, Afghanistan had been subjected in 1955 to a blockade which had paralysed its economic life and caused great hardship to its population.

3. Afghanistan was most anxious to entertain friendly relations with all countries and put forward no territorial claim. Its sole object was to obtain the protection of law and the support of public opinion in order that no country should be able to exercise economic pressure on another.

4. Mr. BHUTTO (Pakistan) expressed surprise at the remarks of the representative of Afghanistan. They might give the impression that relations between Afghanistan and Pakistan were not friendly, whereas, in fact, the heads of State of the two countries had recently exchanged visits. The treaties concluded by the State to which Pakistan had succeeded had not lapsed, as the Afghan representative had said, and Pakistan accepted all the obligations stipulated therein. If, at a particular moment, relations had been somewhat strained, that was not the fault of Pakistan, which had merely taken the necessary steps to safeguard its security.

5. The CHAIRMAN thought that, the general debate having been concluded, the Committee should wait and see in what form the other committees recommended the Conference to embody the results of their work before considering what form its own recommendations should take — whether that of draft articles, a declaration or a resolution.

6. He suggested that the Commitee proceed to the study of the two proposals before it in the order of their submission: the nineteen-power [2] proposal (A/CONF. 13/C.5/L.6) and the three-power [3] proposal (A/CONF. 13/C.5/L.7). When the two proposals had been discussed, it would be advisable to set up a drafting committee consisting, say, of the representatives of twelve delegations, for the purpose of framing the text to be submitted to the Committee for adoption.

7. Mr. RUEGGER (Switzerland) believed that it would be helpful to the Committee's proceedings if he offered some explanations concerning document A/CONF.13/C.5/L.6. In his opinion it was a working paper submitted solely by the land-locked countries, and not by a group of countries comprising both States without a seacoast and coastal States. Besides, it would be premature for a proposal to be submitted jointly, at that juncture, by both categories of States, especially as the Committee should hear more fully the views of countries situated between the land-locked countries and the sea. The text of the document was a restatement of the principles enunciated by the countries which had taken part in the Preliminary Conference (A/CONF.13/C.5/L.1, annex 7); Switzerland approved the substance of the document, having reservations as to its form only.

8. Mr. WILLFORT (Austria) stated that his delegation had not taken part in the general debate because it had felt that the problem had been competently presented by the other delegations which had spoken.

9. The sole purpose of the informal meetings held by the delegations of the land-locked countries had been to prepare a working paper; only for procedural reasons was document A/CONF.13/C.5/L.6 styled a proposal. Its object was to express in more appropriate form the principles enunciated at the Preliminary Conference. All the delegations which had taken part in its drafting were, of course, free to propose any changes they considered necessary.

10. Father DE RIEDMATTEN (Holy See) explained that his delegation was not a co-sponsor of document A/CONF.13/C.5/L.6 because that document was submitted in the form of a proposal. That did not mean, of course, that his delegation would not participate in the discussion on the document which, he hoped, would be conducted in a fully co-operative spirit.

11. Mr. NOEL (San Marino) associated himself with the statement of the representative of the Holy See.

12. Mr. BESSLING (Luxembourg) agreed with the Swiss and Austrian representatives that document A/CONF. 13/C.5/L.6 should be treated as a working paper. He suggested that the Committee should set up a working party, composed in equal numbers of representatives of land-locked States and of coastal States, to reconcile the texts and to report to the Committee.

13. Mr. BEN SALEM (Tunisia) did not share the Swiss representative's opinion; actually, however, the fact that certain coastal States appeared with the land-locked States among the sponsors of document A/CONF.13/C.5/L.6 meant that those countries subscribed to the principles enunciated therein. Either of the documents before the Committee could be used as the basis of discussion.

14. Mr. BOURBONNIERE (Canada) said that the Committee should come to a decision forthwith on the form which its recommendations should take.

15. Mr. GEAMANU (Romania) said that the Committee should first determine what were the substantive rules to be formulated and then decide what form they should take. That had been the method employed for the drafting of the Barcelona Declaration; he asked whether

[1] See *Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 2* (E.2959), para. 43.

[2] Afghanistan, Albania, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxembourg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia, United Arab Republic.

[3] Italy, Netherlands and United Kingdom.

the Canadian representative would be prepared to agree to the procedure proposed by the Chairman.

16. Mr. GUEVARA ARZE (Bolivia) associated himself with the Romanian representative's remarks. It would be pointless to set up a working party at that stage. The two proposals were too divergent to be capable of being merged in a single text.

17. Mr. SRESHTHAPUTRA (Thailand) said that he would like to add to the Canadian representative's comments by remarking that, in his view, document A/CONF.13/C.5/L.6 did not contain a proposal in the true sense of the word since it incorporated notes and comments. It would be a waste of time to discuss the document in its present form.

18. Mr. JOHNSON (United Kingdom) said he could not unreservedly support the plan proposed by the Chairman. He doubted whether document A/CONF.13/C.5/L.6 formulated a proposal. Apart from a number of points or articles, that document contained commentaries, notes and reservations. Its sponsors should be asked to present it in a more appropriate form. The two texts could then be discussed concurrently. He was not trying to secure priority for the three-power proposal. Form was inseparable from substance, in such matters, and consequently the question of form could not wait for the discussion of substance.

19. Mr. MASCARENHAS (Brazil) said he too had doubts as to the exact nature of document A/CONF.13/C.5/L.6, which some delegations had submitted with reservations. Brazil's attitude would depend on the decisions regarding form, for Brazil was bound by certain international engagements; nevertheless, his delegation would adopt a conciliatory attitude in seeking common ground.

20. The CHAIRMAN said that, in his opinion, both documents contained proposals in keeping with the rules of procedure. The inclusion of notes and commentaries was not unprecedented.

21. Mr. SCHEFFER (Netherlands) considered that the Committee should discuss the texts simultaneously and then, when the discussion was concluded, establish a working party. He did not think it would be impossible to reach agreement.

22. Mr. BELTRAMINO (Argentina) said that he saw no real objection to the procedure suggested by the Chairman. As a compromise, the Committee might decide that delegations were entitled to deal with the question of form when discussing substance. He hoped that the problems would be examined calmly. The legitimate interests of the coastal State were undeniable and should not be forgotten.

23. Mr. BENSIS (Greece) said that substance and form should be discussed together.

24. Mr. TABIBI (Afghanistan) explained that document A/CONF.13/C.5/L.6 was drafted in a form intended to facilitate the Committee's work: the purpose of the notes was to make the sense clearer. He would vote against the three-power proposal; he saw no connexion between the opinions expressed in it and the statements made during the general discussion by the Netherlands and United Kingdom representatives.

25. Mr. BACCHETTI (Italy) said that the difference between the two documents was that, while one clearly indicated the nature of the proposed commitments, the other did not specify whether it was a set of articles or a declaration. But surely the Committee had a right to know what kind of text it was dealing with.

26. Mr. SRESHTHAPUTRA (Thailand) said that the three-power proposal (A/CONF.13/C.5/L.7) was more or less in line with the statement which he had made during the general debate, and he thought that he found himself in agreement with it. But he would be only too glad to consider any proposal, whoever sponsored it.

27. Mr. BHUTTO (Pakistan) said he was prepared to study both proposals with a view to reaching a solution acceptable to both sides.

28. Mr. KING (United States of America) said that it was premature to appoint a working party. The sponsors of document A/CONF.13/C.5/L.6 might consider whether they wished this text to be treated as a proposal within the meaning of the rules, or as a working paper. If there were two proposals, they should be examined together. It was indispensable that a decision should first be taken as to the form of the document.

29. Mr. PECHOTA (Czechoslovakia) said that the Committee had two proposals before it, both equally good in law. It would be premature to decide on the final form, since the result of the discussion could not be foreseen.

30. Mr. SAVELIEV (Union of Soviet Socialist Republics) agreed with the Chairman's constructive proposal. In his opinion, the nineteen-power text (A/CONF.13/C.5/L.6) contained a proposal within the meaning of the rules and should have priority over the three-power text because it was chronologically earlier. The proposal expressed the opinion of a large group of land-locked and coastal States whose circumstances differed and which belonged to different continents. It was based on the decisions of the Preliminary Conference of Land-locked States. It took account of the wishes expressed during the general discussion, whereas the three-power text (A/CONF.13/C.5/L.7) contained new proposals which had not yet been examined with sufficient attention. The question of form, being closely connected with the results of work in other committees, should be settled at a later stage.

31. Mr. LOOMES (Australia) proposed that the two documents should be discussed together, it being understood that delegations would be free to speak on the question of form during the debate.

32. After a debate on procedure, Mr. MASCARENHAS (Brazil), seconded by Mr. BOURBONNIERE (Canada), moved the closure of the debate.

It was so agreed.

The meeting rose at 1.25 p.m.

TWELFTH MEETING

Monday, 31 March 1958, at 3.25 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Procedural questions (concluded)

1. The CHAIRMAN said that he had suggested in his note [1] that, after the nineteen-power proposal (A/CONF. 13/C.5/L.6) and the three-power proposal (A/CONF. 13/C.5/L.7) had each been introduced by one of their co-sponsors, they should be discussed together point by point, in keeping with the wishes of some delegations. A decision on the form in which the result of the Committee's work should be embodied could only be reached once the proposals had been discussed; but that would in no way debar representatives from stating in the course of the discussion which form they preferred, whether a convention, a declaration, a resolution, or some other kind of instrument. The Committee might then set up a working party consisting of representatives of land-locked countries, maritime countries next to land-locked countries, and other maritime countries, selected on the principle of equitable geographical distribution. The working party would then, in the light of the Committee's proceedings, prepare a draft and submit it to the Committee for adoption.

The procedure proposed by the Chairman was adopted.

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.6, L.7)

2. Mr. GUEVARA ARZE (Bolivia) thanked the co-sponsors of the nineteen-power proposal (A/CONF.13/C.5/L.6) and, in particular, the delegations of States with a coastline for whom access to the sea was no problem. For Bolivia, however, it was one of vital importance.

3. The nineteen-power text was the fruit of a compromise among the land-locked countries and carried the hope of a compromise between those countries and the maritime States, especially those which were countries of transit. That the proposal was in the nature of a compromise was clear from the text. The note to section V specified that the Austrian delegation attached no wider implications to the principle than the obligations deriving from the Statute of Barcelona. The note to section VII made it clear that the clause did not apply to Bolivia's arrangements for its transit traffic through the territory of the coastal States towards the Pacific. That note was of capital importance to Bolivia, for it would be ridiculous to destroy regulations established by bilateral convention. Finally, the delegations of Austria, Luxembourg and Switzerland reserved their position as to the form and mode of codification of the rights of land-locked States. Thus, as Bolivia had wished and despite such divergent viewpoints, a common denominator had been found both at the Preliminary Conference and during the more recent conversations among the delegations of the land-locked countries. Though the proposal had not been signed by the Holy See and San Marino, the representatives of those States had expressed their approval of it.

4. Disagreement had been most marked over the objections which might be raised by neighbouring countries, whether maritime or States of transit. Some countries had taken the view that the land-locked States should be humble petitioners, begging to be allowed passage through neighbouring States. Others, among them Bolivia, had wished to explain their difficulties in all frankness in the certainty that they would thereby serve both their own interest and that of good understanding between States. It was obvious that one-sixth of the States in the world could not be left at the mercy of variable circumstances.

5. In general the draft was imperfect, it was far from satisfying the land-locked countries and it would admit of some constructive amendments, but it filled a gap and it was a basis of discussion which had been approved by nineteen States.

6. It had been said that there was no need to codify the law on the matter in question, since satisfactory rules had been established in bilateral or multilateral treaties. In 1919, in a note to the Commission on the International Regulation of Ports, Navigable Waterways and Railways of the Conference of the Powers in Paris, Switzerland had given the best possible answer to that objection. " Free access to the sea will be but an empty phrase unless *jus gentium* gives these [land-locked] countries the assurance that their communications ... will not depend on temporary agreements which can be revoked by other States at will." (A/CONF.13/C.5/L.1, annex 5). A guarantee of the right of free access to the sea should be included in the instrument adopted by the Conference. Inasmuch as the treaties were capable of being denounced, the transit countries were in a position to exercise powerful and unjustifiable influence on the land-locked countries.

7. It had been said, too, that there was a conflict between the right of free access to the sea and the sovereign rights of the States of transit. In most cases, however, transit was in the interest both of the land-locked State and of the coastal State. Some authorities held that the right of access to the sea could be granted as a concession. But, if access to the sea was a matter of life and death for a State, it would be contrary to the fundamental principles of the United Nations to admit that that right could form the subject of a concession.

8. Section I was the keystone of the whole nineteen-power draft. The contents of section II had been established by the Declaration of Barcelona. Both section II and section III were included in the International Law Commission's draft. Section IV reasserted the principle of the Geneva Convention of 1923. Section V was no less important. The right enunciated in that provision had been restricted in order to facilitate the adoption of the text. Section VI indicated that the exercise of the right of access to the sea by land-locked States constituted no threat to the sovereignty of coastal States and States of transit, since the right would be subject to agreement between the parties. According to section VII, coastal States and States of transit would be the only judges of their legitimate interests. Section VIII

[1] Conference room paper circulated to members of the Committee only.

safeguarded the freedom of the parties in their contractual relations. Section IX was designed to compensate for the lack of reciprocity, since at times a land-locked country had nothing to offer in exchange for the right it requested.

9. Replying to a question by Mr. MARTINEZ MONTERO (Uruguay), Mr. GUEVARA ARZE (Bolivia) stated that section IV did not apply to coastal traffic and that the régime proposed was that provided for in the Geneva Convention of 1923.

10. Mr. JOHNSON (United Kingdom) said that, before submitting the three-power proposal (A/CONF.13/C.5/L.7) — which could not fail to facilitate the Committee's work since its sponsors had taken into account all the views expressed during the general discussion — he would ask for further information on a few points from the sponsors of the nineteen-power proposal, and more particularly from those who had not spoken during the general debate.

11. He asked whether the principles embodied in that proposal were meant to constitute a statement of the existing law or to set forth the law which the proposal's sponsors would like to see established. The statement of principles — which, after all, were those adopted at the Preliminary Conference — did not take sufficient account of comments made during the general debate. That was perhaps why there was a danger that in some respects those principles might be too broad and even transcend the Committee's terms of reference. In that connexion, he asked whether the other co-sponsors shared the Austrian representative's opinion that the principle formulated in section V had no wider implications than the obligations deriving from the Statute of Barcelona, or whether it was their intention to enunciate a principle not established by international practice or by international treaties.

12. Introducing the three-power proposal, he said that part I was meant to prevent the adoption of discriminatory measures against land-locked countries which would exclude their ships on the high seas from the benefit of the régime applied to the ships of countries possessing a seacoast. Operative paragraph 2 of the three-power draft resolution (part II of the proposal) specified what, in the opinion of the three sponsors, should be the component elements of free access to the sea by land-locked countries. It was more important to define such free access to the sea than to enquire into its origin, especially as it was open to two different interpretations. If free access to the sea meant free transit, it was difficult to see what could be the purpose of enunciating two distinct principles. If, on the other hand, free access to the sea was intended to mean the sum of the rights relating to the sea, the word " access " was wrong, and an expression such as " free use of the high seas " would have been more apt.

13. In the opinion of the proposal's sponsors the right of free access comprised three elements, of which the first (the ability to sail ships on the high seas) related directly to the law of the sea, the second (the ability to transport persons and goods across the territory of certain countries) was not related to the law of the sea, and the third (the ability to use the ports of coastal States) was only in part related to the law of the sea. So far as the second and third elements were concerned, he said the rights and duties of the land-locked States were governed by principles not differing from those governing the rights and duties of other States, and no special régime was justified. In that connexion, he said it was open to many of the States concerned to accede to the conventions of Barcelona and Geneva and to conclude local or regional agreements on the basis of the principles underlying those two conventions. Those States to whom accession to those conventions was not open could agree to abide by their principles.

14. With regard to the element which was related to the law of the sea (the ability to sail ships on the high seas) the three-power draft resolution recommended that the instrument to be adopted by the Conference should not draw any distinction whatsoever between land-locked States and coastal States.

15. The question of the form of the Committee's decisions should be discussed forthwith. For that reason the three sponsors were recommending in their proposal, in the light of the distinction they had drawn between the several elements comprising the right of free access to the sea, that the element related directly to the law of the sea should form the subject of an additional sentence in article 28 of the International Law Commission's draft. With regard to the element only partly related to the law of the sea (the ability to use ports) and to the element of overland transit which was not related to the law of the sea at all, the sponsors felt that the Conference should not consider them in detail. That, incidentally, was why the International Law Commission had not felt it appropriate to submit draft articles on the access to ports from *terra firma*. It would be dangerous for the Conference to establish, in that respect, a special régime applying only to the land-locked States, as it would very probably invite all sorts of analogous claims from countries which considered that they suffered from some kind of geographical disadvantages. The good relations which in most cases existed between land-locked countries and their neighbours might suffer if the former were to insist that the latter should surrender part of their sovereignty. The only solution would be one worked out in a spirit of mutual concession and co-operation.

16. Mr. GUEVARA ARZE (Bolivia) said that, if the three-power proposal was adopted, it might have the unfortunate effect of debarring the land-locked countries from access to the sea.

17. Unlike the United Kingdom representative, he did not consider that the Committee was concerned with those rights of the land-locked countries which related solely to the sea. In fact, the Committee's business was to study the question of free access to the sea by the land-locked countries in all its aspects, and to find a solution. The right of innocent passage, the freedom of the high seas, the right to engage in fishing on the high seas and to lay cables, referred to in operative paragraph 5 of the three-power proposal, came within the province of other committees.

18. He did not object to the insertion in the instrument finally adopted by the Conference of the new article and the additional sentence in article 28 (A/CONF.13/C.5/L.7, part I), but that was not the way to solve the problem. Nor did the draft resolution (A/CONF.13/

C.5/L.7, part II) offer a solution; it seemed to imply that the right of free access to the sea of land-locked countries did not exist and, furthermore, that the General Assembly and the Committee, after considering the problem thoroughly, had recognized that fact.

19. Referring to operative paragraph 1 of the draft resolution, which recognized the importance of free access to the sea, he said that it was precisely because the General Assembly had also recognized its importance that it had entrusted the Conference with the task of finding a solution to the problems raised by such free access.

20. Of the three elements of free access to the sea enumerated in operative paragraph 2 of the three-power proposal, he only considered two to be important — the possibility of transporting persons and goods across the territory of States situated between land-locked countries and the sea coast, and the possibility of using the ports of coastal States. It was no solution simply to enumerate the elements of free access to the sea by land-locked States, or to define what was meant by free access; a definition did not provide a practical answer.

21. With respect to operative paragraph 3, he said that it was illogical, in connexion with the free access to the sea of land-locked countries, to require the application of the principle of reciprocity.

22. Paragraph 4 merely presented the semblance of a solution since reference to the Barcelona Convention did not broaden its scope; while paragraph 5 enumerated rights which the Committee was not competent to study.

23. He realized that the sponsors had made a commendable attempt to take into account the opinions expressed in the Committee but was doubtful whether there was any real hope of finding a solution simply by adopting a resolution reflecting such opinions. What was needed were rules of general validity which would help the land-locked countries to overcome their difficulties.

24. Mr. BACCHETTI (Italy) said that, like the United Kingdom representative, he would like to know whether the sponsors of the nineteen-power proposal considered that the right of free access to the sea already existed or should be established. The usefulness of the Committee's work would depend to a large extent on the answer to that question.

25. The CHAIRMAN explained that the land-locked countries considered that that right was recognized in international practice and by treaties in force. It was, in fact, *lex lata* which had not yet been given expression.

26. Mr. USTOR (Hungary) pointed out that by resolution 1105 (XI) the General Assembly of the United Nations had requested the Conference to study the question of the free access to the sea of land-locked countries but had not wished to limit its task to the codification of existing law. The question whether existing law should be codified or law created had also arisen in other committees and it had been recognized to be sometimes difficult to determine which rules were universally accepted and which rules should be so accepted. In his opinion the distinction was an artificial one, and he failed to see why the Fifth Committee should, in that respect, adopt an attitude different from that of the other committees.

27. In reply to a question from Mr. SCHEFFER (Netherlands), the CHAIRMAN explained that, in the view of the land-locked countries, the right of free access to the sea included all rights that would enable such countries to enjoy any of the advantages inherent in the freedom of the high seas, and that, therefore, it was much broader in scope than the right of free transit.

The meeting rose at 5.55 p.m.

THIRTEENTH MEETING

Tuesday, 1 April 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

In the absence of the Chairman, Mr. Guevara Arze (Bolivia), Vice-Chairman, took the Chair.

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.6, L.7) *(continued)*

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION I, AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARAS. 1 AND 2

1. Mr. ANDERSEN (Iceland) said that Iceland had become one of the co-sponsors of the nineteen-power proposal because it wished to show its interest in a question which was of concern to all members of the international community. Iceland, being neither land-locked nor a country of transit, could take an entirely unprejudiced view of the subject. It had at all times supported the freedom of the high seas and the right of all States without distinction to use the high seas as a means of communication.

2. The principle of the freedom of the high seas being universally recognized, the land-locked States should, like other States, have free access to the sea. The principle of the freedom of the high seas was the source of the specific rights of States unfavourably placed by reason of their peculiar geographical position. The right of land-locked States to sail ships under their flag had been recognized more than thirty years before in the Barcelona Declaration, and the Geneva Convention on the international régime of maritime ports had clearly enunciated the rights of those States and had exempted them from the condition of reciprocity.

3. The right of transit, too, should be regarded as part and parcel of the régime governing free access to the sea. The right of transit and the interests of land-locked States should not, of course, prejudice the sovereignty and the legitimate interests of the States of transit. His delegation accordingly considered that in seeking a solution, the objective criterion of equity should be applied. To question whether the right of transit existed in international law, as several delegations had done, was not the right start. It was incorrect to argue that, because it had not been formulated, the right did not exist. If a right such as that of free access to the high seas was recognized in international law, then the other rights without which it could not be exercised should likewise be recognized. That was the view of the great

Italian jurist Anzilotti and the task of encouraging the progressive development of international law and its codification placed on the General Assembly under Article 13, 1 (*a*) of the Charter should be taken as applying to cases such as the one under discussion.

4. Though, for the purpose of regulating the right of land-locked countries to free access to the sea, bilateral agreements were of great value in that they settled all the practical problems, he thought that the Conference should provide a general solution, for which all the requisite conditions were already fulfilled. In the opinion of his delegation, the well-balanced and moderate proposal of the nineteen States provided a satisfactory basis for such a solution.

5. Mr. BACCHETTI (Italy) said he had been disappointed at the Bolivian representative's unfavourable reaction to the three-power proposal, the sponsors of which had been at pains to put forward the best possible solution to the problem of the free access of land-locked countries to the sea. He had been surprised to hear that representative say that, if the right of free access to the sea as defined in section I of the nineteen-power proposal were not explicitly recognized, any other decision that might be taken would be valueless. But surely it did not follow necessarily that, simply because a resolution of the United Nations General Assembly recommended study of the question and because that study had been referred to the Fifth Committee of the Conference, it was the Conference's duty to recognize the right of the land-locked countries to free access to the sea.

6. It had been affirmed that the right of free access to the sea existed as a fact. In his delegation's opinion, it had never been proved, either in the documents before the Committee or in the statements made during the general discussion, that in that respect the coastal States were under any obligation towards the land-locked States or that the latter could make claims on the coastal States on the strength of general international law. No such thing emerged from any of the decisions taken by international organs. Even if the list of agreements in which the right was granted to land-locked countries were ten times longer, the claim that the right was derived from general international law would not be any more convincing. It would have to be established that, in the sources of international law, which were treaties and custom, the right was recognized because it should be recognized. If one admitted the existence of a third source of international law — namely, the general principles of law recognized by civilized nations — it would have to be shown that the legal systems of all those nations recognized the principle of free access to the sea for land-locked countries.

7. The only relevant case of resort to an international tribunal that could be quoted was that of the dispute between Poland and Lithuania regarding transit by rail, on which an advisory opinion of the Permanent Court of International Justice had been given on 15 October 1931.[1] The Court had held that, under existing international commitments, Lithuania was not bound to take the necessary steps to open to international traffic a stretch of the railway line linking the two countries, and had concluded that any duty on the part of Lithuania to take such steps could derive only from a special agreement. It was to be noted, incidentally, that in all the relevant documents before the Committee the use of the term " right " was scrupulously avoided.

8. The keystone of international law was the consensus of all countries and it had not been proved that there was any tacit agreement limiting the most precious possession of all States, their sovereignty. Yet, to recognize the free access of land-locked countries to the sea as part of general international law would, in fact, limit that sovereignty. There was, admittedly, nothing to prevent States creating such a right, but the Italian delegation considered that preparatory studies should be made first. In that connexion, he suggested that, if the views expressed in the Committee could not be reconciled, it might adopt the proposal mentioned at the 10th meeting by the Pakistan delegation of referring the question to the International Law Commission.

9. Mr. PECHOTA (Czechoslovakia) said that section I of the nineteen-power proposal was in the nature of a general provision like article 1, paragraph 1, of the draft prepared by the International Law Commission. It was customary in international law to give a general definition of a right. In his delegation's opinion, the failure to recognize the right of the land-locked States to free access to the sea would in effect make it impossible for them to enjoy the freedom of the high seas.

10. Mr. TABIBI (Afghanistan) associated himself with the views expressed by the Bolivian representative at the previous meeting; he was very sorry to note that the spirit of understanding and co-operation which had been in evidence in the General Assembly when resolutions 1105 (XI) and 1028 (XI) had been adopted did not prevail at the Committee's meetings. If it was not possible to establish international law on the basis of logic and equity, the world might well witness the return of the law of the jungle. Some representatives had doubted whether free access to the sea by land-locked countries was a right recognized in international law. After searching study, the participants in the Preliminary Conference had reached the conclusion that it was indeed a right, and that was also the opinion of the sponsors of the nineteen-power proposal, not all of which were land-locked countries. The objections now being voiced had been expressed at the time when Switzerland had applied for the grant of the right to a flag; yet that right was not now disputed by anyone.

11. Some representatives had asked whether the principles recommended by the nineteen Powers were *lex lata* or *lex ferenda*; in reply, he would say that the proposal's sponsors took the view that the principles were *lex lata*. Even if they were not, the Conference was empowered to adopt them under Article 13, 1 (*a*) of the Charter of the United Nations. What was more, it was its duty to adopt them, for otherwise the freedom of the high seas would be illusory so far as the land-locked States were concerned.

12. With regard to the Pakistan proposal to which the Italian representative had just referred, he pointed out that if the General Assembly had felt that the Conference

[1] Publications of the Permanent Court of International Justice, Series A, No. 13.

was not in a position to study the question it could itself easily have referred it to the International Law Commission. The General Assembly had recommended the Conference to study the question of the free access to the sea of land-locked countries and to settle it in a co-operative spirit; the Conference should heed that recommendation.

13. Mr. BHUTTO (Pakistan) stated that it was not his delegation's intention to submit a proposal. Possibly the misunderstanding was due to the fact that he had said in his statement at the 10th meeting that his delegation had not been able to study the problem in sufficient detail to express a judgement.

14. So far as the Committee's terms of reference were concerned, he said that it was improper to cite the discussions and conversations which had preceded the adoption of resolution 1105 (XI) in support of a broad interpretation of the strict meaning of the words " study " and " question " used in operative paragraph 3 of that resolution. The delegations which had voted in favour of that resolution did not construe the word " study " to mean " settle ", or the word " question " to mean " right ".

15. Mr. VELILLA (Paraguay) stated that although his country had no sea-coast, it had free access to the sea by rivers which had an international status. Its right to free access to the sea had been confirmed and amplified on a number of occasions, more particularly in bilateral agreements concluded with Argentina and Brazil. It followed that, from the legal point of view, Paraguay was not a State having no access to the sea. Nevertheless, his government considered that the Conference should study and confirm the right of free access to the sea of land-locked countries. That right was in fact recognized in international law, and was confirmed by international practice and international treaties. He stressed the great importance of the decisions adopted by the Economic Conference of the Organization of American States which had been held at Buenos Aires in 1957; those decisions related to an entire continent and constituted a most valuable precedent.

16. In his delegations's opinion, the right of free access to the sea by land-locked countries was a universal rule of international law, and the General Assembly had expressly empowered the Conference to confirm that right, without which the freedom of the high seas would be fictitious so far as the land-locked States were concerned.

17. Mr. MASCARENHAS (Brazil) said that his delegation was reluctant to deal with the substance of the two proposals, and regretted that it had no relevant documentary or other evidence at its disposal.

18. The question was difficult, and to be approached with caution. Not all States had the same responsibilities. The responsibility of land-locked States differed from that of coastal States, and the responsibility of each from that of States surrounded by water. After a century and a half of good international relations, his country was familiar with that kind of responsibility, and he hoped that the same was true of the countries represented by the other delegations. He had been pleased to hear the representative of Paraguay reaffirm the authority of the Economic Declaration of Buenos Aires. While it was true that general agreement had not materialized at Buenos Aires, the moral force of the declaration was greater than that of any other document. The principles underlying it were reaffirmed in the nineteen-power proposal.

19. Many principles were enshrined in conventions. But only a few States had ratified the Convention and Statute of the Freedom of Transit, the Convention and Statute on the Régime of Navigable Waterways of International Concern and the Additional Protocol to that Convention, the Declaration recognizing the Right to a Flag of States having no sea-coast, signed at Barcelona on 20 April 1921, or the Convention and Statute on the International Régime of Maritime Ports signed at Geneva on 9 December 1923. Certain States should hasten to ratify those instruments, for otherwise one might be tempted to discern a connexion between their attitude in the committee and the information given about the extent to which those instruments had been ratified.

20. The Brazilian delegation agreed that the question should be considered in a realistic light. It had adopted a very liberal attitude, but it could not ignore the factors which prevailed in relations between sovereign States.

21. Mr. ASANTE (Ghana) said the Committee did not possess a basic draft; the nineteen-power proposal filled that gap. The delegation of Ghana was one of the co-sponsors of that proposal, believing it desirable to establish on a sound foundation the right of land-locked countries to enjoy the freedom of the high seas. The principles set out in the proposal could not be put into force without the co-operation and goodwill of the coastal States. It was to be hoped that other delegations would introduce proposals based on the highest motives. If the two documents (A/CONF.13/C.5/L.6 and A/CONF.13/C.5/L.7) before the Committee were compared, it would be found that, on the whole, the views expressed in them coincided. The three-power proposal gave too much importance to the coastal State. It was necessary, however, that an agreed formula should be worked out.

22. Mr. USTOR (Hungary) said that Hungary was one of the co-sponsors of the nineteen-power proposal. He confirmed that section I was the corner-stone of the document. The issue was whether the Committee should decide that the land-locked countries had the right of access to the sea, or whether it should recognize (in the words of paragraph 1 of the three-power proposal) the " importance to land-locked countries of free access to the sea ".

23. In an article entitled " Codification and Development of International Law",[2] Lauterpacht, now a judge at the International Court of Justice, defined the cases which would be proper subjects for codification in the following terms: (*a*) cases where no agreed law existed; (*b*) cases where existing law was undisputed; (*c*) cases where exising law was not undisputed but codification was called for as a result of considerations of progress, mutuality of economic interest, international interdependence, good faith, or the rights of man. Free access to the sea was a right for all land-locked States. It was

[2] *The American Journal of International Law*, Vol. 49 (1955), p. 16.

immaterial under what heading it was codified ; a whole series of treaties had confirmed the right and it had never been disputed. If a State refused absolutely to acknowledge it, that State's international responsibility would be involved ; naturally, however, a State was entitled to stipulate certain reasonable conditions.

24. No State should prevent another State from exercising rights that were generally recognized, and the right to use the sea was generally admitted to belong to all States, whether they possessed a coastline or not. Section I of the nineteen-power proposal was declaratory of an existing right, and stated a rule which was capable of being codified.

25. Father DE RIEDMATTEN (Holy See) agreed with the conciliatory remarks of the representative of Ghana. It was to be hoped that attitudes would not harden ; if they did, delegations which had been disposed to be helpful might well take refuge in abstention.

26. The CHAIRMAN proposed that the Committee should consider section II of the nineteen-power proposal (A/CONF.13/C.5/L.6) and paragraph 4 of the three-power proposal.

27. Mr. DONOSO (Chile) said that he had no objection, provided that it was understood that the discussion was not closed.

28. Mr. THOMAS (Austria) recalled that, at the 12th meeting, some members of the Committee had asked what was the scope of the right of free access to the sea, and Professor Zourek had stated that the right comprised all the rights which enabled a land-locked country to enjoy the freedom of the seas in the same way as maritime States. Accordingly, the Committee should consider the subsequent sections of document A/CONF.13/C.5/L.6 in order to determine whether in their aggregate they truly constituted the right laid down in section I. He would therefore propose that the discussion of section I should be closed provisionally.

It was so agreed.

The meeting rose at 5.15 p.m.

FOURTEENTH MEETING

Wednesday, 2 April 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

In the absence of the Chairman, Mr. Guevara Arze (Bolivia), Vice-Chairman, took the Chair.

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.6, L.7) *(continued)*

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION II, AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARA. 4

1. Mr. SCHEFFER (Netherlands), commenting first on point I of document A/CONF.13/C.5/L.6, said that he understood the sponsors of the proposal to consider that the right of free access to the sea consisted of several rights, which were listed in points II to IX of the document. Since, however, point I was only an introduction, the question arose why it was drafted in that form. As the United Kingdom representative had pointed out at the 12th meeting, various rights set forth in the nineteen-power proposal belonged to very different spheres, and the question arose whether the sponsors intended to enunciate existing law or to state the law that they wished to see established.

2. In fact, although the viewpoints of the delegations concerned were different, their respective positions were not so far removed one from the other. Freedom of transit and communication should be mutually recognized by all States ; that right, however, was subject to the conditions agreed between the State concerned. Although he could not subscribe to the nineteen-power proposal as drafted, that did not mean that he denied the land-locked countries the rights set forth therein, but that in his opinion such rights were enjoyed by all States, whether coastal or land-locked.

3. The three-power draft resolution (A/CONF.13/C.5/L.7) referred to the Barcelona and Geneva conventions because all the rights of land-locked countries were set forth in those instruments. It might be that certain land-locked countries were not parties to those conventions, and that in certain respects the latter were incomplete ; but those were matters that could be settled in a different context. In any case, if certain States regarded those conventions as inadequate in present circumstances, it was for them to justify their attitude. If, therefore, the Conference confirmed the conventions of Barcelona and Geneva, as advocated by the three-power draft resolution, it would have complied with the provisions of General Assembly resolution 1105 (XI).

4. It had been urged that the freedom of the seas would have no meaning for land-locked countries unless they enjoyed access to the sea, which for them was therefore a question of life or death. It should be emphasized that for coastal States also free access to other States, whether coastal or not, was a matter of vital importance. Since the earth was divided into terrestrial and maritime regions, the problem of the law of the sea should be regarded from the standpoint of freedom of communication between all States, whatever their geographical situation.

5. It was clear, therefore, that both legally and scientifically the principles set forth in the nineteen-power proposal failed to meet the requirements of the situation. In conclusion, he hoped that the Conference would reach agreement on the measures that should be taken so that land-locked countries might, like other States, enjoy the freedom of the seas, and confirm those conventions and rules which already conferred that right on all States.

6. Mr. BREUER (Federal Republic of Germany) pointed out that the right to a flag set forth in point II of the nineteen-power proposal was already conferred on land-locked countries in the Barcelona Declaration ; the Federal Republic of Germany willingly reaffirmed that right.

7. In regard to the form of the instrument to be adoped, he would urge the advantages of a declaration which, unlike a convention, could not be denounced.

8. Mr. DONOSO SILVA (Chile) recalled that during the general debate he had recognized the need to facilitate the access of land-locked countries to the sea, and he therefore saw no objection in principle to the rights set forth in the nineteen-power proposal. In regard to the form, however, he preferred the texts summitted by the Preliminary Conference (A/CONF.13/C.5/L.1, annex 7) as clearer and more precise. The Chilean delegation, therefore, would submit amendments to the different sections of the nineteen-power proposal in order to make the text as a whole generally acceptable.

9. First, with regard to section I, he would propose to delete the second sentence (" This right derives from the fundamental principle of the freedom of the high seas") which was controversial, and to replace it by the following words, based on paragraph 2 of the operative part of the three-power draft resolution (A/CONF.13/C.5/L.7) :

" This right consists essentially in the ability to transport persons and goods across the territories of States situated between land-locked countries and the sea coast and to use the ports of coastal States."

10. That text, which was submitted in a spirit of compromise and was clearly open to amendment, laid stress on the essential questions — namely, the free transit of persons and goods, and the use of the ports of coastal States — and avoided any mention of navigation on the high seas, which lay outside the Fifth Committee's province.

11. As for the right to a flag, which was dealt with in section II of the nineteen-power proposal and paragraph 4 of the operative part of the three-power proposal, since Chile had ratified the Barcelona Declaration in 1922, he saw no reason why that right should not be reaffirmed.

12. Mr. SALAMANCA (Bolivia), stressing how important it was for the land-locked States to have the right of access to the sea, said that at the previous meeting the Brazilian representative had made statements which appeared to contradict the principles and provisions of existing international conventions and agreements. The Committee had undertaken to codify the legitimate aspirations of the land-locked States in universally acceptable terms. To succeed in that task all delegations must display goodwill and refrain from misinterpreting the views of other delegations. The Bolivian delegation at any rate had always endeavoured to define its position in perfectly clear terms.

13. Mr. MASCARENHAS (Brazil), replying to the Bolivian representative, regretted that his statement at the previous meeting should have been open to criticism. His government's attitude was very liberal, and it was prepared to consider in the most helpful spirit any proposal recognizing the principle of the land-locked States' free access to the sea.

14. Mr. BUU-KINH (Republic of Viet-Nam) pointed out that since the Barcelona Declaration of 20 April 1921 the right to a flag had been accepted as a principle of public maritime law. All States were considered entitled to a flag, even if they had not signed the Barcelona Declaration. As the representative of the Federal Republic of Germany had very rightly pointed out, in the present circumstances a declaration would be of more value than a convention. The Barcelona Declaration had established a precedent which the Conference on the Law of the Sea would do well to take as a guide for the future.

15. Mr. JOHNSON (United Kingdom) thanked the Chilean representative for his constructive suggestion, but said that the sponsors of the three-power proposal had included a reference to the ability to sail ships in their proposal, since that was one of the points covered in the seven principles originally enunciated by the Preliminary Conference. He was, however, puzzled that the head of the Bolivian delegation now seemed to hold the view that the Committee should not deal at all with the right to a flag, which he did not appear to regard as coming within the compass of free access to the sea.

16. So far as the right to a flag was concerned, he agreed with the representative of the Federal Republic of Germany that a declaration, which posited an established principle, was preferable to a convention, which could be denounced. For that reason, in paragraph 4 of the operative part of the joint proposal (A/CONF. 13/C.5/L.7), the delegations of Italy, the Netherlands and the United Kingdom had deliberately referred to the Declaration recognizing the Right to a Flag of States having no Sea Coast, adopted at Barcelona on 20 April 1921.

17. Mr. PROBST (Switzerland), giving his views on the Committee's competence, recalled that his delegation had intended to submit to the Second Committee an amendment to article 28 of the International Law Commission's draft, to make clear that the article also applied to land-locked States. The Chairman of the Fifth Committee, Mr. Zourek, whose views the Swiss delegation had sought on the matter, had indicated that it would be preferable for the draft amendment to be submitted to the Fifth Committee, which was responsible for all matters affecting land-locked States. Apparently that point of view was not shared by certain delegations, including the Bolivian delegation, whose chief, Mr. Guevara Arze, Vice-Chairman of the Fifth Committee, had submitted an amendment (A/CONF.13/C.1/L.52) concerning land-locked States to the First Committee. The situation was thus somewhat confused, but the Chairman and Vice-Chairman of the Fifth Committee could clarify it once they had reached agreement on the way in which the Fifth Committee's competence should be defined. The question was important, for, if certain questions were withdrawn from the Fifth Committee's competence, the result might be to shut out certain amendments which their sponsors had not been able to submit to other committees in time.

The CHAIRMAN accepted the Swiss representative's suggestion.

The meeting rose at 12.15 p.m.

FIFTEENTH MEETING

Tuesday, 8 April 1958, at 8.15 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.6, L.7) *(continued)*

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION II AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARA. 4 (continued)

1. Mr. JOHNSON (United Kingdom) said that the question of the right of land-locked States to a flag could be settled quite simply by adopting the following text:

> " Without prejudice to the continuing validity of the Declaration of Barcelona of 1921, the States parties to this convention recognize that every State not having a sea-coast possesses, on terms of equality with States having a sea-coast, the right to a flag in respect of such of its ships as are registered at some one specific place situated in its territory ; such place shall serve as the port of registry of such ships."

2. The replacement of the expression " maritime States " by " States having a sea-coast " was also desirable from another point of view. The latter expression was closer to the wording of the Declaration of Barcelona ; and " maritime States " usually meant States which engaged in maritime activities, so that it would not be impossible for a land-locked State to be described as " maritime ".

3. Mr. MINTZ (Israel) pointed out that the United Kingdom representative's text should be brought into line with the decision of the Second Committee at its 26th meeting delating to articles 28 and 29 of the International Law Commission's draft, on the nationality of ships. The words " such of its ships as are registered " should therefore be replaced by the words " those of its ships to which the State accords its nationality in accordance with the articles included in this convention ".

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION III, AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARA. 5

4. Mr. SCHEFFER (Netherlands) considered that reference in point III of the nineteen-power proposal to " the internal waters " was out of place. There were no international rules for navigation in internal waters.

5. Mr. MARTINEZ MONTERO (Uraguay) said that the expression " internal waters " had a very general meaning. It should be explained that the provision applied to waters open to international navigation.

6. Mr. JOHNSON (United Kingdom) said he did not see why the authors of the nineteen-power proposal had omitted to mention the high seas among the maritime areas in which the ships of a land-locked State should enjoy the same régime as other States. One could say, for example : " Ships flying the flags of land-locked States enjoy on the high seas the same régime as that enjoyed by the ships of other States."

7. To mention the " internal waters ", on the other hand, was to open the door to all kinds of difficulties. The expression could relate to waters which were enclosed by baselines and shared the régime of the territorial sea, to the waters of the ports mentioned in section IV of the nineteen-power proposal, to the waters of bays in which no right of innocent passage was exercised, and to internal waters properly so-called : rivers, lakes and inland seas. If, therefore, it were decided to retain the expression " internal waters ", it should be explained that only the waters of ports and the accesses thereto were meant. That being so, the only areas which should be mentioned in section III of the nineteen-power proposal were the high seas, the territorial sea, ports, and waters providing access to ports.

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION IV, AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARAS. 3 AND 6

8. Mr. JOHNSON (United Kingdom) considered that explicit reference should be made in section IV of the nineteen-power proposal to the Convention and Statute of the International Régime of Maritime Ports signed at Geneva in 1923. The definition of maritime ports, at any rate the definition contained in the English text of the nineteen-power proposal, did not exactly correspond with the definition in the Statute of Geneva. Furthermore, the expression " most favourable treatment " was not so clear as " equality of treatment ". Lastly — a point affecting the substance of the matter — he wondered why the text of section IV would accord most favourable treatment only in the ports of certain coastal States and not in the ports of coastal States all over the world.

9. Moreover, the Statute of Geneva had established a number of exceptions : coastal traffic, pilotage, ships carrying emigrants, warships and other public vessels, and also fishing boats. Those exceptions had their importance. The States which had been unable to accede to the Statute of Geneva would certainly not accept provisions which were even more general and did not contain the safeguards that had seemed essential in 1923. The question of the régime applicable in ports could be settled only within the framework of a convention relating to ports. The Conference should therefore recommend participants to accede to the Geneva Convention, or, failing that, to act on its principles.

10. Mr. SCHEFFER (Netherlands) fully supported the United Kingdom representative's observations. The régime of ports could not be settled in such a summary fashion. Moreover, a land-locked State obviously needed the use of all ports, and the limitation introduced in section IV of the nineteen-power proposal was not logical. The questions raised in that section should therefore be settled within the more general framework of the international régime of maritime ports.

11. Mr. BELTRAMINO (Argentina) considered that, in regard to the régime applicable in ports, the nineteen-power proposal represented a step backward from the principles enunciated by the Preliminary Conference of Land-locked States. Moreover, the Argentine delegation could not subscribe to a resolution recommending, as

suggested in the three-power proposal, that States should accede to the Barcelona Convention of 1921 and the Geneva Convention of 1923.

12. Mr. MINTZ (Israel) thought that it would be useful to include the main provisions of the Geneve Convention and Statute on the International Régime of Maritime Ports.

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION V, AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARAS. 3 AND 6

13. Mr. USTOR (Hungary), replying to questions put by Mr. SCHEFFER (Netherlands) and Mr. LOOMES (Australia), said that the expression " special agreements " referred to agreements of all kinds concluded between a land-locked State and a State of transit, whether bilateral agreements or multilateral agreements to which the two States concerned were parties. By " existing " conventions should be understood conventions in force, not on the date of the conclusion of the convention, but at the time when transit was effected.

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION VI, AND THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), PARAS. 7 AND 8

14. Mr. BHUTTO (Pakistan) reserved the right to make observations concerning both the proposals if necessary, on a future occasion.

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION VII

15. Mr. GUEVARA ARZE (Bolivia), recalling an observation made by his delegation at the Preliminary Conference of Land-locked States, pointed out that the text of article VII of the nineteen-power proposal, of which his delegation was a sponsor, conferred very vague and general rights on the transit State. In whatever form the text was adopted, it must be understood that the advantages which Bolivia enjoyed by virtue of agreements concluded with its neighbours would not be reduced thereby. On the other hand it seemed useless, because self-evident, to mention that the transit State had full sovereign rights over the means of communication.

16. He asked how the phrase in paragraph 3 of the three-power draft resolution " (including reciprocity) " should be construed in cases where the land-locked State was physically unable to accord reciprocity.

17. Mr. JOHNSON (United Kingdom) stated that two situations might arise. Either the land-locked State had a river port linked with the sea, in which case reciprocity was possible ; or there might come about the situation explicitly mentioned in paragraph 4 of the Protocol of Signature of the Geneva Convention on the International Régime of Maritime Ports which expressly reserved the rights of States having no seaports, which were consequently unable to ensure reciprocity. It would be noticed that the sponsors of the three-power proposal had taken care to mention the Protocol of Signature in paragraph 6 of their draft resolution.

18. Mr. TABIBI (Afghanistan), who had taken part in the preparation of the nineteen-power proposal, recalled that when section VII had been drawn up he had supported the point of view of the Bolivian representative. He wished to return to the question. The wording decided upon might be dangerous for land-locked States, because in practice it authorized the State of transit to take measures equivalent to a blockade on the pretext of protecting its security and public health interests. He therefore reserved the right to introduce a text which would safeguard the rights of land-locked States.

19. Mr. MINTZ (Israel) said that he thought the wording of section VII would be improved if reference were made in it to the economic interests of land-locked States, or if it were indicated that measures taken by transit States must not be arbitrary. On this point the Committee might well take as a model the debates of the First Committee, during which reference had been made to an analogous case in relation to article 15 of the International Law Commission's draft.

20. Mr. BHUTTO (Pakistan), addressing the representative of Israel, pointed out that one could not speak of the measures taken by a State to preserve its security as arbitrary ; in the circumstances, the State must be the sole judge. Perhaps the only means of making article VII acceptable to some delegations would be to make the land-locked countries the judges of the security needs of the coastal States.

21. Mr. TABIBI (Afghanistan) agreed with the representative of Pakistan that a State was free to take the necessary measures for the protection of its legitimate interests ; nevertheless, a procedure should be established for deciding whether the measures taken by the transit State were reasonable and justified or whether, on the contrary, they were intended to put pressure on the land-locked State.

22. Mr. JOHNSON (United Kingdom) agreed that it would be advisable to provide for recourse to an arbitral body or to the International Court of Justice. The Barcelona Statute contained a provision of that kind, but nothing similar seemed to be envisaged in the nineteen-power proposal.

23. Mr. BELTRAMINO (Argentina) said that he could not agree to the reservation made by the Bolivian delegation with respect to section VII ; that section safeguarded the rights of the State of transit in matters of security and public health. It was an accepted principle in treaties between land-locked States and States of transit, notably in those concluded between Bolivia and Argentina. The measures adopted by the State of transit should, of course, be reasonable and not of an arbitrary character.

24. Mr. GUEVARA ARZE (Bolivia) repeated that the text finally adopted for article VII must in no way infringe the interests of land-locked States, and in particular of Bolivia, as recognized in agreements already in force. The obligations of land-locked States must not be increased by the adoption of the new text.

25. Mr. BELTRAMINO (Argentina) agreed with the Bolivian representative.

26. Father DE RIEDMATTEN (Holy See) said that it would be a positive achievement if the Committee proposed an arbitral procedure for the settlement of disputes between land-locked States and States of transit.

THE NINETEEN-POWER PROPOSAL (A/CONF.13/C.5/L.6), SECTION VIII

27. Father DE RIEDMATTEN (Holy See) deprecated the phrase " provided that such future agreements do not institute a less favourable régime and do not conflict with the aforesaid articles ". Parties must not be given reason to regret signing the convention.

THE THREE-POWER PROPOSAL (A/CONF.13/C.5/L.7), PART I, PARA. 1

28. Mr. PROBST (Switzerland) considered that paragraph 1 was too general and might give rise to misunderstandings. It would be difficult in some cases — for instance, in regard to pollution of the high seas — to claim that the terms " all States ", " each State ", and " every State " should be understood to comprise land-locked States as well as States possessing a sea-coast.

29. Mr. SCHEFFER (Netherlands) said that, since the provisions of the instrument to be drafted by the Conference were to be applicable to ships of any flag, the text of paragraph 1 was completely justified.

30. Father de RIEDMATTEN (Holy See) said that the members of the Conference should come to a decision on the definition of " land-locked States " or " States without a sea-coast ", otherwise the future might bring unpleasant surprises.

THE THREE-POWER PROPOSAL (A/CONF.13/C.5/L.7), PART I, PARA. 2

31. Mr. CHU (China) thought that paragraph 2 might reduce the scope of article 28 of the International Law Commission's draft report (Right of Navigation).

THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), FIRST PARAGRAPH OF THE PREAMBLE

32. Mr. GUEVARA ARZE (Bolivia) asked the sponsors of the proposal what, in their opinion, was the legal force of a resolution.

33. Mr. JOHNSON (United Kingdom) explained that the sponsors of the proposal felt that the problem of access to the sea of land-locked countries was very difficult and could not be solved at once by a convention. The difficulties would have to be resolved gradually, and so the sponsors had presented their proposal in the form of a resolution, which would admittedly have less legal force than a convention, but would have quite as much as a resolution of the General Assembly of the United Nations.

34. Mr. TABIBI (Afghanistan) said that the General Assembly of the United Nations by no means expected the Conference to restrict itself to the approval of resolutions, but hoped that it would prepare an instrument of indisputable legal force.

35. Mr. RECALDE de VARGAS (Paraguay), agreeing with the representative of Afghanistan, said that he reserved the right to take up the matter again.

36. Mr. BOURBONNIERE (Canada) and Mr. BHUTTO (Pakistan) did not think that the General Assembly had expressly requested the Conference to prepare a legal instrument.

37. Mr. SHAHA (Nepal) said that at the Committee's fifth meeting he had had to draw his colleagues' attention to paragraph 6 of document A/CONF.13/11, prepared by the Secretariat, where it was stated that resolution 1105 (XI) of the General Assembly " contained no specific recommendation to the Conference . . . to embody in an international convention or other instruments the results of its study of the question of free access to the sea of land-locked countries. At the same time, there would appear to be no reason why the Conference should not embody the results of its work on this question in a suitable form of instrument if it considers it appropriate to do so ".

38. At the proposal of Mr. MASCARENHAS (Brazil), the CHAIRMAN said that the question of the form to be given to the Conference's recommendations would be studied at the next meeting.

THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), SECOND PARAGRAPH OF THE PREAMBLE

39. Mr. MASCARENHAS (Brazil) said that the text of sub-paragraph 2 was not clear. It would be preferable and more accurate to state that the Economic Conference of the Organization of American States had adopted a declaration and three resolutions, some of which pertained to the question of free access to the sea of land-locked countries.

THE THREE-POWER DRAFT RESOLUTION (A/CONF.13/C.5/L.7, PART II), FOURTH PARAGRAPH OF THE PREAMBLE

40. Mr. GUEVARA ARZE (Bolivia) considered that sub-paragraph 4 was clumsily worded, for it made the question of free access to the sea of land-locked countries appear a minor concern of a conference which, already having other matters before it, had delegated that question to the Fifth Committee. The text should therefore be redrafted.

The meeting rose at 11 p.m.

SIXTEENTH MEETING

Wednesday, 9 April 1958, at 2.45 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.6 to L.9) *(continued)*

1. Mr. BREUER (Federal Republic of Germany) spoke of the interest that his country, pre-eminently a transit country, took in the work of the Committee. Since other

delegations had explained in detail the point of view of transit States, he would confine himself to a few additional observations. The question of free access to the sea of land-locked countries belonged to the field of conventional international law; it required concrete solutions allowing for the needs of land-locked States and of transit States and aiming at conciliation. The fact that no acute problem had arisen in that field argued against improvization, and he would therefore support any effort to embody the results of the Committee's work in a resolution similar to that of the three Powers (A/CONF.13/C.5/L.7, section II).

2. Mr. KING (United States of America) insisted that it was essential for the Committee to find a common denominator as a basis for an understanding between land-locked States and transit States, and pointed to the divergence of views revealed during the debates on the nineteen-power and three-power proposals. Speaking of the discussions concerning the powers of the Committee, during which reference had been made to resolution 1105 (XI) of the General Assembly, he pointed out that there was some question as to the form the Committee's conclusions should take. However, his delegations reserved its position on this point.

3. His delegation would introduce a draft amendment to modify operative paragraph 3 of part II of the three-power proposal (A/CONF.13/C.5/L.7, section II). Under the draft amendment, coastal States would facilitate as far as possible access to the sea of land-locked States and recognize fully their needs in regard to transit trade; they would grant them all facilities for the purpose according to international law and international practice, taking into account future requirements from the economic development of land-locked States.

4. Mr. DONOSO SILVA (Chile) pointed out that the Spanish translation of document A/CONF.13/C.5/L.6 contained a linguistic error; in article IV the words " a un trato más favorable " should be replaced by the words " al trato más favorable ". Besides that error of wording, his delegation considered that there were grounds for not extending to coast-wise trade the facilities granted to land-locked States in the internal or territorial waters of coastal States.

5. Moreover, regarding article VII of the document, his delegation had taken cognizance of the note in which the Bolivian delegation stated that its arrangements for transit through the territory of the coastal States towards the Pacific were broad and liberal, and remained in force at all times and in all circumstances, and that consequently the clause included in article VII was not applicable to those arrangements. Bolivia enjoyed ample facilities on Chilean territory. The measures envisaged in article VII would only be applied where strictly necessary for the protection of Chilean interests in security and public health; they would not be such as to infringe recognized Bolivian rights. For that reason, he considered that the note by the delegation of Bolivia was hardly justified. In addition, article VIII of the same document contained a safeguard which should completely reassure the Bolivian delegation.

6. Mr. GUEVARA ARZE (Bolivia), repeating for the benefit of the Chilean representative, who had been absent from the previous meeting, the statement which he had made for the information of the representative of Argentina, said that the note which appeared in article VII of the nineteen-power proposal had no other aim than to establish Bolivia's determination that its contractual obligations towards neighbouring countries should not be increased. It did not seek to obtain any advantage beyond those which it had been granted by virtue of agreements concluded with neighbouring countries. The text of article VII presented a certain danger in not defining the circumstances in which the transit State could make reservations in regard to commercial traffic in transit from land-locked States. An unfavourable situation might result for those countries. Admittedly, article VIII contained a safeguard, but the Bolivian delegation had wished to meet the possibility that article VII might be adopted without article VIII. That was why it wished to maintain the note to which the Chilean representative had alluded. He recognized the merits of the Chilean representative's remarks on coast-wise traffic by ships of land-locked States in the internal and territorial waters of coastal States.

7. The CHAIRMAN drew the attention of members of the Committee to the letter from the Chairman of the First Committee to the Chairman of the Fifth Committee (A/CONF.13/C.5/L.9). If no observations were forthcoming, the document would be studied in conjunction with the other proposals submitted to the Committee. He referred to the suggestion that a working party should be set up, and invited members of the Committee to consider it.

Appointment of a working party

8. Mr. LOOMES (Australia) and Mr. BOURBONNIERE (Canada) thought that it was not advisable to set up a working party until consideration had been given to the form in which the results of the Committee's work should be expressed. The working party could then be given the necessary instructions and in particular it could be stated whether the text to be prepared should be a convention, a resolution or some other kind of instrument.

9. Mr. GUEVARA ARZE (Bolivia) took the opposite view and contended that the Committee should not make the results of its work dependent on the form in which they were expressed. If the working party was able to prepare a text which gave satisfaction to its members, who would be chosen to represent the various viewpoints, the final form of the text could easily be decided by voting on whether it should take the form of articles for inclusion in the convention to be prepared by the Conference or of a resolution or a declaration. If the question of form were to be given priority, the progress of the Committee's work would suffer a serious and possibly lasting setback.

10. Mr. GERONINE (Byelorussian Soviet Socialist Republic) considered that, in the light of the Committee's discussions, the proposed working party should be asked to prepare a single document, but its form was a matter for the Committee to decide later.

11. Mr. SHAHA (Nepal) thought that the proposed working party should itself decide on the form of the

text to be prepared by it. That solution was a logical one, since the working party would represent the different opinions and parts of the world ; moreover, it was the only way in which the Committee could finish its work within the allotted time.

12. Mr. BACCHETTI (Italy) thought that directives would have to be given to the working party ; otherwise it would embark on the same general discussion as had taken place in the Committee. The form of the instrument was not a secondary matter, for the nature of the undertaking to be given by States was highly important. Only when the form had been decided on could the working party endeavour to prepare the compromise text which all the participants wanted.

13. Mr. USTOR (Hungary), while agreeing that the form of the future instrument was important, thought that the Committee might do what the other committees of the Conference were doing, and endeavour first of all to reach an agreement on substance. Besides, it could instruct the working party to submit proposals on the form of the instrument.

14. Mr. SAVELIEV (Union of Soviet Socialist Republics) said that many delegations had tried to reconcile the viewpoints expressed in the nineteen-power and three-power proposals, and the desire for a compromise formed a solid basis for the discussions of the proposed working party. It was to be hoped that the working party would manage to prepare a text satisfactory to all the delegations. It was difficult to decide immediately on the form which the Committee's recommendations should take, for the form of the document embodying the working party's conclusions was closely linked with the results of the work of the other committees. The working party could therefore start its work while observing the work of the other committees, and then submit to the Fifth Committee concrete proposals regarding the final form in which its conclusions should be expressed.

15. The CHAIRMAN asked whether the members of the Committee had any objection to the setting up of a working party having as its terms of reference the study of both the form and the content of the instrument to be submitted to the Committee.

16. Mr. FREMLIN (Sweden) considered that the Committee should appoint a working party and lay down its terms of reference, specifying in particular the form in which it wished the working party to express its conclusions. With the conclusions before it the Committee could study them and give further instructions to the working party for the second stage of its work.

17. After the representative of Canada had recalled that a draft amendment submitted by the United States delegation was before the Committee, the CHAIRMAN said that, although he regretted that the United States delegation had not submitted its amendment sooner, he wondered whether it would not be possible to consider it in conjunction with the question of the setting up of the working party.

18. Mr. KING (United States of America) pointed out that no time limit had been set for the submission of amendments, and his delegation had been unable to table its amendment until the discussion of the proposals contained in A/CONF.13/C.5/L.6 and A/CONF.13/C.5/L.7 had been closed. The United States delegation had no objection to the Committee defining the working party's terms of reference before taking up the United States draft amendment.

19. Mr. PECHOTA (Czechoslovakia) thought that the amendments before the Committee could quite well be studied by the working party itself.

20. Mr. JOHNSON (United Kingdom) considered that the Swedish delegation had made a constructive proposal worthy of detailed study. For its part, the United Kingdom delegation would like to propose that the Committee should set up a working party to study simple questions first, such as the right to a flag and the right of navigation ; at the same time, the working party could be asked to prepare general recommendations on the form in which the Committee's conclusions should be expressed. In the meantime, the United States amendment could be studied by the Committee itself.

21. Mr. BHUTTO (Pakistan) opposed the United Kingdom proposal, as it sought to combine substantive elements with those of form. It was necessary first to determine the form. For that reason, he would support the Swedish proposal.

22. Mr. SHAHA (Nepal) supported the United Kingdom proposal. He also considered that the United States amendment would considerably improve the three-power proposal.

23. After a procedural discussion in which Mr. MASCARENHAS (Brazil) and Mr. BHUTTO (Pakistan) participated, Mr. JOHNSON (United Kingdom) said that he would withdraw his proposal in favour of the Swedish proposal.

24. Mr. USTOR (Hungary) and Mr. SCHEFFER (Netherlands) regretted that the United Kingdom had not maintained its suggestion to ask the working party to study, as a first stage, both the form in which the instrument should be expressed and the substance of the provisions which, in the proposals before the Committee, concerned the right of navigation and the right to a flag.

25. Mr. GUEVARA ARZE (Bolivia) took over and introduced as a formal proposal the suggestion previously withdrawn by the United Kingdom. In other words, he proposed that a working party be asked to report on the form to be given to the results of the Committee's work and to submit a text on the provisions common to the two main proposals before the Committee.

26. After a procedural discussion in which Father DE RIEDMATTEN (Holy See), Mr. BHUTTO (Pakistan) and Mr. SHAHA (Nepal) took part, the CHAIRMAN suggested that the Committee might like to postpone its study of the proposals on the working party's terms of reference to the next meeting, thus giving the sponsors time to consult one another and to submit written texts.

It was so decided.

The meeting rose at 5.15 p.m.

SEVENTEENTH MEETING

Thursday, 10 April 1958, at 2.45 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Appointment of a working party (A/CONF.13/C.5/L.11 to L. 13) *(continued)*

TERMS OF REFERENCE OF THE WORKING PARTY

1. The CHAIRMAN invited the Committee to consider a Swedish proposal (A/CONF.13/C.5/L.11) relating to the appointment and terms of reference of a working party, a Hungarian amendment to that proposal (A/CONF.13/C.5/L.12), and a Bolivian proposal on the same subject (A/CONF.13/C.5/L.13).

2. Mr. FREMLIN (Sweden) said that he hoped that the compromise solution which his delegation proposed would commend itself to the majority of members of the Committee.

3. Mr. USTOR (Hungary) admitted that the Swedish proposal would facilitate and expedite the work of the Committee. Nevertheless, his delegation, which represented a land-locked State, had felt bound to put forward a draft amendment (A/CONF.13/C.5/L.12) providing that the working party should be able to deal not only with the question of which type of instrument it preferred but also with the substance of the matter. In that way, the working party would be able to study the problem as a whole.

4. Mr. WILLFORT (Austria) considered that the Committee should decide expressly whether a working party should be set up before determining its functions. With that reservation the Swedish proposal seemed to place the working party in the most favourable position. The party's work would, however, be still easier if its field of activity were more precisely defined. With a view to limiting the initial task of the working party, his delegation therefore formally proposed that the words " articles II and III of document A/CONF.13/C.5/L.6 " should be substituted for the words " the results of the Committee's work " in the Swedish proposal. The questions to which those two articles related were in fact the easiest to solve.

5. Mr. GUEVARA ARZE (Bolivia) thought that the Swedish proposal was based on incorrect premises, since it would instruct the working party to make recommendations concerning the form in which " the results of the Committee's work should be expressed ", whereas so far the Committee's work had not led to any result.

6. His delegation had therefore considered it necessary to present a different proposal (A/CONF.13/C.5/L.13) on the same subject. Though it was true that the Committee's work had not produced a general result, a partial agreement might be said to have been reached on certain rights of land-locked States, such as the right to fly a flag and to sail the high seas. It was thus reasonable to instruct the working party to deal with such points in its draft. In regard to other questions which were still controversial, the working party should be instructed to draft a text and suggest the form which the Committee might give to them.

7. Mr. GEAMANU (Romania) said he would support the Bolivian proposal. The Swedish proposal lacked precision ; it was impossible to tell whether the words " the form or forms in which the results of the Committee's work should be expressed " referred to the wording itself or the nature of the text to be drawn up.

8. The CHAIRMAN, referring to the oral amendment made by the Austrian delegation to the Swedish proposal, said that in view of the small amount of time at the Committee's disposal it should decide on that amendment although the prescribed time limits had not been observed.

9. Mr. KING (United States of America) was ready to support the Swedish proposal. The Hungarian amendment concerned questions of substance, and he would not vote for it. The Austrian amendment seemed acceptable, but it would be preferable to adopt the Swedish text, which had the merit of simplicity. The Bolivian proposal could only be considered if the Committee first decided to appoint a working party.

10. Mr. BHUTTO (Pakistan) said that he would vote for the Swedish proposal, against the Hungarian amendment, and against the Bolivian proposal.

11. Mr. PECHOTA (Czechoslovakia) said he would support the proposal submitted by the Bolivian delegation, which corresponded exactly to the stage which the Committee's work had reached : It would open the way to settlement of the questions already considered and also of questions of form and substance which were still outstanding.

12. Mr. SCHEFFER (Netherlands) considered the text of the Swedish proposal acceptable. He emphasized that the composition of the working party should be perfectly balanced.

13. Mr. SANDBERG (Secretariat) pointed out that the Swedish proposal established 11 April as the date on which the working party's report should be presented to the Committee. All the available interpreters had already been appointed to the various committees for that day. He hoped that the working party would be able to carry out its task without interpreters.

14. Mr. FREMLIN (Sweden) agreed to alter his delegation's proposal to make 12 April the date for the presentation of the report.

It was so agreed.

15. After a procedural discussion concerning the order of priority of the proposals submitted to the Committee, *the oral amendment of the Austrian delegation was put to the vote.*

The Austrian amendment was rejected by 29 votes to 3, with 21 abstentions.

The Hungarian amendment (A/CONF.13/C.5/L.12) was put to the vote.

At the request of Mr. BHUTTO (Pakistan), *a vote was taken by roll-call. The Dominican Republic, having been drawn by lot by the Chairman, was called upon to vote first.*

In favour: Hungary, Laos, Nepal, Panama, Paraguay, Romania, Union of Soviet Socialist Republics, Afgha-

nistan, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Costa Rica, Czechoslovakia.

Against: Ecuador, El Salvador, France, Federal Republic of Germany, Greece, India, Iran, Italy, Mexico, New Zealand, Norway, Pakistan, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Argentina, Australia, Austria, Brazil, Canada, Chile, China, Colombia.

Abstaining: Ghana, Indonesia, Israel, Japan, Netherlands, Portugal, Saudi Arabia, Tunisia, United Arab Republic, Venezuela, Burma, Cambodia, Ceylon.

The Hungarian amendment was rejected by 29 votes to 13, with 13 abstentions.

The Swedish proposal (A/CONF.13/C.5/L.11) was put to the vote.

The Swedish proposal was adopted by 29 votes to 13, with 11 abstentions.

16. The CHAIRMAN pointed out that the Swedish proposal having been adopted, there was no reason to put the Bolivian proposal to the vote.

17. Father DE RIEDMATTEN (Holy See) explained that his vote in favour of the Swedish proposal should not be taken to indicate opposition to the Bolivian proposal. His delegation merely considered that the Committee's debates had not reached a stage where the Bolivian proposal could be adopted.

The meeting was adjourned at 5.15 p.m. and resumed at 6.25 p.m.

Composition of the working party

18. The CHAIRMAN announced that during the adjournment the Committee's officers had prepared a list of 12 members to make up the working party. The list comprised 4 representatives of land-locked States (Afghanistan, Bolivia, Switzerland and Czechoslovakia), 4 representatives of transit States adjoining land-locked States (Thailand, Chile, Netherlands, Romania), and 4 representatives of maritime States (Ceylon, Mexico, United Kingdom, Tunisia). He asked members of the Committee to comment on the proposed list.

19. Mr. SCHEFFER (Netherlands) considered that his country should not appear amongst the countries adjoining land-locked States.

20. Mr. PECHOTA (Czechoslovakia) said that the Netherlands had been chosen because it was a transit State for the land-locked States of Europe.

21. Mr. BOURBONNIERE (Canada) proposed the following list: 4 land-locked States (Czechoslovakia, Nepal, Bolivia, Switzerland); 4 transit States (Chile, Federal Republic of Germany, Italy, Thailand); and 4 coastal States (Mexico, Netherlands, Tunisia, United Kingdom).

22. The CHAIRMAN announced that the composition of the working party would be decided by secret ballot.

23. He called on the Committee to appoint four representatives of land-locked States.

At the invitation of the Chairman, Father de Riedmatten (Holy See) and Mr. Cardona (Mexico) acted as tellers.

A vote was taken by secret ballot.

Number of ballot papers	52
Invalid ballots	0
Number of valid ballots	52
Abstentions	0
Number of members voting	52
Required majority	27
Number of votes obtained	
Switzerland	46
Bolivia	41
Czechoslovakia	40
Nepal	33

Having obtained the required majority, Switzerland, Bolivia, Czechoslovakia and Nepal were appointed members of the working party.

24. The CHAIRMAN called on the Committee to appoint four representatives of States adjoining land-locked States.

At the invitation of the Chairman, Father de Riedmatten (Holy See) and Mr. Cardona (Mexico) acted as tellers.

A vote was taken by secret ballot.

Number of ballot papers	52
Invalid ballots	0
Number of valid ballots	52
Abstentions	0
Number of members voting	52
Required majority	27
Number of votes obtained	
Thailand	51
Chile	41
Italy	33
Federal Republic of Germany	31

Having obtained the required majority, Thailand, Chile, Italy and the Federal Republic of Germany were appointed members of the working party.

25. The CHAIRMAN called on the Committee to appoint four representatives of coastal States.

At the invitation of the Chairman, Father de Riedmatten (Holy See) and Mr. Cardona (Mexico) acted as tellers.

A vote was taken by secret ballot.

Number of ballot papers	52
Invalid ballots	0
Number of valid ballots	52
Abstentions	0
Number of members voting	52
Required majority	27
Number of votes obtained	
United Kingdom	48
Mexico	46
Tunisia	43
Ceylon	27
Netherlands	27

Having obtained the required majority, the United Kingdom, Mexico and Tunisia were appointed members of the working party.

The CHAIRMAN announced that, as Ceylon and the Netherlands had obtained an equal number of votes, another ballot would be held at the next meeting.

The meeting rose at 8 p.m.

EIGHTEENTH MEETING

Friday, 11 April 1958, at 2.45 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.10, L.15) *(continued)* [1]

1. Mr. MULLER (Switzerland) said he was afraid the Committee had reached a deadlock. It had lost two days setting up a working party to settle the question of the form in which its conclusions were to be expressed. However, although tendencies of another kind had emerged, there were also trends towards conciliation, as shown, for example, by the United States amendment (A/CONF.13/C.5/L.10). It was in an attempt to reach agreement that the Swiss delegation was submitting its proposal.

2. The first part of the draft needed no comment. The substance would not, he thought, be criticized, and as for the final wording, that would be left to the Committee to decide. The second part, which constituted the compromise, contained, *mutatis mutandis,* the seven principles of the preliminary conference of land-locked States (A/CONF.13/C.5/L.1, annex VII, p. 1) in a flexible, condensed form; they were in no sense demands.

3. The principles concerning access to the sea were set forth as part of the freedom of the seas which land-locked States should enjoy on the same footing as coastal States. The text proposed, which corresponded to the Geneva Statute of 1923, did not ask for anything more than equality, and that had never been contested. Those principles should guide the States concerned in drawing up the necessary agreements. They would serve as an outline-law, for which draft article 48 of the International Law Commission (A/3159) could be taken as a model. The coastal States would therefore be in a position to accept the suggested draft, and the land-locked States would have access to the sea. It might perhaps be objected that the rights would remain theoretical if the coastal States concerned refused to conclude an agreement with a land-locked State. The Swiss delegation believed that the value of the rules formulated was not impaired by the fact that agreements implementing the principles set forth would have to be concluded, or that there was a possibility of their being infringed.

4. The proposal did not contain provisions for recourse to the procedure contemplated in article 57 because Switzerland had proposed a general clause for the settlement of disagreements by compulsory arbitration.

5. The CHAIRMAN asked the representative of the United States if he wished the Committee to proceed to the study of the amendment submitted by his delegation (A/CONF.13/C.5/L.10) or would agree to consideration of the document being deferred unil the working party had submitted its report to the Committee.

6. Mr. KING (United States) agreed that consideration of the document submitted by his delegation should be postponed until the working party had presented its report on the form to be given to the Committee's conclusions.

Appointment of a working party *(continued)*

COMPOSITION OF THE WORKING PARTY *(continued)*

7. The CHAIRMAN pointed out that the Committee had to proceed to a second ballot to elect a twelfth and last State to the working party, since the delegations of Ceylon and the Netherlands had tied at the first ballot.

At the invitation of the Chairman, Father de Riedmatten (Holy See) and Mr. Cardona (Mexico) acted as tellers.

A vote was taken by secret ballot.

Number of ballot papers	67
Invalid ballots	1
Number of valid ballots	66
Abstentions	1
Number of members voting	65
Required majority	33
Number of votes obtained	
Ceylon	36
Netherlands	29

Having obtained the required majority, Ceylon was appointed a member of the working party.

8. Mr. TILLEKARATNE (Ceylon) expressed his gratitude to the members of the Committee whose votes had enabled his country to be represented on the working party. His delegation was fully conscious of the magnitude of the task entrusted to it. He emphasized that the problems confronting the working party were not insoluble, and expressed his conviction that it would fulfil its task and submit to the Committee a report which could be examined in a constructive spirit.

The meeting rose at 3.40 p.m.

NINETEENTH MEETING

Monday, 14 April 1958, at 2.45 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the Working Party's report (A/CONF.13/C.5/L.16)

1. Mr. PERERA (Ceylon), speaking as Chairman of the Working Party, said that during the Working Party's two meetings all its members had shown a very real desire to find a way out of the deadlock reached by the Committee.

2. The Working Party had decided by a majority vote that the matters dealt with in section I of the nineteen-power proposal (A/CONF.13/C.5/L.6), in the Chilean amendment to that proposal (A/CONF.13/C.5/L.8), and in the Swiss proposal (A/CONF.13/C.5/L.15) should be embodied in a convention. It had decided unanimously that sections II and III of the nineteen-power proposal, the first part of the three-power proposal (A/CONF.13/C.3/L.7), operative paragraph 4 of the three-power proposal, and the Bolivian proposal

[1] Resumed from the 16th meeting.

transmitted by the First Committee (A/CONF.13/C.5/L.9) should also be embodied in a convention.

3. The Working Party unanimously decided that part II (except for operative paragraph 4) of the three-power proposal and the United States amendment to that proposal (A/CONF.13/C.5/L.10) should be embodied in a resolution.

4. There was also a majority decision of the Working Party that sections IV, V, VI, VII and VIII of the nineteen-power proposal should be embodied in a declaration.

5. The results achieved had been modest, because the Working Party had not been empowered to consider matters of substance, although matters of form and substance were closely interconnected. A number of reservations made with a view to solving outstanding difficulties were appended to the report. Brief as it was, the report assembled all the essential facts and might serve as a basis of discussion for any body made responsible for drafting a specific text.

6. Mr. ASANTE (Ghana) congratulated the Working Party on the way in which it had carried out its assignment and suggested that to save time it be entrusted with the further task of preparing for the Committee a draft text based on its report.

The meeting was adjourned at 4.15 p.m., and resumed at 4.30 p.m.

7. Mr. KING (United States of America) congratulated the Working Party on its report. An examination of the report showed that it had not been possible to reach unanimity on all points. Being anxious to speed up the Committee's work, the United States delegation formally proposed that the Committee give priority to consideration of the Swiss proposal (A/CONF.13/C.5/L.15), which had the twofold advantage of embodying the matters before the Committee in a convention and emanating from a land-locked country.

8. Mr. BOURBONNIERE (Canada) supported the United States representative's proposal. His delegation had been very much impressed by the Swiss delegation's endeavours to find compromise solutions. It hoped that by according priority to consideration of that proposal the Committee would finally find a formula acceptable to the great majority of its members.

9. In addition, a time-limit should be set for the submission of amendments to the Swiss proposal.

10. Mr. DONOSO SILVA (Chile) supported the United States proposal, since consideration of the Swiss proposal in plenary meeting would lighten the Working Party's task.

11. Mr. GUEVARA ARZE (Bolivia) said that the contents of the Swiss proposal had already been thoroughly studied and further discussion of it would merely be going over ground already covered. The Committee should therefore take a decision on it.

12. If the United States proposal was accepted, amendments to the Swiss proposal would be submitted and there would be further delay. Such amendments should preferably be studied by the Working Party.

13. The Swiss proposal provided for only the conventional form, but some matters might be better embodied in a resolution or a declaration. He did not oppose the Swiss proposal, which represented some advance towards a solution.

14. Mr. ASANTE (Ghana) proposed that the Report of the Fifth Committee to the Plenary Conference should consist only or in part of suggested amendments to articles of the International Law Commission draft as amended by other committees.

15. The Swiss proposal could be studied and the Committee could then see whether it wanted to submit other proposals to the Conference.

16. Mr. PERERA (Ceylon) pointed out that according to the agenda the business of the meeting was to be consideration of the Working Party's report, and the Committee must accordingly take a decision on that report. If it were to examine the Swiss proposal or the United States proposal (A/CONF.13/C.5/L.10), the discussion would start afresh.

17. The CHAIRMAN ruled that the Committee should first take a decision on the report and then study the proposals in order of submission.

18. Mr. BREUER (Federal Republic of Germany) said that during the Working Party's discussions his delegation had opposed the inclusion of section I of the nineteen-power proposal, because free use of the sea was guaranteed to land-locked States by international law but access to the sea through the territory of another State was a completely different matter, land being divided among sovereign States.

19. As a rule, transit was by roads or railways built or administered by or under the direction of the transit State, which therefore had exclusive rights, modifiable only by agreement, over them. The codification of international law related to generally applicable rules. The Committee was not competent to create a kind of easement of international law affecting some States and not others. A transit regulation like the Barcelona Convention and Statute was an instrument of general scope, and was therefore based on the principle of reciprocity, which completely satisfied the legitimate aspirations of land-locked States.

20. Germany had always granted its neighbours transit facilities answering their requirements and had ratified the Barcelona Convention and Statute. It was in that spirit also that the delegation of the Federal Republic of Germany had proposed an amendment to the Swiss proposal, which it considered to be the best basis for a convention.

21. Mr. PROBST (Switzerland) said that results would be achieved more quickly if the Swiss proposal were adopted. The points covered by the proposal were precisely those which the Committee had been discussing. The approving comments received by the Swiss delegation showed that its proposal provided something new — a less dogmatic approach to the problems. The Committee would be well advised to take a decision on it and thus perhaps eliminate a number of proposals which were complicating its task.

22. Mr. PERERA (Ceylon) said that the Working Party had studied the Swiss proposal, and he proposed that its report be given priority.

23. Mr. KING (United States of America) asked that a vote be taken on his proposal that the Committee give priority to consideration of the Swiss proposal.

24. Mr. TABIBI (Afghanistan) hoped that the Committee would not take a vote, for it would then find itself in a difficult position. The Working Party had studied all the proposals and submitted its report, on which the Committee should take a decision. The Swiss proposal, which was a good basis for work, would be considered by the Working Party in preparing the definitive text.

25. Mr. JOHNSON (United Kingdom) said that the members of the Working Party who had made reservations should be allowed to state their reasons. The Committee should not refer the matter to the Working Party without giving it clear terms of reference. He proposed that discussion of the report should be adjourned, and that the Swiss proposal and the amendments thereto be studied at the next day's meeting.

26. Mr. SCHEFFER (Netherlands) said he had read the Working Party's report with great interest but regretted that it had not been unanimous on the form in which the Committee's work should be expressed. Its report had not saved any time. The first thing was to study the substance and then consider suitable forms of expression for it.

27. Father DE RIEDMATTEN (Holy See) hoped that the Committee would turn to the substance of the matter.

28. Mr. JOHNSON (United Kingdom) explained that the United Kingdom delegation had entered three reservations, which were set forth in paragraph 12 of the report. The reason for the third reservation was that there was a world of difference between the proposal enunciating the right of free access to the sea in a purely unilateral form and the Swiss proposal, which would make such right subject to reciprocity and agreement between the States concerned.

29. The Working Party had had a long discussion on the nature of declarations and resolutions and had tried to discover whether declarations needed to be ratified. The United Kingdom delegation had recalled that The Hague Conference had refused to embody its work in the form of a declaration, on the grounds that a majority should not claim the right to draft a declaration embodying existing rules of international law which, if correctly formulated, were binding upon all States, including those which had not ratified the declaration. His delegation did not consider that a declaration of that kind would be an appropriate form of instrument. Perhaps there were different forms of declaration and one could be drafted which did not claim to formulate rules binding upon States not accepting it.

30. It would be a mistake to give the Working Party a new task without first considering the Swiss proposal.

31. Mr. PECHOTA (Czechoslovakia) expressed his delegation's support for the recommendations of the Working Party, which, although it had not reported unanimously on some points, had given an opinion on the very important question of the form of the instrument.

32. Like the Nepalese delegation, his delegation had made a reservation in regard to section IX of the nineteen-power proposal. The provision for the exclusion of the application of the most-favoured-nation clause represented a very important part of the right of free access to the sea of land-locked countries and should not, therefore, be separated from the remaining sections contained in the nineteen-power proposal.

33. The Working Party's report made it possible to form a clearer view of the proposals submitted. The close relationship between form and substance was evident. The Czechoslovak delegation had supported the proposal that the Working Party should be instructed to examine both form and substance.

34. Mr. ASANTE (Ghana) presented the following proposal:

> "The Fifth Committee takes note of the report of the Working Party to the Fifth Committee contained in document A/CONF.13/C.5/L.16 and accepts their findings that the recommendations of the Fifth Committee to the Plenary Session should be in the form partly of a convention and partly of resolutions and/or declarations."

35. Mr. GUEVARA ARZE (Bolivia) said that during the discussions in the Working Party his delegation had, like other delegations, maintained that the results of the Committee's work should be presented in three forms. Arrangements sanctioned by practice and by bilateral or multilateral treaties and corresponding to the general trend of international law could be embodied in a convention. There might, however, be arrangements of a special character adapted to regional needs which could not be appropriately embodied in a universal convention even if they had been given official sanction in treaties; and those should therefore be embodied in a declaration.

36. As the United Kingdom representative had said, there were declarations and declarations. It must therefore be made clear that such a declaration would not be binding upon all States; because there was a special character to every situation.

37. Lastly, arrangements that were in process of formation but which had not yet become rules of universal international law could be embodied in a resolution. That type of document imposed no obligations but helped to form the law of the future.

38. As for section IX of the nineteen-power proposal, the Bolivian delegation, which had abstained from voting on it, considered that it should figure in a resolution.

39. Under the vigorous direction of its Chairman, Mr. Perera, the Working Party had obtained results which gave grounds for believing that a solution satisfactory to all could be found.

40. Mr. SHAHA (Nepal) proposed the outright adjournment of the meeting.

The Nepalese proposal was rejected by 27 votes to 16, with 8 abstentions.

41. Following a suggestion by Father DE RIEDMATTEN (Holy See), Mr. JOHNSON (United Kingdom) proposed that consideration of the Working Party's

report and of the Ghana delegation's proposal relating thereto should be adjourned till the next meeting.

It was so agreed.

The meeting rose at 6.30 p.m.

TWENTIETH MEETING

Tuesday, 15 April 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.15, L.17, L.18, L.20) *(continued)* [1]

1. The CHAIRMAN, having invited the Committee to continue consideration of the report of the Working Party (A/CONF.13/C.5/L.16) and the proposal by Ghana (A/CONF.13/C.5/L.19), Father DE RIEDMATTEN (Holy See) suggested that it would be preferable, in order to expedite the conduct of business, to give priority to study of the Swiss proposal (A/CONF. 13/C.5/L.15) and the amendments proposed to it. Having decided that question, the Committee could return to its consideration of the report of the Working Party and the proposal by Ghana, and then deal with the question of its future work.

2. Mr. ASANTE (Ghana) paid tribute to the Swiss delegation for submitting, in its desire to achieve a compromise, a highly interesting proposal. He was willing for the proposal and the proposed amendments thereto to be considered before his delegation's proposal, as the representative of the Holy See had suggested.

3. Father DE RIEDMATTEN (Holy See) assured the representative of Ghana that the Holy See would support the Ghana proposal when the Committee came to examine the Working Party's report as a whole. He formally requested that his own proposal to study the Swiss proposal first be put to the vote.

The Committee decided by 29 votes to 4, with 16 abstentions, to give priority to study of the Swiss proposal and the proposed amendments thereto.

4. Mr. PROBST (Switzerland) said that the proposal (A/CONF.13/C.5/L.15) had been submitted by his delegation in the hope of obtaining the agreement of the majority of the Committee. Referring to the English and Spanish renderings of the original, he said that as far as the English text was concerned, it would be preferable not to use the term "land-locked"; the phrase "les Etats riverains ou non de la mer", proposed for article 15 ought to be translated as: "States, whether coastal or not". In the text proposed for article 27, the English would be nearer to the French original if the words "non-coastal States" were used instead of "land-locked States". Similarly, in the text proposed for article 28, the words "whether coastal or land-locked" should be replaced by the words "whether coastal or not". Finally, in part II of the document, the words "land-locked States" should be replaced by the words "States not having a sea-coast".

5. In the Spanish text, the words "le libre transit" had been translated by the phrase "el derecho de libre tránsito", whereas the Swiss delegation had deliberately avoided using the term "*droit* de libre transit" in its anxiety to avoid all dogmatic bias. He asked for the words "el derecho" to be deleted from the Spanish text.

6. Mr. BREUER (Federal Republic of Germany) considered that the Swiss proposal offered an excellent basis for preparing a convention relating to land-locked countries. However, paragraph 1 of part II would be distinctly improved if it were amended to mention the principles other than that of reciprocity which were enunciated in the Barcelona Statute. His delegation would also like to have the minor changes listed in document A/CONF.13/C.5/L.17 made in the Swiss text.

7. Mr. SCHEFFER (Netherlands) considered that the Swiss proposal was acceptable. The Swiss representative's observations on the English and Spanish translation of the proposal were, he thought, well-founded. Apart from such questions of rendering, it would be advisable to mention in the second and third sub-paragraphs of paragraph 1 of part II, the rules of international conventions already in force. The following text should therefore be added to the two sub-paragraphs: "In conformity with the legal provisions of international conventions in force". The word "guarantee" in paragraph 1, third sub-paragraph, should be replaced by the word "accord". Finally, it would be preferable for paragraph 2 of part II to be worded as follows:

> "A State not having a sea-coast shall settle by bilateral or regional agreement with the State or States situated between it and the sea all additional matters relating to freedom of transit and equal treatment in ports taking into account the special conditions of the States concerned."

8. Mr. ASANTE (Ghana) remarked that the proposals made by the Netherlands representative and those made by the representative of the Federal Republic of Germany had a point in common. He accordingly asked the Netherlands representative whether he had any objection to the amendment proposed by the Federal Republic of Germany.

9. Mr. SCHEFFER (Netherlands) thought that the proposal submitted by the Federal Republic of Germany was satisfactory to the extent that it mentioned the Statute of Barcelona; it would, however, be preferable if the final text of the proposal referred to all international conventions already concluded in the matter, and not merely to the Statute of Barcelona.

10. Mrs. DE HARTINGH (France) said she found the Swiss proposal acceptable in principle. The French delegation had submitted an amendment (A/CONF.13/C.5/L.18) in order to introduce a clarification which would round off the Swiss proposal without altering its purport. The amendment consisted merely of a refer-

[1] Resumed from the 18th meeting.

ence to the Barcelona Convention and Statute of 20 April 1921 on Freedom of Transit and the Geneva Convention and Statute of 9 December 1923 on the International Régime of Maritime Ports.

11. Mr. BREUER (Federal Republic of Germany) agreed to include the reference to the Geneva Convention as well as to the Barcelona Statute in his proposal, in accordance with the Netherlands representative's suggestion.

12. Mr. KING (United States of America) recalled that he had already had occasion to emphasize the need to find a common denominator between the interests of land-locked States and those of coastal States. The United States amendment (A/CONF.13/C.5/L.20) was motivated by the desire to ensure free collaboration between the different countries.

13. His delegation had also submitted an amendment to the three-power proposal (A/CONF.13/C.5/L.7); he wished to reserve his delegation's right to revert to that matter when the Committee resumed consideration of the three-power proposal.

14. Mr. GUEVARA ARZE (Bolivia) stated that his delegation intended to submit an amendment to the Swiss proposal. The amendment would consist in replacing the word "accord" by the word "guarantee" in the second sub-paragraph of paragraph 1 of the article in part II of the Swiss proposal. In the same sub-paragraph, the words "and in conformity with the agreements in force on the subject" should be added after the word "reciprocity".

15. He further remarked that his delegation could not agree that the Geneva and Barcelona conventions should be the only international agreements already concluded to be mentioned. Besides the Barcelona and Geneva declarations, relations between land-locked States and their neighbours had given rise to a series of bilateral treaties which could not be revoked. It would be inadvisable to overlook the juridical system which had been built up between the land-locked States of Latin America and their neighbours over thirty years of co-operation.

16. Mr. MASCARENHAS (Brazil) said he would support the Swiss proposal, which offered all necessary safeguards for the parties concerned. He also endorsed the statement made by the Bolivian representative with regard to the numerous bilateral agreements at present governing the relations between coastal and land-locked States.

17. Mr. MARTINEZ MONTERO (Uruguay), while supporting the Swiss proposal, recalled the reservations he had already made on the subject of preferential treatment in territorial waters and ports. Such a preferential régime was provided for under Uruguayan law. Furthermore, although the Uruguayan delegation was prepared to support the Swiss proposal in principle, it would be unable to vote until it had seen in writing all the amendments submitted orally.

18. Mr. PECHOTA (Czechoslovakia) saw a certain parallelism between the fundamental principles established by the Preliminary Conference of Land-locked States and those set forth in the Swiss proposal, which his delegation was prepared to support. He remarked, however, that the proposal did not include all the principles recommended by the Preliminary Conference; its adoption should therefore not exclude other proposals which might also be of interest.

19. Commenting on the amendments proposed to the Swiss proposal, he thought that the amendment submitted by the Federal Republic of Germany (A/CONF. 13/C.5/L.17) would weaken the Swiss proposal. The proposal submitted by the French delegation (A/CONF.13/C.5/L.18) failed to mention bilateral agreements, an omission unacceptable to the Czechoslovak delegation. The amendment submitted by the United States delegation (A/CONF.13/C.5/L.20) would merely complicate the otherwise simple wording of the Swiss proposal. As for the proposals presented orally by the Bolivian and Netherlands delegations, the Czechoslovak delegation reserved the right to comment upon them at a later stage.

20. Mr. WILLFORT (Austria) congratulated the Swiss representative, who by submitting his proposal, had greatly helped to improve the atmosphere of the discussions in the Committee. His delegation was prepared to support the proposal. He understood the Bolivian representative's apprehension, and thought that no country could surrender rights obtained under bilateral agreements, particularly as the provisions of the Barcelona and Geneva conventions should be regarded as minimum provisions.

21. Mr. BACCHETTI (Italy) paid tribute to the spirit of co-operation shown by the delegation of Switzerland in submitting its proposal. Before committing himself, he would need to study carefully the text of the proposal and the proposed amendments thereto.

22. Mr. DONOSO SILVA (Chile) considered that, in submitting its proposal, the Swiss delegation had made a most effective contribution to the Committee's work. None of the proposed amendments aimed at introducing any fundamental changes in the proposal; all were merely designed to clarify it. Since it would appear possible to combine them all in a single draft, the Chilean delegation proposed that their sponsors discuss the possibility of drafting a joint text.

23. The Chilean delegation agreed with the representatives of the Netherlands and Bolivia that, in referring expressly to the principles of the Barcelona Convention and Statute of 1921 on freedom of transit and the Geneva Convention and Statute of 1923 on the international régime of maritime ports, there was a risk of appearing to ignore other bilateral or multilateral treaties on the same subject. On the other hand, his delegation saw no objection to the use of some general expression such as, say, "existing agreements".

24. Mr. BOURBONNIERE (Canada) stated that the Swiss proposal (A/CONF.13/C.5/L.15) had received the support of the largest number of delegations. He paid tribute to the wisdom and realism inherent in it. He hoped that the sponsors of the nineteen-power proposal (A/CONF.13/C.5/L.6) and the three-power proposal (A/CONF.13/C.5/L.7) would agree to withdraw their texts. This would facilitate the Committee's

work and demonstrate that all those taking part were eager to reach a compromise. In point of fact, nearly all the points dealt with in the latter two proposals were contained in the Swiss proposal.

25. The Canadian delegation proposed that part I of the Swiss proposal, to which no amendments had been suggested, be put to the vote at once. Thereafter, to help in taking a decision on Part II, the sponsors of the various draft amendments might endeavour to agree on a joint text, as the Chilean representative had suggested.

26. Mr. BELTRAMINO (Argentina) welcomed the Swiss proposal, which aimed at providing the Committee with compromise solutions in a condensed form. In principle, his delegation accepted the proposal, together with the Bolivian amendment to it. It also supported the Chilean proposal that a drafting group be asked to merge into a single text the various proposed amendments to the Swiss proposal.

27. Mr. ADOR (Haiti) was happy to note that the substance of the Swiss proposal had met with the approval of all members, and that all that remained was to round off the text.

28. The sponsors of proposed amendments to the Swiss proposal might, as suggested by the Chilean representative, form a drafting group among themselves and with the help of the Swiss delegation, draw up a text which could then be put to the vote in the Committee.

29. Father DE RIEDMATTEN (Holy See) stated that his delegation supported the Swiss proposal and the Bolivian amendment thereto. It likewise supported the Chilean proposal for the preparation of a joint amendment. He urged the sponsors of the various amendments to show a spirit of conciliation and make every effort to reach solutions which would not only receive virtually unanimous approval at the Conference but also lead subsequently to the greatest possible number of ratifications.

30. Mr. SAVELIEV (Union of Soviet Socialist Republics) considered that the Swiss proposal constituted an excellent working basis. Together with the nineteen-power proposal and the three-power proposal, it would enable the Working Party to arrive at a final solution.

31. His delegation could not accept the amendment proposed by the Federal Republic of Germany (A/CONF.13/C.5/L.17). It could see no point in complicating the wording of the text by a reference to conventions and statutes that had not been universally ratified and which many countries found themselves unable to ratify. The Committee had to find a text which would satisfy all participating States and establish an instrument which could remain in force for several decades.

32. Mrs. DE HARTINGH (France) stated that, in its desire to satisfy the Bolivian delegation, the French delegation would agree to round off the reference to the Barcelona Convention of 1921 on freedom of transit and the Geneva Convention of 1923 on the international régime of maritime ports with a text which might take the following form: "and other existing conventions, such as those concluded by Latin American countries". At the same time, she thought it would be more logical to insert that reference in paragraph 2 rather than paragraph 1 of part II of the Swiss proposal.

33. M. KING (United States of America) said he supported the Chilean representative's proposal that in compliance with the recommendations of the General Committee a joint amendment should be drafted. He also favoured the Haitian proposal that the single text to be drawn up by the sponsors of the various proposed amendments to the Swiss proposal should be put to the vote. Finally, he gave his backing to the Canadian representative's suggestion that the Committee should vote without delay on part I of the Swiss proposal, as no amendment to it had been proposed.

34. Mr. LOOMES (Australia) said his delegation gave general support to the Swiss proposal and would vote for it, subject to any modifications which might be made later as a result of amendments. It was well drafted and could serve as a basis for a decision by the Committee. The Australian delegation also supported the Chilean proposal for the drafting of a joint amendment and, like the Canadian representative, hoped that the sponsors of the nineteen-power proposal and the three-power proposal would withdraw their texts.

35. Mr. PECHOTA (Czechoslovakia) said that the Swiss proposal was not the only one. The others, in particular the nineteen-power proposal, the three-power proposal and the report of the Working Party (A/CONF.13/C.5/L.16) should not be put aside. They should therefore be considered at the same time as the Swiss proposal, and the Committee would thus be able to choose the best solution.

36. Mr. TABIBI (Afghanistan) congratulated the Swiss delegation on its proposal, which should enable the Committee to reach agreement on the most important points for embodiment in a convention. But it would be improper to neglect the report of the Working Party and the other proposals previously submitted to the Committee. In the nineteen-power proposal particularly, there were principles which its sponsors could not readily agree to withdraw. The Committee must not only draft articles for incorporation in a convention, but also decide on those which were to be included in resolutions or declarations.

37. The Afghan delegation generally approved of the Swiss proposal, but reserved the right to submit amendments designed not to weaken it, like the amendment proposed by the Federal Republic of Germany (A/CONF.13/C.5/L.17), but to improve it.

38. Mr. SHAHA (Nepal) said he thought the Swiss proposal was well drafted, took into account the different points of view and was entirely acceptable in its present form. In some respects it went further than the nineteen-power proposal, since it offered a decision on the form of the text.

39. However, the Committee should not fail to examine the other proposals and the report of the Working Party (A/CONF.13/C.5/L.16). Before going on to the next stage of its work, it should instruct a smaller body, which might be the Working Party already constituted

or another working party, to consider what should be done about the recommendations made in the report.

40. Mr. JOHNSON (United Kingdom) said he thought the proposed amendments to the Swiss proposal did not differ so greatly that their sponsors could not succeed in drawing up a joint text. He strongly urged delegations from European States not to insist on an express reference to the Barcelona and Geneva conventions being inserted in the text. Although those conventions were not exclusively European (there were non-European powers among the signatories), there was a danger that such a reference might seem to exclude other important treaties and conventions. On the other hand, a general phrase such as "the agreements in force" would exclude neither the Barcelona and Geneva conventions nor any other treaty.

41. The United Kingdom delegation was in a position to state that the sponsors of the three-power proposal (A/CONF.13/C.5/L.7) were prepared to withdraw it. It had served a constructive purpose when submitted, but had now been superseded by the Swiss proposal.

42. Mr. GERONIN (Byelorussian S.S.R.) praised the work done by the Swiss delegation and the proposal to which it had led. However, that proposal was silent on one important issue: that every land-locked State had the right of free access to the sea as the consequence of a more general principle, that of freedom of the high seas, which could be understood to mean that the sea was by its nature open to all.

43. The right of free access to the sea, already recognized as belonging to land-locked States in many bilateral and multilateral agreements, must be affirmed and developed. The Swiss proposal was therefore not the only one to be considered. Echoing the remarks made by the Soviet Union representative, he expressed the view that the Working Party should draft a document acceptable to all participants, also taking into account the report of the Working Party (A/CONF.13/C.5/L.16) and the proposals previously submitted to the Committee.

44. Mr. USTOR (Hungary) said he hoped that the praiseworthy efforts of the Swiss delegation would soon lead the Committee to a favourable result. For land-locked States the proposal might seem weak. The first paragraph of its part II did not re-enunciate the phrase "right of free access to the sea" which was used in the preamble of that part. The Swiss proposal would be further weakened if the amendments proposed by the United States of America (A/CONF.13/C.5/L.20) and by the Federal Republic of Germany (A/CONF.13/C.5/L.17) were adopted.

45. The nineteen-power proposal (A/CONF.13/C.5/L.6) had not been withdrawn, so there were still two proposals before the Committee. The Hungarian delegation thought, first, that — as several other delegations had suggested — an attempt should be made to unify the various proposed amendments to the Swiss proposal, and secondly, that the already existing Working Party should be entrusted with the task of seeking a compromise between the nineteen-power proposal and the Swiss proposal.

46. Mr. DONOSO SILVA (Chile), again proposed that the sponsors of the various proposed amendments to the Swiss proposal be requested to meet together with a view to framing a single text.

It was so decided.

The meeting rose at 5.40 p.m.

TWENTY-FIRST MEETING

Tuesday, 15 April 1958, at 8.15 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.15, L.17, L.18, L.20, L.23) *(continued)*

1. The CHAIRMAN said that consideration of the Swiss proposal (A/CONF.13/C.5/L.15) and of the proposed amendments thereto could be quickly completed, whereupon the Committee could at once dispose of the Working Party's report (A/CONF.13/C.5/L.16), with a view to passing on as quickly as possible to the question of the Committee's further work, which was a matter of urgency.

2. Mr. JUSUF (Indonesia) considered that the Swiss proposal had been amply discussed at the previous meeting, and that consideration of that point could be rapidly completed, as the Chairman hoped, thanks to the joint text which would no doubt be submitted by the sponsors of the amendments to the Swiss proposal. All representatives would surely agree that the Working Party had scrupulously fulfilled the terms of reference entrusted to it by the Committee; consequently, consideration of the Working Party's report could also be quickly terminated, and the Committee would undoubtedly approve the recommendations contained therein. Finally, the Indonesian delegation, in an effort to enable the Committee to complete its work as quickly as possible, had joined with the delegation of Iceland in submitting a proposal (A/CONF.13/C.5/L.22), whereby the Working Party would be further called upon to prepare, not later than 18 April, its recommendations concerning the substance and wording of provisions suitable for inclusion partly in a convention and partly in a declaration and a resolution.

3. Mr. SRESHTHAPUTRA (Thailand) supported the Swiss proposal, paying tribute to the spirit of conciliation and goodwill it displayed.

4. Replying to a question by Mr. BOURBONNIERE (Canada), the CHAIRMAN stated that discussion of the Swiss proposal was not closed, but that, since no other representative had asked to speak on that proposal, the Committee could now turn to consideration of the Working Party's report.

5. Mr. KING (United States of America) was of the opinion that, before continuing consideration of the Swiss proposal, it would be advisable to await the results of the discussions going on between the sponsors of amendments to that proposal, who expected to be able to submit a joint text to the Committee at its next meeting.

6. Mr. TABIBI (Afghanistan) expressed his profound regret that a joint text had not been laid before the Committee at the present meeting.

Consideration of the Working Party's report (A/CONF.13/C.5/L.16) *(continued)* [1]

7. Mr. MASCARENHAS (Brazil) said he would like some further information concerning the Working Party's recommendation on section IX of the nineteen-power proposal (A/CONF.13/C.5/L.6). Brazil's attitude would depend on the eventual decision on the principle set forth there, that of the exclusion of the application of the most-favoured-nation clause. As a matter of fact, Brazil had concluded many treaties based on the application of that clause and was also taking an active part in the work of GATT, whose whole mechanism also rested on its application.

8. Mr. SHAHA (Nepal) stated that the Working Party's recommendations were acceptable to the Nepalese delegation. He proposed that the Committee should consider them one by one. In his opinion, the Working Party's report should receive the Committee's full attention and he regretted that some representatives tended to attach less importance to it than it deserved. The Swiss proposal should, he thought, be referred to the Working Party for study.

9. In reply to the question put by the representative of Brazil, he pointed out that according to sub-paragraph (2) (*a*) of paragraph 3 of the Working Party's report, section IX of the nineteen-power proposal should be embodied in a conference resolution.

10. Mr. MASCARENHAS (Brazil) pointed out that paragraph 3 referred to draft recommendations submitted by the United Kingdom representative and not to the recommendations of the Working Party itself. Paragraph 7 of the report stated expressly that in the Working Party " a proposal that the matter dealt with in section IX of the nineteen-power proposal should be embodied in a declaration was rejected by a majority "; but no indication was given of the form which the Working Party recommended should be given to that part of the nineteen-power proposal.

11. Mr. PECHOTA (Czechoslovakia) said he thought that it could be inferred from a comparison of paragraphs 3 and 7 of the report that the Working Party was of the opinion that section IX of the nineteen-power proposal should not be embodied in a declaration but in a resolution. Of course, that did not mean that the Working Party either approved or disapproved of the contents of section IX, for it had no authority to express its opinion on matters of substance.

12. Mr. MASCARENHAS (Brazil) noted that in the second sentence of paragraph 7 of its report, which referred specifically to the matters to be embodied in a resolution, the Working Party had not mentioned section IX. He hoped that it would be possible to have the Working Party's intentions made completely clear.

13. Mr. ASANTE (Ghana) said that the Swiss proposal had been well received by many delegations representative both of land-locked and of coastal States. That was because the proposal emanated from a country which had long experience of international discussions, and had done much for the maintenance of peace. As Switzerland had concluded numerous bilateral agreements with its neighbours enabling it to enjoy full freedom of the seas, one could be assured that its proposal was designed solely to asist the Committee in carrying out its task successfully.

14. Dealing with the report under discussion, he recalled that the Working Party had received no mandate from the Committee to express an opinion on the substance of the questions but only on the form in which they should be expressed. Approval of the report would in no way bind the Committee when it came to submit its own report to the Conference.

15. With regard to the nineteen-power proposal, which was still before the Committee, it must be noted that some parts of it had been incorporated in the Swiss proposal, which, it seemed, could be adopted by the Committee with minor amendments. Nor must it be forgotten that the land-locked States were in a minority in the Committee and that, whatever form was adopted for the results of the Committee's work, some of those countries would still have problems to solve which they could not settle without the co-operation of the coastal States. He therefore asked the members of the Committee to make every effort to ensure that some other parts of the nineteen-power proposal were added to the Swiss proposal in the form of an amendment, for example. In that way, the delegations of the land-locked States would not have the impression that their proposals had escaped consideration for merely procedural reasons.

16. In his opinion, the Committee could first give its approval to the Working Party's report, which referred only to the form in which the results of the Committee's work should be expressed, could then proceed to consideration of the Swiss proposal on the understanding that additions might be made to it, and could conclude by examining certain parts of the nineteen-power proposal which might well be incorporated in the Swiss proposal.

17. Mr. BREUER (Federal Republic of Germany) proposed that the Committee should adjourn its discussion in order to give the sponsors of the amendments to the Swiss proposal the time to prepare a joint text.

18. Mr. PECHOTA (Czechoslovakia) said he thought that before adjourning the discussion the Committee should conclude the study of the Working Party's report.

19. Mr. BREUER (Federal Republic of Germany) said that in his view the Committee could more easily carry on its work when it had before it the joint text submitted by the sponsors of the amendments to the Swiss proposal.

20. Mr. TABIBI (Afghanistan) said he supported the proposal by the representative of the Federal Republic of Germany and requested that the discussion should be adjourned until the following morning and not the following afternoon. The sponsors of the amendments to the Swiss proposal could hold a meeting before the Committee met.

It was so decided.

The meeting rose at 9.50 p.m.

[1] Resumed from the 19th meeting.

TWENTY-SECOND MEETING

Wednesday, 16 April 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.15, L.17, L.18, L.20, L.21, L.23) *(continued)*

1. Mr. WILLFORT (Austria) thought that the Committee might usefully continue its consideration of the Swiss proposal (A/CONF.13/C.5/L.15) and amendments thereto (A/CONF.13/C.5/L.17, L.18, L.20, L.21, L.23). He therefore proposed that the Committee should consider the questions before it in the following order : Swiss proposal and amendments thereto ; Working Party's report (A/CONF.13/C.5/L.16) ; further work of the Committee.

The Austrian proposal was adopted by 30 votes to 9, with 6 abstentions.

2. Mr. KANDAN (Turkey) considered that the Swiss proposal would simplify the Committee's work of codification. The Turkish delegation could accept part I of that proposal without reservation, but as regards part II it would support only paragraph 2 (on equal treatment in ports and freedom of transit), for it could not accept provisions under which one category of States would have special duties towards another category of States. The countries concerned still retained the right to conclude agreements with one another and to accede to the 1921 Barcelona Convention and the 1923 Geneva Convention.

3. Mr. KING (United States of America) said that, pursuant to the Committee's decision, the sponsors of the various amendments to the Swiss proposal had endeavoured in a spirit of real co-operation to draft a single text. They had been unable to do so because of discrepancies in translation. The Committee therefore still had to deal with draft amendments A/CONF.13/C.5/L.17, L.18, L.20, L.21 and L.23.

4. Mr. BACCHETTI (Italy) proposed that part I of the Swiss proposal, which most members apparently approved, be put to the vote first.

5. Mr. GUEVARA ARZE (Bolivia) said that his delegation could not support the Italian proposal. The Swiss proposal formed an indivisible whole and sought to solve one and the same problem. It should be put to the vote in its entirety, for the Committee would find itself in an awkward situation if part I was adopted and part II was then rejected.

6. Mr. O'SULLIVAN (Ireland) supported the Italian proposal and did not share the misgivings of the Bolivian representative.

7. Mr. TABIBI (Afghanistan) thought that not even part I of the Swiss proposal could be voted on until the fate of the various amendments to part II was known.

8. Mr. BHUTTO (Pakistan) thought that with certain reservations the Swiss proposal came closest to the desired solution. The Committee might give the sponsors of the various amendments and the Swiss delegation time to endeavour to merge their several texts in a consolidated text. The Pakistani delegation would be willing to serve on a group appointed for that purpose.

9. Mr. BREUER (Federal Republic of Germany) said that his delegation had left no stone unturned in its efforts to formulate a single amendment. It was still hoping to do so and to facilitate the preparation of a joint text, would be willing to withdraw its own amendment (A/CONF.13/C.5/L.17). The only change which he would like to see in the Swiss proposal would be the replacement in part II, paragraph 1 (English text) of the word "shall" by "should" or "may", which seemed a more accurate translation of the French word "peuvent".

10. Mr. GUEVARA ARZE (Bolivia) said that his delegation was also willing to withdraw its amendment (A/CONF.13/C.5/L.23) if the sponsors of the other amendments would do likewise. The translation problem raised by the representative of the Federal Republic of Germany did not affect Bolivia, since the Spanish text of the Swiss proposal contained the word "tendrán", which was quite satisfactory.

11. Mr. ASANTE (Ghana) said that, after an informal exchange of views with the representative of the Holy See, his delegation considered that the Swiss proposal omitted only two important provisions of the nineteen-power proposal (A/CONF.13/C.5/L.6).

12. He therefore formally moved the amendment of the Swiss proposal by adding: (1) *in fine*, the text of section IX of the nineteen-power proposal; and (2) at the end of paragraph 1 of part II, after the words "through their territory", the text of paragraph 2 of section V of the nineteen-power proposal.

13. With those additions, the Swiss proposal would be likely to find a wide measure of support. If any of the sponsors of the nineteen-power proposal wished to see any other of its provisions retained, they should ask the Committee to add them to the Swiss proposal.

14. Father DE RIEDMATTEN (Holy See) said that his delegation had reached the same conclusions as the delegation of Ghana about the provisions of the nineteen-power proposal which had not been taken up in the Swiss proposal. The delegation of the Holy See would vote against the additions proposed by the representative of Ghana but considered, nevertheless, that the latter's suggestion would save the Committee a lengthy procedural discussion and enable a vote to be taken very soon.

15. Mr. BOURBONNIERE (Canada) said that he fully understood the misgivings of the Bolivian representative with regard to the Italian proposal. However, a decision on articles 15, 27 and 28 was urgent because the other committees were going ahead with their work in that connexion and they should, therefore, be notified in good time — for instance, by a communication from the Chairman of the Fifth Committee — of the decisions taken by it. The other committees had resorted to the method of provisional votes in similar cases. The Fifth Committee might like to follow their example, converting the provisional vote into a final vote if the translation difficulties could be cleared up.

16. Mrs. DE HARTINGH (France) feared that the tabling of additional amendments might further complicate the Committee's work. Although it would be difficult to divide the Swiss proposal, the French delegation would agree to a provisional vote on part I. All things considered, it would be prepared to withdraw its own amendment (A/CONF.13/C.3/L.18) in favour of the unamended text of the Swiss proposal (A/CONF. 13/C.5/L.15).

17. Mr. SHAHA (Nepal) said he would agree to a provisional vote on the Swiss proposal in its entirety.

18. Mr. GUEVARA ARZE (Bolivia) shared the view of the Canadian representative that the Chairman might address a communication to the other committees which were to consider articles 15, 27 and 28.

19. He was still opposed to the Swiss proposal being put to the vote part by part, even provisionally. If that procedure were followed, the Committee might conceivably adopt part I and then not have time enough to adopt part II.

20. Mr. TILLEKERATNE (Ceylon) agreed with the representatives of Afghanistan and Bolivia that the two parts of the Swiss proposal could not be separated. Moreover, the Working Party itself had recommended that the questions covered by the Swiss proposal (A/CONF.13/C.5/L.15) should be dealt with in a convention.

21. Mr. O'SULLIVAN (Ireland) said that he had supported the Italian proposal simply and solely in order to facilitate the Committee's work and that, as it appeared from the debate that that proposal might have the opposite effect, he withdrew his support.

22. Mr. SCHEFFER (Netherlands) pointed out that translation difficulties alone had prevented the submission of a joint amendment to the Swiss proposal. It appeared, however, that those difficulties could be surmounted, and his delegation was therefore prepared to withdraw its amendment in favour of the joint text. He too thought it would be better to postpone further discussion until a joint amendment had been submitted.

23. Mr. ASANTE (Ghana) pointed out that his oral amendment provided for the incorporation in the Swiss proposal of a number of important points contained in the nineteen-power proposal (A/CONF.13/C.5/L.6). If the sponsors of the latter proposal feared that the Ghana amendment might further complicate the Committee's work, however, he was prepared to withdraw it.

24. Mr. BHUTTO (Pakistan) considered that, if the Swiss proposal and the amendments thereto were put to the vote and adopted, they would replace both the nineteen-power proposal (A/CONF.13/C.5/L.6) and the three-power proposal (A/CONF.13/C.5/L.7).

25. It would therefore be helpful if the Swiss delegation joined the sponsors of the amendments to the Swiss proposal in a further effort to formulate a consolidated text. Accordingly, he repeated his suggestion that the discussion be deferred to enable the sponsors of the various proposals to seek a basis for agreement. If those consultations were fruitless, his delegation would in its turn submit an amendment to the Swiss proposal.

26. Mr. SHAHA (Nepal) said that he might be able to accept the Swiss proposal, but pointed out that it was more limited in scope than the nineteen-power proposal. For that reason, he did not share the opinion of the representative of Pakistan that the Swiss proposal would replace that submitted by the nineteen powers.

27. The CHAIRMAN confirmed that the nineteen-power proposal (A/CONF.13/C.5/L.6) was still before the Committee.

28. Mr. JOHNSON (United Kingdom) reminded the Committee that in response to the appeal made to the sponsors of the nineteen-power proposal and those of the three-power proposal, the latter had withdrawn their proposal (A/CONF.13/C.5/L.7). If the sponsors of the nineteen-power amendment found the Swiss proposal too limited, they too could withdraw their proposal (A/CONF.13/C.5/L.6) and replace it by amendments to the only text which would then before the Committee — the Swiss proposal (A/CONF.13/C.5/L.15).

29. Accordingly, he endorsed the suggestion of the representative of Pakistan that the discussion be deferred to enable the sponsors of all the amendments to the Swiss proposal to find a basis for agreement; even if those consultations did not result in the formulation of a consolidated text, at least the number of amendments might be reduced to two or three.

30. Mr. MÜLLER (Switzerland) paid tribute to the representative of Ghana for the spirit of compromise he had shown in submitting an oral amendment, which was doubtless designed to enlist the support of the sponsors of the nineteen-power proposal and also of the supporters of the Swiss proposal.

31. It should be noted, however, that the provisions which the representative of Ghana had proposed to incorporate in the Swiss proposal were in fact already implicit in that proposal. The "free transit" referred to in part II of the Swiss proposal implied, of course, exemption from customs duty and other special charges and taxes referred to in section IV of the nineteen-power proposal. Similarly, the equal treatment provided for in part II of the Swiss proposal met the preoccupations underlying section IX of the nineteen-power proposal.

32. Mr. SHAHA (Nepal) pointed out that the sponsors of the nineteen-power proposal had not withdrawn it, because the Swiss proposal was more limited in scope. Moreover, the Working Party itself had recommended that certain provisions of the nineteen-power proposal should be incorporated in a resolution and the United Kingdom representative had supported that view. In any case, it could not be maintained that the sponsors of the nineteen-power proposal had not shown a conciliatory spirit, since they had agreed that certain sections of their proposal should be incorporated in the Swiss proposal.

33. Mr. GUEVARA ARZE (Bolivia) said that he would withdraw his delegation's support for the nineteen-power proposal only if he was certain that the Swiss proposal would be adopted.

34. It was obvious that certain points of the nineteen-power and the three-power proposals were not embodied in the Swiss proposal, but it should be borne in mind

that the latter proposal was designed to group together the questions which should be covered by a convention; the other questions could be dealt with in another instrument — either a resolution or a declaration; his delegation reserved its position on that point.

The meeting rose at 12.30 p.m.

TWENTY-THIRD MEETING

Wednesday, 16 April 1958, at 2.45 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.15, L.24 to L.26) *(continued)*

1. The CHAIRMAN invited the Committee to consider the amendments to the Swiss proposal (A/CONF.13/C.5/L.15) in the following order: the Ghana amendment (A/CONF.13/C.5/L.24); the Pakistan amendment (A/CONF.13/C.5/L.25); and the five-power amendment (A/CONF.13/C.5/L.26).

2. Mr. BHUTTO (Pakistan) said it was his country's ardent desire that a fair agreement be reached and a common denominator found for the views of all States, whether land-locked States or transit or coastal States. The Conference would have been a failure if such a common denominator were found only for a single group of States. Pakistan wished to maintain cordial relation with its neighbours. He had, therefore, been deeply grieved to hear doubts cast at times on its motives. Those doubts seemed to be based on Pakistan's attitude towards the principle of sovereignty. Pakistan could not agree to the relinquishment of sovereignty by States. The rights, facilities and privileges sought by land-locked States must be the subject of agreement with coastal States and States of transit.

3. His country's amendment (A/CONF.13/C.5/L.25), which was the product of mature reflection, took account both of the facts and of the need to protect the sovereignty of coastal States and provide safeguards. Pakistan acknowledged that the freedom of the seas belonged to land-locked States, on the understanding that, in order to enjoy it, those States must agree with the neighbouring coastal States. It was prepared to grant land-locked States free transit through its territory on the basis of bilateral and multilateral agreements. It was also prepared to accord their ships treatment equal to that accorded to the ships of any other State. Obviously, however, such treatment might, in certain cases, not be the same as that which Pakistan accorded to its own ships.

4. By way of conclusion, he would assure the Conference that his country desired to co-operate and entertain friendly relations with all land-locked countries, whether its neighbours or not.

5. At the CHAIRMAN's invitation, Mr. KING (United States of America) introduced the five-power amendment (A/CONF.13/C.5/L.26) to the Swiss proposal. He was pleased to be able to announce that five countries which had submitted amendments to the Swiss proposal had agreed on a single text. Practically the whole of the Bolivian amendment (A/CONF.13/C.5/L.23) had been incorporated in the text. The sponsors of the joint amendment in question considered that no agreement on any other basis would stand a chance of being approved by the majority of the delegations at the Conference.

6. Mr. SHAHA (Nepal) said he also considered that the joint text was the only one on which agreement could be reached. The delegation of Nepal approved of it in all essentials, but proposed that the word " may " in the second line of paragraph 1 be replaced by the word " shall ".

7. Mr. KING (United States of America) regretted that the amendment just proposed by the representative of Nepal could not be accepted by the United States delegation. His delegation had suggested using the word " should " instead of " may " but the suggestion had not been accepted by the other co-sponsors of the joint amendment.

8. Mrs. de HARTINGH (France) proposed deleting from the fourth line of the French text of the joint amendment the words " à ce dernier ", as superfluous.

It was so agreed.

9. Mr. ASANTE (Ghana) said that the purpose of his amendment (A/CONF.13/C.5/L.24) was to bring the nineteen-power proposal (A/CONF.13/C.5/L.6) and the Swiss proposal more closely into line. After discussing the matter with several representatives, he had, however, reached the conclusion that his amendment might render agreement more difficult. His delegation accordingly wished to withdraw it, on the understanding that any decisions taken on the Swiss proposal and the outstanding amendments to that proposal would not prejudice the Committee's decisions on the nineteen-power proposal and the report of the Working Party (A/CONF.13/C.5/L.16).

10. Mr. TABIBI (Afghanistan) announced that the Afghan delegation would vote for the five-power amendment, provided that the Nepalese amendment to it were adopted. He had listened with much interest to the explanations of his amendment given by the Pakistani representative, and noted them with deep appreciation, but he must state that his delegation, like those of the other land-locked countries represented at the Conference, had from the very beginning of the discussions adopted a most understanding attitude. He must emphasize that the proposals of the land-locked countries were directed against no State, and that a successful conference would benefit the coastal States just as much as the land-locked States. In his opinion, section VII of the nineteen-power proposal (A/CONF.13/C.5/L.6) explicitly recognized the fact that the coastal State or State of transit maintained " full sovereignty over its territory ". The fears expressed by the Pakistani representative were therefore without foundation.

11. His country, by the policy it followed, had always given evidence of its determination to preserve bonds of friendship with its neighbours and to co-operate with them. In the case of some of them, Afghanistan's efforts had not always been crowned with success, but he hoped

that henceforth those countries would agree to conclude bilateral agreements with Afghanistan.

12. The Afghan delegation would vote against the amendment submitted by Pakistan. His delegation considered that it had already given sufficient evidence of its desire for an understanding by agreeing not to press for a discussion of the nineteen-power proposal, and also by accepting any suggestion which might enable the Swiss proposal to be adopted.

13. Mr. ELAYAFI (United Arab Republic) said that he would vote for the Swiss proposal with the five-power and the Nepalese amendments, provided that the other points made in the nineteen-power proposal could be presented in the form of a declaration.

14. Mr. BHUTTO (Pakistan) announced that, after hearing the statements by the representatives of Afghanistan and the United Arab Republic, he wished to withdraw his country's amendment (A/CONF.13/C.5/L.25). He approved of the five-power amendment. He could not accept the amendment by Nepal replacing the word " may " by the word " shall ", since the latter verb had imperative force. Pakistani courts ruled in some cases that the word " may " had the meaning of " shall ". By accepting the word " may ", the Pakistani delegation had gone more than half way towards a compromise since, like the Pakistani proposal, the United States amendment (A/CONF.13/C.5/L.20) had originally contained the word " should ".

15. He expressed his country's gratitude to Switzerland, which had provided the basis for a settlement of the matter by leaving each State free to decide what was good for it. The Committee should adopt the Swiss proposal.

16. Mr. BACCHETTI (Italy) said he thought that the more flexible form of a resolution would have been better suited to the subject-matter of the Swiss proposal. While approving the Swiss delegation's motives, the Italian delegation had, on the previous day, reserved its position. Seeing that the Swiss proposal and the five-power amendment satisfied the land-locked States, the Italian delegation was prepared, in a supreme effort to achieve a compromise, to vote for the five-power amendment, but on condition that not a word of it was changed.

17. Mr. BENSIS (Greece) noted with satisfaction that after carrying out a very difficult task, the Committee had reached a solution acceptable to all. The Greek delegation was ready to vote in favour of the amendment, but could go no further than that. It hoped that all delegations would make an effort to vote in favour.

18. Father DE RIEDMATTEN (Holy See) said he would vote unhesitatingly for the five-power amendment, which was the result of such laudable efforts, and he hoped that it would obtain as big a majority as possible.

19. Mr. ASANTE (Ghana) said it was his opinion that the Committee should proceed to a vote in order to bring its work to a happy conclusion. However, in order that its validity might not be challenged, he hoped the Chairman would give a ruling as to whether the rules of procedure permitted a vote on a proposal circulated during a meeting. He himself thought it was possible. He would also like to know whether adoption of the Swiss proposal would make it unnecessary to consider the other proposals before the Committee.

20. Mr. BOURBONNIERE (Canada) said the Canadian delegation had backed the Swiss proposal ever since it was submitted, and would have liked to see it adopted without amendment. However, in view of the opinions expressed, the Canadian delegation would vote for the five-power amendment.

21. He made a formal proposal that in order not to delay the Committee's work rule 29 of the rules of procedure should not be applied.

22. M. BHUTTO (Pakistan) supported the Canadian representative's proposal.

23. The CHAIRMAN pointed out for the benefit of the representative of Ghana that the Committee had two proposals before it; the nineteen-power proposal (A/CONF.13/C.5/L.6) and the Swiss proposal with the five-power amendment and the Nepalese amendment. The rules of procedure provided that those proposals should be put to the vote in the order in which they had been submitted.

24. Rule 29 made it impossible to proceed to the vote at once, and it was impossible not to apply a rule of procedure duly adopted by the Conference. However, the consensus of opinion in favour of the Swiss proposal and the five-power amendment gave grounds for hoping that the matter could be settled the following day.

25. Mr. DONOSO SILVA (Chile) said his delegation would vote for the Swiss proposal and the five-power amendment. He noted that the symbol of the five-power amendment was marked " Original: English/French/Spanish ", and to give that document its final form, it should be referred to the Drafting Committee.

26. Mr. GUEVARA ARZE (Bolivia) and Mr. MARTINEZ MONTERO (Uruguay) said they concurred with the Chilean representative's suggestion.

27. Mr. KING (United States of America) said he thought that the Committee was entirely master of its own procedure. Since the second sentence of rule 29 began with the words " as a general rule ", it could very well decide to vote on the five-power amendment at the present meeting. Furthermore, after voting on that amendment and on the Swiss proposal, it could decide under rule 41 not to consider the nineteen-power proposal (A/CONF.13/C.5/L.6).

28. The CHAIRMAN said that the words " as a general rule " appeared in rule 29 because the third sentence of that rule permitted exceptions.

29. If the debate was concluded, the Committee could proceed to take a vote straightaway at the beginning of the next meeting.

30. Mr. JOHNSON (United Kingdom) said he thought the interpretation of rule 29 given by the Chairman was incorrect. That rule authorized the Chairman on his own initiative to put to the vote motions as to procedure, but the Committee could decide that a vote should be taken even if a matter of substance was involved.

31. Mr. BOURBONNIERE (Canada) said that if the Chairman maintained his ruling on rule 29, he would be obliged to appeal against it.

32. Mr. USTOR (Hungary) said that to adopt the Canadian proposal would be to contravene rule 29; he did not think that after two months of discussion the Committee could decide on a proposal embodying the essential of its work when it had only been submitted half an hour before.

33. If no other representative wished to speak, he would propose that the meeting be adjourned until the following day.

The motion for adjournment was rejected by 29 votes to 16, with 9 abstentions.

34. The CHAIRMAN maintained that he could not allow the five-power amendment to be put to the vote.

35. Mr. BACCHETTI (Italy) considered that it was for the Committee to decide whether or not it would vote on the five-power proposal at the present meeting.

36. Mr. TABIBI (Afghanistan) and Mr. BHUTTO (Pakistan) thought that under rule 22 of the rules of procedure the Chairman must put the Canadian appeal to the vote.

37. Mr. WILLFORT (Austria) said that he interpreted rule 29 in the same way as the United Kingdom representative. The previous week, he himself had submitted an amendment which, with the Committee's approval, the Chairman had put to the vote the very same day.

38. Mr. USTOR (Hungary) said that for him rule 29 did not bear the meaning attributed to it by the United Kingdom representative. . . .

39. Mr. BHUTTO (Pakistan), intervening on a point of order, declared that, under the terms of rule 22, the appeal should be put to the vote immediately.

40. The CHAIRMAN begged the Pakistani representative not to interrupt the speaker.

41. Mr. USTOR (Hungary) considered that the third sentence of rule 29 should be interpreted strictly, and that the Chairman had no right to put the five-power amendment to the vote at the present meeting.

42. Mr. GERONIN (Byelorussian Soviet Socialist Republic) pointed out that he had only just received the text of the five-power amendment, and was therefore not in a position to vote immediately. He asked that the vote be deferred until the following day.

43. The CHAIRMAN stated that the object of rule 29 was to allow representatives to consult the heads of their delegations or their governments.

44. Mr. ASANTE (Ghana) moved that the meeting be adjourned.

The motion was rejected by 31 votes to 12, with 11 abstentions.

45. Mr. BUU-KINH (Republic of Viet-Nam) claimed that, while rule 29 constituted a safeguard for delegations, the latter were entitled to dispense with it. The words " as a general rule " made it clear that the text did not necessarily have to be applied in every case. The Committee could give its own ruling on that matter of procedure.

46. Mr. BHUTTO (Pakistan) thought that the Committee had reached a deadlock as a result of the Chairman's interpretation of rule 29. When the Chairman's ruling had been challenged, the appeal had not been immediately put to the vote, as stipulated by rule 22. When he (Mr. Bhutto) had intervened on a point of order, he had been asked not to interrupt the speaker. But that was not the first time that a speaker had been interrupted by a representative rising to a point of order, and a point of order always enjoyed priority. The turn subsequently taken by the debate had shown that his intervention was correct. The Chairman, who was supposed to keep order and protect everyone's rights, had prevented him from putting a motion which he was fully entitled to present.

47. The CHAIRMAN replied that a point of order could not be used as a means of ensuring priority for a proposal.

48. Replying to a question by Mr. JOHNSON (United Kingdom), the Chairman said that he had given his opinion, and that it was now up to the Committee to decide.

49. Mr. BOURBONNIERE (Canada) made a formal emphatic request for the application of rule 22.

50. Mr. ASANTE (Ghana) suggested that the Committee should in any case vote on the Swiss proposal.

51. Mr. SAVELIEV (Union of Soviet Socialist Republics) expressed surprise that a problem that had occupied the Committee for two months, and which affected millions of human beings, should be treated so lightly. The wisest course would be to defer the vote until the next meeting.

52. The CHAIRMAN asked the Committee to vote on his interpretation of rule 29.

The Chairman's ruling was overruled by 34 votes to 10, with 7 abstentions.

53. Mr. PECHOTA (Czechoslovakia) asked whether the decision taken meant that the debate on the Swiss proposal and the five-power amendment was now terminated; should that be the case, the Committee must first take a decision on the Working Party's report and the joint proposal of Iceland and Indonesia (A/CONF. 13/C.5/L.22).

54. The CHAIRMAN replied in the affirmative.

55. Mr. ASANTE (Ghana) appealed to all representatives to help the Committee to reach a lasting solution in a matter which affected millions of human beings, as the Soviet Union representative had rightly stressed. He could see no reason for not putting the Swiss proposal to the vote, provided that any decision taken on it did not affect the consideration of other proposals. Thereafter, the Committee should turn to the other proposals and put them into the appropriate form.

56. Mr. KING (United States of America) supported the proposal by the representative of Ghana.

57. Mr. TABIBI (Afghanistan), Mr. BHUTTO (Pakistan) and Mr. WILLFORT (Austria) requested that a vote be taken, first on the Nepalese oral amendment, then on the five-power amendment (A/CONF.13/C.5/L.26), and finally on the Swiss proposal (A/CONF.13/C.5/L.15).

The Nepalese amendment, to replace the word "may" in the second line of paragraph 1 of the five-power amendment by the word "shall", was rejected by 28 votes to 19, with 8 abstentions.

58. Mr. TABIBI (Afghanistan), supported by Mr. BHUTTO (Pakistan) and Mr. SHAHA (Nepal) proposed, in a spirit of compromise, that the word "may" in the second line of paragraph 1 the five-power amendment be replaced by the word "should".

The proposed amendment was adopted by 31 votes to 2, with 19 abstentions.

The five-power amendment (A/CONF.13/C.5/L.26), as just amended, was then adopted by 37 votes to none, with 15 abstentions.

59. Mr. PECHOTA (Czechoslovakia) requested that the vote on the Swiss proposal as amended be taken by roll-call.

A vote was taken by roll-call.

Venezuela, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Republic of Viet-Nam, Yugoslavia, Afghanistan, Argentina, Australia, Austria, Bolivia, Brazil, Canada, Ceylon, Chile, China, Colombia, Czechoslovakia, Denmark, Ecuador, France, Federal Republic of Germany, Ghana, Greece, Holy See, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Republic of Korea, Laos, Liberia, Mexico, Nepal, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Spain, Switzerland, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Venezuela, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Iran, Turkey.

The Swiss proposal (A/CONF.13/C.5/L.15), as amended, was adopted by 51 votes to none, with 6 abstentions.

The meeting rose at 6.45 p.m.

TWENTY-FOURTH MEETING

Thursday, 17 April 1958, at 10.30 a.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the proposals submitted to the Committee (A/CONF.13/C.5/L.15, L.24 to L.26) *(conclusion)*

1. Mr. JOHNSON (United Kingdom) explained the votes cast by his delegation at the previous meeting. The United Kingdom delegation had been one of the few that voted against the Afghan delegation's amendment for replacing the word "may" by "should" in the five-power proposal (A/CONF.13/C.5/L.26). His delegation considered that for the sake of uniformity as between the texts in the various languages it was preferable to retain the word "may", which was the nearest equivalent of the word "peuvent" used in the French text. However, in the expectation that the discrepancy between the two texts could be eliminated at a later stage, the United Kingdom delegation had not hesitated to vote for the five-power amendment as a whole.

2. His delegation had been happy to note that the amendment in question contained an express mention of "existing international conventions", a reference more particularly to the Barcelona Convention of 1921 and the Geneva Convention of 1923.

Consideration of the Working Party's report (A/CONF.13/C.5/L.16, L.19) *(continued)*

3. The CHAIRMAN observed that the suggestions submitted by the Working Party in its report (A/CONF.13/C.5/L.16) were in conformity with the terms of reference given by the Committee. With the votes taken at the previous meeting, the Committee had agreed on the provisions to be included in a convention. It now remained for the Committee to decide whether other types of instrument would also be necessary.

4. Mr. BOURBONNIERE (Canada) suggested an amendment to the Ghana proposal (A/CONF.13/C.5/L.19), whereby the final words would read: "that the recommendations of the Fifth Committee to the Conference should be in the form of a convention".

5. Mr. ASANTE (Ghana) considered it essential to make it possible for the various sponsors of the nineteen-power proposal (A/CONF.13/C.5/L.6) to request the insertion of certain provisions of that proposal in resolutions or declarations. The amendment just proposed by the Canadian representative might appear to prevent the delegations concerned from expressing their point of view. The delegation of Ghana would therefore feel obliged to oppose it.

6. On the other hand, his delegation put forward a simple suggestion which, if deemed appropriate, it would turn into a formal proposal; the suggestion was to replace the words: "and accepts their finding that" in the proposal which it had submitted (A/CONF.13/C.5/L.19) by the words: "and notes that, in accordance with their finding".

7. Mr. DONOSO SILVA (Chile) thought that the suggestion made by the representative of Ghana might be adopted. The Chilean delegation considered it illogical to accept the Working Party's report, which had been superseded by the decision recently taken by the Committee.

8. Mr. KING (United States of America) suggested replacing the Ghana proposal by the following wording: "The Fifth Committee thanks the Working Party for a report that has greatly facilitated its task." That wording would leave the Committee free to act subsequently as it thought fit.

9. Mr. EL YAFI (United Arab Republic) thought that

the Working Party might be asked to prepare a draft resolution embodying the elements of the nineteen-power proposal (A/CONF.13/C.5/L.6).

10. Mr. SHAHA (Nepal) proposed that the Canadian amendment to the Ghana proposal (A/CONF.13/C.5/L.19) be rounded off by adding the words " without prejudice to the consideration of the nineteen-power proposal " after the words " the form of a convention ".

11. Mr. ASANTE (Ghana) accepted that amendment to his delegation's proposal.

12. Mr. KING (United States of America) withdrew his suggestion in favour of the Nepalese proposal.

13. Mr. BOURBONNIERE (Canada) and Mr. PECHOTA (Czechoslovakia) likewise supported the Nepalese proposal.

14. Mr. USTOR (Hungary), supported by Mr. BOURBONNIERE (Canada), suggested adding the words " with deep appreciation " after the words " takes note ", in the first line of the Ghana proposal (A/CONF.13/C.5/L.19).

15. The CHAIRMAN put to the vote the Ghana proposal, which, as modified by the various amendments above, would read as follows:

> " The Fifth Committee takes note with deep appreciation of the report of the Working Party to the Fifth Committee (contained in document A/CONF.13/C.5/L.16) and accepts their finding that the recommendations of the Fifth Committee to the Conference should be in the form of a convention, without prejudice to the consideration of the nineteen-power proposal."

The proposal of Ghana (A/CONF.13/C.5/L.19), thus amended, was adopted by 41 votes to none, with 8 abstentions.

16. Mr. BACCHETTI (Italy) stated that his delegation had abstained from voting since it considered that most of the points in the nineteen-power proposal (A/CONF.13/C.5/L.6) had been embodied in the Swiss proposal (A/CONF.13/C.5/L.15), as amended and adopted at the previous meeting. In point of fact, only section IX of the nineteen-power proposal had not been so incorporated.

17. He also noted a contradiction between the Working Party's recommendation that most of the points contained in the nineteen-power proposal should be embodied in a declaration, and the Committee's decision at the previous meeting that those questions, as incorporated in the text adopted, should be dealt with in the Convention.

Further work of the Committee

18. The CHAIRMAN pointed out that it remained for the Committee to come to a decision on the nineteen-power proposal (A/CONF.13/C.5/L.6), and finally to adopt its report.

19. Mr. SHAHA (Nepal) said he did not think the Conference had the time left to make a thorough study of the nineteen-power proposal. That proposal would therefore have to be consigned to the conference records.

20. Mr. MÜLLER (Switzerland) said he too considered that the substance of the nineteen-power proposal was for the most part embodied in the text which the Committee had adopted at its previous meeting. It was only the points of detail which had been omitted, and they were certainly not worth incorporating in a declaration. Perhaps in order to avoid duplication, the Committee might adopt a resolution to the effect that except for the second sentence of section I of the nineteen-power proposal, the text of that proposal should serve as a guide to States which had not yet concluded bilateral agreements among themselves.

21. Mr. TABIBI (Afghanistan) emphasized that in a spirit of compromise his delegation had voted for the Swiss proposal as amended, but it still believed that the nineteen-power proposal was preferable, in both form and substance, particularly because it was more in harmony with the basic principles of international law. Whereas international law was in a state of constant evolution and various United Nations bodies sometimes kept certain proposals on their agenda for years without proceeding to discuss them, the nineteen-power proposal could be left in abeyance until some day in the future when it might be examined afresh by a future conference. That was doubtless the idea behind the Nepalese suggestion. In the same spirit, he could give his support to the Swiss suggestion.

22. Mr. MASCARENHAS (Brazil) and Mr. BEN SALEM (Tunisia) said that they too supported the Swiss suggestion.

23. Mr. DONOSO SILVA (Chile) paid tribute to the spirit of compromise shown by the Swiss delegation but thought that, in view of the reservations made or objections raised by many delegations, it would be dangerous to give the nineteen-power proposal the status of a reference document, even though the text adopted by the Committee at its previous meeting included the bulk of the points in that proposal. In any event, the Chilean delegation had already proposed that the second sentence of section I of the nineteen-power proposal should be deleted, and had noted that the text which had emerged from the Preparatory Conference was clearer and more concise than the nineteen-power proposal.

24. Mr. BACCHETTI (Italy) said that the text which the Commission had adopted at its previous meeting represented a compromise and it would be out of the question to resume discussion of another text which, although it contained some elements of compromise, had none the less a very different scope. The Italian delegation could not subscribe to some of the principles set forth in the nineteen-power proposal and, if that proposal were debated anew, it would be obliged to repeat the reasons for its opposition.

25. Mr. BOURBONNIERE (Canada) pointed out that, whilst approving some of the principles set forth in the nineteen-power proposal, his delegation too could not subscribe to some parts of it. It could not, therefore, agree that a text which, like others, was only a conference working paper, should serve as a guide to future

international negotiations. He was therefore opposed to the Swiss suggestion.

26. Mr. JOHNSON (United Kingdom) said that in similar circumstances, and particularly when the Swiss proposal (A/CONF.13/C.5/L.15) was being discussed, the Committee had seen fit to have the terms of the texts explained to it even before it began to consider their substance. In the case in point, therefore, it would be appropriate for the proponents of the last two suggestions to explain the meaning of the novel concepts whereby the nineteen-power proposal would be " left in abeyance " or would serve " as a guide " for future international negotiations.

27. The nineteen-power proposal had, of course, made a useful contribution to the discussions, just as the three-power proposal (A/CONF.13/C.5/L.7) had done. Thanks to the suggestions contained in the various texts the Swiss proposal had finally obtained the almost unanimous approval of the Committee. Moreover, the ideas put forward by the sponsors of the nineteen-power proposal would not be lost since, like the other proposals laid before the Conference, that proposal would be included in the conference records and mentioned in the Fifth Committee's report.

28. Mr. SHAHA (Nepal) said that the object of his suggestion was precisely to enable the nineteen-power proposal to be included in the records of the Conference, which could accord appropriate recognition of the fact that the proposal had contributed to the success of its work.

29. Mr. SCHEFFER (Netherlands) said that he too wished to pay tribute to the understanding attitude shown by the Swiss delegation. Nevertheless, the members of the Committee could not, in all conscience, adopt a text in whatever form unless they were prepared to take the responsibility for it. If, therefore, the nineteen-power proposal was to be the subject of a resolution, a broad discussion ought to be held on it first, in the course of which a number of amendments would undoubtedly be submitted. The Committee might, in any case, save itself the trouble of such a lengthy new discussion, since the text of the nineteen-power proposal would likewise figure in the conference records.

30. Mr. BOURBONNIERE (Canada) suggested that the rapporteur be requested to state in his report that the Committee had found the nineteen-state proposal very helpful, and was grateful to its sponsors.

31. Mr MÜLLER (Switzerland) said that, in view of the remarks made by the Netherlands and United Kingdom representatives, he would be satisfied if the text of the nineteen-power proposal were included in the Committee's report.

32. Mr. BACCHETTI (Italy) agreed with the Swiss representative, on the understanding that the text of the other proposals which had been before the Committee were also included in the Committee's final report.

33. Mr. TABIBI (Afghanistan), speaking as rapporteur, said that he would see that all the proposals and opinions put forward in the Committee were mentioned in the report. In response to the Canadian representative's suggestion, he would also state that the Committee had found the nineteen-power proposal a helpful one.

34. Father DE RIEDMATTEN (Holy See) proposed that the Committee adopt the following resolution: " The Fifth Committee, having concluded its discussion of all the documents submitted to it, considers that it has completed its work with voting on the Swiss proposal (A/CONF.13/C.5/L.15), and invites the rapporteur to acknowledge, in his report, the contribution made to the success of its discussions by the nineteen-power proposal (A/CONF.13/C.5/L.6), the three-power proposal (A/CONF.13/C.5/L.7), the Swiss proposal (A/CONF.13/C.5/L.15), and the amendments thereto."

35. Mr. DONOSO SILVA (Chile) supported the proposal of the representative of the Holy See.

The proposal was adopted by 45 votes to one, with 6 abstentions.

36. In reply to a question from Mr. BOURBONNIERE (Canada), the CHAIRMAN said that the Committee's decisions would be passed to the Drafting Committee of the Conference for appropriate action.

37. Mr. TABIBI (Afghanistan) suggested that a separate chapter of the Convention be devoted to the Fifth Committee's decisions on free access of land-locked countries to the sea. The Chairman might perhaps discuss the matter with the members of the Committee who were also members of the Drafting Committee of the Conference, to enable the Fifth Committee to debate the matter, if necessary, at its next meeting.

38. Mr. KING (United States of America) thought that the matter was one for the Drafting Committee of the Conference.

The meeting rose at 12.30 p.m.

TWENTY-FIFTH MEETING

Friday, 18 April 1958, at 8.15 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Consideration of the Fifth Committee's draft report (A/CONF.13/C.5/L.27)

1. Mr. TABIBI (Afghanistan), Rapporteur, introduced the Committee's draft report (A/CONF.13/C.5/L.27), explaining that he had been at pains to strike a fair balance between the views of the coastal States and those of the land-locked States.

2. The CHAIRMAN invited the Committee to consider the draft report paragraph by paragraph.

Paragraph 1

3. Mr. SHAHA (Nepal) wondered whether it should not be stated that, in the opinion of some delegations, the Conference was empowered to codify international law on the question of free access to the sea.

4. Mr. TABIBI (Afghanistan), speaking as rapporteur,

thought it would be preferable simply to quote the General Assembly's recommendation.

It was so agreed.

Paragraph 1 was adopted.

Paragraphs 2-6

Paragraphs 2-6 were adopted without comment.

Paragraph 7

5. Mr. BACCHETTI (Italy) proposed adding the five-power amendment (A/CONF.13/C.5/L.26) to the list given in the paragraph.

It was so agreed.

Paragraph 7, thus amended, was adopted.

Paragraph 8

Paragraph 8 was adopted without comment.

Paragraph 9

6. Father DE RIEDMATTEN (Holy See) proposed adding at the beginning of the last sentence the words " on the proposal of Sweden ".

It was so agreed.

7. Mr. SHAHA (Nepal) proposed inserting in the same sentence the words " or forms " between the words " the form " and the words " in which the results ".

8. The CHAIRMAN suggested reproducing in the sentence the words of the Swedish proposal, as given in the report of the Working Party (A/CONF.13/C.5/L.16).

It was so agreed.

Paragraph 9, thus amended, was adopted.

Paragraph 10

Paragraph 10 was adopted without comment.

Paragraph 11

9. Mr. BACCHETTI (Italy) proposed adding the following sentence at the end of the paragraph: " Some members of the Working Party did not share the majority view with regard to the division of matters into those to be embodied respectively in a convention, a declaration and a resolution."

10. Mr. LÜCKING (Federal Republic of Germany), Mr. SRESHTHAPUTRA (Thailand) and Mr. BOURBONNIERE (Canada) supported the proposal.

11. After further discussion in which Mr. PECHOTA (Czechoslovakia), Mr. BEN SALEM (Tunisia), Mr. EL YAFI (United Arab Republic), Mr. BOURBONNIERE (Canada) and the rapporteur took part, Mr. JOHNSON (United Kingdom) proposed amending the beginning of paragraph 11 to read: " In its report, in regard to which reservations have been entered by some delegations, the Working Party recommended . . . "

12. Mr. TABIBI (Afghanistan), speaking as rapporteur, and Mr. BACCHETTI (Italy) accepted the amendment.

The United Kingdom amendment was adopted.

Paragraph 11, thus amended, was adopted.

Paragraphs 12 and 13

Paragraphs 12 and 13 were adopted without comment.

Paragraph 14

13. After a discussion in which Mr. WAITE (New Zealand), Mr. ASANTE (Ghana), Mr. PECHOTA (Czechoslovakia), Mr. DONOSO SILVA (Chile), Mr. BOURBONNIERE (Canada), Father DE RIEDMATTEN (Holy See), Mr. BHUTTO (Pakistan) and the rapporteur participated, Mr. JOHNSON (United Kingdom) proposed replacing the last two sentences in the paragraph by the following: " During the discussion, the three-power proposal (A/CONF.13/C.5/L.7) was withdrawn."

14. Mr. PECHOTA (Czechoslovakia) said that he would prefer the second sentence in paragraph 14 to be left unchanged.

15. Mr. JOHNSON (United Kingdom) pointed out that all the proposals not withdrawn had remained before the Committee.

16. Mr. ASANTE (Ghana) supported the United Kingdom proposal.

The United Kingdom proposal was adopted.

Paragraph 14, thus amended, was adopted.

Paragraphs 15 and 16

17. Mr. DONOSO SILVA (Chile) said that it would be more logical to reverse the order of paragraphs 15 and 16 and to add at the end of the new paragraph 15 the end of the existing paragraph 16 from the words: " The joint amendment (A/CONF.13/C.5/L.26) proposed the replacement of . . . " For stylistic reasons, the words " The joint amendment (A/CONF.13/C.5/L.26) " might perhaps have to be replaced by the word " It ".

It was so agreed.

18. Father DE RIEDMATTEN (Holy See) suggested that the following sentence should be added at the end of the new paragraph 16: " The amendments by Ghana (A/CONF.13/C.5/L.24) and Pakistan (A/CONF. 13/C.5/L.25) were withdrawn."

It was so agreed.

Paragraphs 15 and 16, thus amended, were adopted.

Paragraph 17

Paragraph 17 was adopted without comment.

Paragraphs 18 to 23

19. After a lengthy discussion on the desirability of translating into Spanish the words " shall ", " may " and " should " referred to in amendments to the English text of the five-power amendment (A/CONF.13/C.5/L.26) and taking into account that to translate them out of context, notably in paragraphs 18 and 20, might raise matters of substance. Mr. GUEVARA ARZE (Bolivia), supported by Mr. DONOSO SILVA (Chile) and by Mr. KING (United States of America), pointed out that the problem could be overcome simply by using the English words in the French and Spanish texts of para-

graphs 18 and 20, as no difficulty had been caused by the translation of those words in the previsions finally adopted.

20. Mr. VELILLA (Paraguay) said that the amendment had been made only in the English text and not in the Spanish text.

21. The CHAIRMAN proposed that the English words " shall " " may " and " should " appear in the French and Spanish text of paragraphs 18 and 20 and that it be left to the Drafting Committee to ensure that the final text of the provisions in question was accurately translated.

It was so agreed.

Paragraphs 18 to 23, thus amended, were adopted.

Paragraph 24

22. Mr. BOURBONNIERE (Canada) proposed that paragraph 24 be deleted.

23. Mr. LÜCKING (Federal Republic of Germany) supported the proposal. Although the first twenty-three paragraphs of the draft report accurately recorded the course of the Committee's discussions as a whole, paragraph 24 was in fact merely a brief summary of the twenty-fourth meeting.

24. Mr. BENSIS (Greece) agreed with the remarks made by the representative of the Federal Republic of Germany.

25. Mr. PECHOTA (Czechoslovakia) said he could not agree to the proposal made by Canada ; paragraph 24, as drafted, was of importance, since it drew attention to the discussions occasioned by the general principles enunciated in the nineteen-power proposal (A/CONF. 13/C.5/L.6), at which quite a number of delegations had stated they regarded those principles as constituting part of international law.

26. Mr. MÜLLER (Switzerland) said he had no objection to the deletion of paragraph 24. But, if it were retained, the last sentence would need to be amended since the Swiss proposal had in fact been withdrawn in favour of the proposal by the Netherlands and the United Kingdom, and not in the interest of speeding up the work of the Conference.

27. Mr. TABITI (Afghanistan), speaking as rapporteur, said he had drafted paragraph 24 in those terms because of the observations made by the Canadian, Netherlands and United Kingdom representatives at the twenty-fourth meeting.

28. Mr. BACCHETTI (Italy) supported the representatives of Canada and the Federal Republic of Germany : it had been agreed at the 24th meeting that the report would refer not only to the 19-power proposal (A/CONF.13/C.5/L.6) but also to the three-power proposal (A/CONF.13/C.5/L.7) and to the other proposals and amendments submitted to the Committee.

29. Mr. BOURBONNIERE (Canada) endorsed the Italian representative's remarks.

30. Mr. BEN SALEM (Tunisia) agreed with the Swiss representative that the last sentence of paragraph 24 would need to be amended, but felt that the whole paragraph should not be deleted, since in that case there would be a gap in the account of the discussions. There should preferably be a reference to the three-power proposal (A/CONF.13/C.5/L.7).

31. Mr. SHAHA (Nepal) also felt that the last sentence should be changed. Replying to the representative of the Federal Republic of Germany, he pointed out that the three-power proposal (A/CONF.13/C.5/L.7) was referred to in the recommendations of the Committee contained in paragraph 26.

32. Mr. MÜLLER (Switzerland) said the Swiss delegation had never stated that the nineteen-power proposal contained the fundamental principles of international law on the matter. He would therefore propose that the penultimate sentence of paragraph 24, beginning with the words " The sponsors of the nineteen-power proposal maintained ", should also be deleted.

39. Mr. SHAHA (Nepal) expressed surprise at the attitude of the Swiss delegation, which had subscribed to the opinion put forward by the Preliminary Conference that the principles in question were general principles forming part of existing international law.

34. Mr. BHUTTO (Pakistan) also felt that paragraph 24 should be deleted in order to avoid giving more prominence to some proposals than to others.

35. Mr. JOHNSON (United Kingdom) proposed that, in order to give a faithful reflection of the discussions, the following changes be made in paragraph 24 : In the second sentence, the words " at this juncture " to be deleted ; at the end of the second sentence, the words " the usefulness of the nineteen-power proposals during the work of the Committee " to be replaced by the words " the usefulness of all the proposals and amendments submitted to the Committee "; the last two sentences, starting with the words " The sponsors of the nineteen-power proposal ", to be deleted.

36. Mr. SHAHA (Nepal), Mr. MASCARENHAS (Brazil), Mr. ASANTE (Ghana) and Mr. KING (United States of America) supported the United Kingdom proposal.

37. Mr. PECHOTA (Czechoslovakia) said every delegation was entitled to request that its point of view should be recorded in the report. The penultimate sentence of paragraph 24 should not be deleted, since it expressed the views of certain delegations.

38. The CHAIRMAN put the United Kingdom proposal to the vote point by point.

In the second sentence, it was decided to delete the words " at this juncture ".

At the end of the second sentence, it was decided to replace the words " the usefulness of the nineteen-power proposals during the work of the Committee " by the words " the usefulness of all the proposals and amendments submitted to the Committee ".

By 28 votes to 5, with 12 abstentions, it was decided to delete the penultimate sentence.

By 28 votes to 1, with 14 abstentions, it was decided to delete the last sentence.

Paragraph 24, thus amended, was adopted.

39. Father DE RIEDMATTEN (Holy See) considered that in view of the above decisions it would be advisable to amend the heading of section X of the report to read:

" Completion of the work of the Fifth Committee ".

It was so agreed.

40. Mr. SHAHA (Nepal) said he had abstained from voting on the deletion of the last two sentences of paragraph 24 because it was clear from paragraph 4 that all the States that had participated in the Preliminary Conference considered that the general principles enunciated in the memorandum of the Conference formed part of existing international law.

41. Mr. BEN SALEM (Tunisia) stated that, in his delegation's opinion, the nineteen-power proposal (A/CONF.13/C.5/L.6) laid down valid principles of international law which could serve as a guide to countries when signing bilateral agreements.

42. Mr. PECHOTA (Czechoslovakia) said that his delegation shared the view expressed by the Tunisian delegation and considered the principles laid down in the nineteen-power proposal to be existing rules of international law ; in his opinion, the third sentence of paragraph 24, giving the views of the land-locked States, should have appeared in the Committee's report in order to give the true picture of proceedings in the Committee.

43. Mr. BHUTTO (Pakistan) stated that the Pakistani delegation did not regard the principles enunciated in the nineteen-power proposal (A/CONF.13/C.5/L.6) as constituting general principles of international law, and that it had accordingly voted for the amended Swiss proposal, which represented a compromise. In view of the statements of principle made by a number of delegations, the Pakistani delegation reserved the right to explain its attitude in a plenary meeting of the Conference.

The Committee took note of these statements.

Paragraph 25

Paragraph 25 was adopted.

Paragraph 26

44. In reply to a remark by Mr. MÜLLER (Switzerland), the CHAIRMAN proposed that the introductory paragraphs of parts I and II of the Committee's recommendations be amended to read :

" I

" Draft the articles to be adopted by the Conference on the basis of the International Law Commission's text, articles 15, 27 and 28, to read as follows (the proposed additions are underlined) . . ."

" II

" Insert the following new article at an appropriate place in one of the conventions to be adopted by the Conference . . ."

It was so agreed.

By 44 votes to none, with one abstention, the draft report (A/CONF.13/C.5/L.27) as a whole was adopted.

45. Mr. MASCARENHAS (Brazil) expressed his satisfaction at the fact that, despite the differences of opinion which initially divided the delegations, the Committee had succeeded, thanks to the spirit of compromise shown, in arriving at concrete results, striking a balance between the interests of coastal States and those of non-coastal States. He expressed his deep gratitude to the Chairman, who had guided the Committee's work to a succesful conclusion. He thanked the Swiss delegation for having so greatly contributed to that result by submitting its compromise proposal.

46. Mr. SAVELIEV (Union of Soviet Socialist Republics), Mr. BEN SALEM (Tunisia), Mr. NAVA CARRILLO (Venezuela), Mr. BHUTTO (Pakistan) and Mr. SALAMANCA (Bolivia) also expressed their keen satisfaction and thanked the Chairman, the other officers and the secretariat.

47. Mr. MÜLLER (Switzerland) considered that the happy outcome of the Committee's work was due above all to the good sense, wisdom and moderation shown by all delegations.

48. He wished to pay tribute to the understanding attitude shown by the coastal States towards the memorandum of the Preliminary Conference, and associated himself with the expressions of gratitude deservedly extended to the officers of the Committee, who had discharged a delicate task with absolute impartiality.

Completion of the work of the Fifth Committee

49. The CHAIRMAN was glad that the Fifth Committee — which, unlike the other committees, had had no basic text to work on at the outset — should have been among the first to complete its work.

50. On behalf of the officers, he thanked the delegations for their kind words and expressed his own gratitude to the secretariat for its ready co-operation at all times.

51. The CHAIRMAN declared the proceedings of the Fifth Committee closed.

The meeting rose at 12.30 a.m.

ANNEXES

Note : For the contents of these annexes, see entries in bold type in the Index to documents of the Fifth Committee, p. v of the present volume.

DOCUMENT A/CONF.13/C.5/L.1

Memorandum submitted by the Preliminary Conference of Land-locked States

[*Original text: English and French*]
[*28 February 1958*]

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[1] Annexes 2 and 3 are not reproduced in the present report.

MEMORANDUM

1. A preliminary conference of States without direct territorial access to the sea was held at Geneva from 10 to 14 February 1958 on the invitation of the Swiss Federal Government. This conference was the sequel to a series of meetings held in New York between representatives of land-locked States, Members of the United Nations, many of which had taken an active part in the discussions in the eleventh session of the General Assembly on the draft articles on the Law of the Sea presented by the International Law Commission, meetings which the observer of Switzerland to the United Nations had been invited to attend.

2. These meetings were based mainly on paragraph 3 of resolution 1105 (XI) adopted by the General Assembly on 21 February 1957 as the result of a joint proposal by Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay, reading:

> "[The Assembly] recommends that the conference of plenipotentiaries study the problem of free access to the sea of land-locked countries as established by international practice or bilateral treaties."

They were also guided by the consideration that the draft articles presented by the International Law Commission contained no provisions dealing directly with the position of land-locked States and, further, that in proposing the establishment in the Conference on the Law of the Sea of a special committee to give effect to the above-mentioned recommendations the competent United Nations organs had expressed the desire that information should be assembled and proposals formulated with a view to that committee's work.

3. The Czechoslovak Government had proposed first of all a meeting of representatives of land-locked States in Prague. Later, the possibility was mooted of holding a meeting in Vienna. Finally, for technical reasons, it appeared more convenient to the delegates at New York of the States concerned to suggest that this preliminary conference should be held at the actual seat of the United Nations Conference on the Law of the Sea at Geneva, and, on practical grounds, shortly before the main conference. The Swiss Federal Government fell in with this suggestion. In his opening speech to the Preliminary Conference on 10 February 1958, the Head of the Swiss delegation, Mr. Paul RUEGGER, explained the circumstances in which the Federal Government had issued invitations to the Preliminary Conference, which that Government regarded as an informal meeting and as having for its main purpose an exchange of views and the collection of documentary material for the general conference.

4. The States invited to the Preliminary Conference were all the land-locked States mentioned in the general list drawn up by the United Nations for the invitation to the Conference on the Law of the Sea: States Members of the United Nations and States members of specialized agencies. Invitations were therefore sent to the following States: Afghanistan, Austria, Bolivia, Byelorussian Soviet Socialist Republic, Czechoslovakia, Holy See, Hungary, Laos, Luxembourg, Nepal, Paraguay, San Marino, and Switzerland. All these countries accepted the Swiss Federal Government's invitation. The delegate of Paraguay, however, was unable to attend the meetings. The list of members of delegations to the Preliminary Conference is annexed.[2]

5. The Head of the Swiss delegation was elected President of the conference. Mr. Weingart, of the Federal Political Department, Berne, was appointed Secretary.

6. At the opening of the conference certain delegations expressed the opinion that it would be desirable to have the participation of the People's Republic of Mongolia in the discussions. In this connexion the Swiss delegation pointed out that, in reality if not formally, the present preliminary meeting fell within the framework of the United Nations. For that reason the host State had followed strictly the decisions taken by the United Nations and had invited all the land-locked States which appeared on the list drawn up by the United Nations for the purposes of the general conference The host government took the view that the question as to what States should be invited was outside its competence.

7. At the beginning of the session, members of the conference were able to study with the keenest interest the valuable memorandum (A/CONF.13/29) on the question of free access to the sea of land-locked countries, prepared by the United Nations Secretariat, which sets out in detail the current aspects of this problem and the history of earlier attempts to solve it. The Preliminary Conference

[2] See annex 1 hereto.

expressed its unanimous appreciation of this excellent piece of work. It also took note with particular interest of the oral information on the same subject given by Mr. Sandberg, representing the Secretariat.

8. The summary records of the meetings of the Preliminary Conference have been reproduced separately as document A/CONF.13/C.5/L.1/Add.1.[3] It was agreed, at the suggestion of one of the delegates to the Preliminary Conference, that none of the statements made in the course of the session should be considered as committing any State to a given position.

9. The Preliminary Conference devoted the greater part of its meetings to hearing statements by the delegates of the different States represented on the situation of their particular countries, on the conventional status the majority of them enjoyed under bilateral or multilateral agreements, on their needs and on their experiences. The substance of these statements will be found in the summary records of the meetings and is placed at the disposal of the United Nations as a supplement to the documentation for the Conference on the Law of the Sea. There is every reason to suppose that both the Conference and the Fifth Committee, set up to study the situation of land-locked States, will find in these statements additional material of considerable value. All twelve states attending the preliminary Conference made general statements in the course of the meetings.

10. The Preliminary Conference had before it a number of papers submitted by delegations of land-locked countries. They are summarized below in their order of presentation, and in view of their importance they are reproduced as annexes to the present memorandum.

(*a*) Note dated 26 August 1957 by the Permanent Mission of Afghanistan to the United Nations distributed in New York to the representatives of the States concerned.[4] This document proposes first of all the elaboration of a "Universal Declaration" stating the right of free access to the sea of all countries; the reiteration of and, if necessary, the elaboration in greater detail of the Barcelona Declaration concerning the right to a flag for land-locked countries; the elaboration of a "Universal Declaration" recognizing a universal right to transit by air, railroad, road and waterways through the territory of States.

(*b*) A memorandum dated 31 January 1958 by the Swiss Government[5] communicated to the Secretary-General of the United Nations in response to a request from the Secretariat addressed to all States taking part in the Geneva Conference with a view to obtaining observations of governments for the Conference on the Law of the Sea. This document consists firstly of a historical section setting forth the steps taken by the Swiss Confederation over close on a hundred years and still more forcefully at the end of the First World War with a view to obtaining express recognition of its right to a flag, and secondly, a statement of a few general principles, such as that of the need for a "genuine link" between the ship and the country whose flag it flies.

(*c*) Lastly, and above all, a detailed draft submitted by the Czechoslovak delegation formulating in twelve articles, with comments in support, texts proposed to the Preliminary Conference as a basis of discussion for a joint proposal by the land-locked States to the Conference on the Law of the Sea.[6]

11. The Preliminary Conference had a long discussion on the question whether and how far, after finishing the part of its proceedings set aside for the hearing of the statements by the representatives of States and taking note of the papers presented by various delegations, it could at once take a further step forward by formulating forthwith texts to be submitted to the Conference on the Law of the Sea in the name of the States taking part in the Preliminary Conference, or whether the presentation of any such texts should not be held over until a later stage. A number of delegations were in favour of the immediate formulation of texts and urged that the Czechoslovak delegation's draft should be taken as a basis of discussion for a joint draft to be worked out on the spot. Other delegations contended that that procedure was premature so far as they were concerned. Some had accepted the Swiss Government's invitation being encouraged by the assurance that the essential object of the meetings at the present stage was to exchange information and to have a general exchange of views on principles of common interest. Others did not feel authorized in virtue of their instructions to form an opinion on the details of articles or drafts communicated at the meeting itself; such texts should, in their opinion, be reserved for previous examination by the governments of their countries, which were traditionally closely concerned with the methods of application of the principles affecting their access to the sea. Another idea put forward was that before proceeding to draft articles for which it was hoped to obtain general acceptance, it would be appropriate to hear the beginning of the discussion in the Fifth Committee of the Conference on the Law of the Sea. Faced with this situation, the participants in the Preliminary Conference nevertheless agreed unanimously in recognizing and underlining the importance of the present moment and of the possibilities which it offers for a reiteration, on the occasion of the proposed codification of the Law of the Sea, of the rights granted by *jus gentium* to land-locked countries. They considered that, nothwithstanding the difference in the positions of the various land-locked States, there was a broad and important common denominator — namely, the recognition by all of a certain number of principles relating to the rights and duties of those States. With a view to making an additional contribution to the general conference, they felt that an attempt could and should be made to express these principles which flow from international law in new and up-to-date formulae.

12. The Preliminary Conference accordingly set up among its members a working group with instructions to try to formulate these principles afresh. In this matter it was, moreover, guided by the finding, which was also the conclusion reached by the Sixth Committee of the United Nations General Assembly at the eleventh session, that, in the work of codification to be considered by the Conference of the Law of the Sea on this point, it would largely be a question of confirming the rights of the land-locked States. The working group set up by the Preliminary Conference consisted of the delegates of Austria, Bolivia, Czechoslovakia, Nepal and Switzerland. At the request of the delegate of one of the participating countries, it was expressly stated that the views put forward at the working group, as well as in the Preliminary Conference, must not be taken as committing the governments represented by the delegates, but that, on the contrary, their countries would always retain complete latitude, after further examination of the texts, to state their respective positions at the Conference on the Law of the Sea. Mr. Zourek, Czechoslovak delegate, was appointed Chairman of the Working Group.

13. After an exhaustive exchange of views, the group submitted its proposals for the formulation of "principles" at the final meeting of the Preliminary Conference, held on 14 February.

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[3] Mimeographed only.

[4] See annex 4 hereto.

[5] See annex 5 hereto.

[6] See annex 6 hereto.

14. After considering and discussing the texts submitted by the working group and expressing its warm thanks to the Chairman and to all members of the group for their work, the Preliminary Conference approved the statement of seven principles which, in the view of the participants, give expression to international law on the subject under discussion. With regard to one of the principles, one of the delegations made a reservation, which, however, refers to one aspect only of the principle formulated. The formulation is of course in no way complete. It was intended merely to state precisely a certain number of principles dealing with the status of land-locked countries. The text of these "principles", which forms the final and principal document of the Preliminary Conference, is contained in annex 7, to which special attention is drawn. This document is headed "Principles enunciated by the Preliminary Conference of land-locked States".

15. At the conclusion of its proceedings the Preliminary Conference expressed the hope that the various items of information assembled and the statement of principles, whose validity would, it believed, receive universal recognition, might be regarded as a useful contribution to the work of the Conference on the Law of the Sea. The delegates to the Preliminary Conference are certainly aware both of the paramount importance and of the difficulty of the task which the general Conference is about to approach in attempting to codify wide-ranging sections of the Law of the Sea. In the special, but essential, field which has formed the subject of its discussions, it could not be the Preliminary Conference's ambition to present preparatory work comparable with that which in other fields had engaged the attention of the International Law Commission over many years. The delegates who met from 10 to 14 February hope, none the less, that their efforts may assist the general conference in its deliberations.

Annex 1

Delegations

Afghanistan
Mr. Abdul Hakim Tabibi (*Chairman of the Delegation*)

Austria
Mr. J. G. Willfort (*Chairman of the Delegation*)
Mr. H. Fröhlich
Mr. O. Bazant
Mr. R. Thomas
Mr. G. Zuk

Bolivia
Mr. W. Guevara Arze (*Chairman of the Delegation*)
Mr. C. Salamanca
Mr. J. Escobari Cusicanqui

Byelorussian Soviet Socialist Republic
Mr. I. Geronin (*Chairman of the Delegation*)
Mr. A. Sheldov

Czechoslovakia
Mr. J. Zourek (*Chairman of the Delegation*)
Mr. V. Pechota

Holy See
Rev. Father Henri de Riedmatten

Hungary
Mr. Endre Ustor (*Chairman of the Delegation*)
Mr. Endre Zador

Laos
Mr. Sisouk Na Champassak (*Chairman of the Delegation*)

Luxembourg
Mr. I. Bessling (*Chairman of the Delegation*)

Nepal
Mr. R. Shaha (*Chairman of the Delegation*)

San Marino
Mr. E. Noel (*Chairman of the Delegation*)

Switzerland
Mr. P. Ruegger (*Chairman of the Delegation*)
Mr. A. Schaller
Mr. W. Müller
Mr. R. Probst
Mr. H. Duttwyler

Secretariat

Mr. G. Sandberg (representing the Secretariat of the United Nations)
Mr. C. Weingart (secretary of the Preliminary Conference)

Annex 2

Summary records of the meetings of the Preliminary Conference

[*Mimeographed only. For the text of the summary records of the meetings, see document A/CONF.13/C.5/L.1/Add.1.*]

Annex 3

List of statements by the delegates attending the Preliminary conference

[*Mimeographed only.*]

Annex 4

Note dated 26 August 1957 by the Permanent Mission of Afghanistan to the United Nations

The Permanent Mission of Afghanistan wishes to state that in order that the representatives of the land-locked countries may concentrate on the question of a common and unified approach to the Conference, it will be to their advantage to consider some problems in connection with the right to free access to the sea.

These problems, in the opinion of the Afghanistan Mission, are as follows:

1. *Documents of a universal nature*

A. Elaboration of a "Universal Declaration" stating the right of free access to the sea of all countries whether land-locked or not.

B. Reiteration of, and if necessary, elaboration in greater detail, of the Barcelona Declaration concerning the right to a flag for land-locked countries.

C. Elaboration of a "Universal Declaration" of all States recognizing a universal right to transit by air, railroad, road and waterways through their respective territories. This might be joined with the Declaration mentioned above, sub A.

2. *General conventions to be adopted as a consequence of the "Universal Declaration" as outlined above*

A. Elaboration of a "Universal Convention" stating the essential principles governing the right of transit and of free access to the sea, these principles being, *inter alia*:

(*a*) The principle of non-discrimination in the use of the available means of transportation through the territory of any given State;

(*b*) The principle of equality for all users of such means of communication;

(*c*) The principle of a just and fair contribution by all users to the cost of construction and maintenance of such means of communication;

(*d*) The rights of States to restrict freedom of communication within reasonable limits in times of emergency;

(*e*) The principle of the settlement of differences concerning the application and interpretation of all conventions

relating to the right of transit and access to the sea by peaceful means:

(i) Through arbitration by a special organ created to this effect by the convention and/or

(ii) By judgement of the International Court of Justice;

B. Elaboration of a "Universal Convention" relating to the use of railroads, roads and airways for the purpose of transit through the territory of States;

C. Elaboration of a "Universal Convention" concerning the right of using the ports, airports and other facilities for persons and goods in transit through a foreign territory;

D. Elaboration of a "Universal Convention" concerning the use of international waterways for purposes of transit;

E. Elaboration of a "Universal Convention" concerning the creation of free zones for the purposes of transit in seaports, river ports and airports.

Because of the importance of this question, the Mission of Afghanistan suggests frequent consultations and discussions between the representatives of all land-locked countries from the present time until April 1958, when the Conference will take place. The Afghanistan Mission will appreciate a response to this and its previous note on this question.

Annex 5

MEMORANDUM DATED 31 JANUARY 1958 BY THE SWISS GOVERNMENT

I. *Historical*

Switzerland had always maintained that the right to fly the national maritime flag is one of the fundamental rights of every independent State, whether such State has a sea-board or not. The flag is a symbol of sovereignty which requires no special recognition. Switzerland's efforts in this connection have been directed towards obtaining the formal and unrestricted recognition of this principle by all States and more especially those which are, by tradition, maritime States.

At the same time, Switzerland has endeavoured to secure the practical recognition of the principle of free access to the sea of countries without a sea-board. She has consistently and vigorously asserted that the right of such States to provision themselves and carry on their export trade and, what is more, to maintain and develop their relations with the whole world ought not to be liable to be restricted by any measures taken by neighbouring countries in ports or any other approach to their territory.

This attitude on the part of Switzerland was given tangible expression in the attached documents [7] — namely:

(*a*) "Memorandum of the Claim of Switzerland to a Maritime Flag", which was submitted to the President of the Paris Peace Conference in 1919;

(*b*) Note of the Swiss Delegation to the Commission on the International Regulation of Ports, Navigable Waterways and Railways of the Conference of the Powers in Paris, dated 13th May 1919, which defined in general terms the principle of the freedom of international transit traffic.

In 1864 the Federal Council, with a view to obtaining recognition of Switzerland's right to fly her own maritime flag, consulted 14 maritime powers. None of these States expressly contested this right, though some of them expressed doubts. France and Prussia pointed out that a State that had no ports could scarcely in practice engage in maritime navigation, as it did not possess the necessary facilities for the policing of such navigation. This objection was, however, ill-founded, because, as has since been proved in numerous cases, a land-locked State can in fact control its shipping just as easily as a State with a sea-board. Switzerland was incidentally admitted to the first conference on maritime law in 1856 (Declaration of Paris).

As for liberty of transit, Article 23 of the Covenant of the League of Nations expressly required the League to issue the necessary provisions for guaranteeing and maintaining liberty of communications and transit traffic. When in August 1919 an international study commission was set up to prepare for the tasks entrusted to the League of Nations by Art. 23 and other provisions of the Peace Treaties, Switzerland was invited to send a representative to that commission.

The work of the commission led to several draft conventions: one on navigation on international rivers, one on freedom of transit, a third on railway traffic and a fourth on the right of States without access to the sea to fly a maritime flag. In addition, a resolution on rights in international ports was adopted.

The Council of the League of Nations took cognizance of these drafts on 19th May 1920. On the same day, the members of the League were asked to state their views with regard to them at a general technical conference.

Later, the general conference on freedom of communications and transit which opened on 10th March 1921 in Barcelona accepted the following agreements, statements and recommendations:

(*a*) Convention and statutes on freedom of transit;

(*b*) Convention and statutes on the regulation of navigable waterways of international interest;

(*c*) Declaration concerning the recognition of the right to a maritime flag of States without a sea-board;

(*d*) Recommendation concerning international regulations governing railways;

(*e*) Recommendation concerning ports governed by international regulations.

The Swiss Federal Council associated itself with all the documents produced by the conference with the exception of the Convention on waterways and the Federal Assembly of the Swiss Confederation subsequently approved the Convention on Freedom of Transit. It also took official cognizance of the declaration recognizing the right of States without a sea-board to fly a maritime flag.

The attitude adopted by Switzerland with regard to all these questions was not dictated exclusively by economic considerations; but was largely determined by the tasks and obligations which she proposed to assume in the field of international co-operation. Thus, during the last world war, the fleet of the International Committee of the Red Cross (created for transport work) in many cases flew the Swiss flag.

It will thus be seen that Switzerland not only has special experience in connection with the right of States without a sea-board to fly a maritime flag and with freedom of transit, but, by virtue of her international functions, occupies a special position.

II. *Declaration of Barcelona concerning the recognition of the right of States without a sea-board to fly a maritime flag and Proposal concerning Maritime Law of the Commission on International Law or the United Nations Organization*

In view of the peculiar position of the States without a sea-board, Switzerland is of opinion that appropriate measures should be taken to guarantee the existence of a "genuine link" between ships flying the flag of a State and the State itself.[8] A country that has no ports of its own, and thus no corresponding services, does in fact have some difficulty in effectively controlling the movements of its vessels; consequently special care should be taken, in its interests and those of international legal security generally, to maintain order.

In practice, this can be done only by creating as close a link as possible between the vessels and the countries whose flags they are flying.

The question whether the primary object of a country's fleet is to ensure its provisioning in war time in goods from oversea countries may be of a certain importance, but the essential thing will always be that the maritime legislation of that country establish the necessary link. Thus Swiss maritime law provides that the whole of the capital invested in Swiss vessels must be of Swiss origin and the actual management of the concerns in question exercised in Switzerland; furthermore it regulates in detail the legal relations between the ship-

[7] See appendices I and II.

[8] See *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159), p. 24, art. 29.

owner and the crew and provides that, in this respect as in all matters connected with maritime activities, Swiss law shall in principle be applied.

III. *Freedom of transit*

Freedom of traffic between States is one of the foundations on which the comity of nations and international collaboration rest. There has even been talk of a fundamental traffic law. With a view to the application of Article 23, e, of the Covenant of the League of Nations and the regulation of the right of free transit, regarded as one of the most effective means of developing international collaboration, the Convention on Liberty of Transit was concluded on 20th April 1921 in Barcelona. According to article 2 of the attached Statutes, the measures taken by the Contracting Parties to regulate transport through their territories, must ensure freedom of transit without discrimination on communications suitable for international transit traffic. This convention was ratified by a large number of States.

In the present state of affairs, which calls for a greater measure of economic collaboration on an international level than ever, it is necessary not only to confirm the principles laid down in this convention, but to strengthen and amplify them.

IV. *Freedom of navigation*

As complete liberty of navigation as possible is vital for Switzerland. It is thus essential that Swiss vessels should have access to ports and obtain the right of transit for innocent purposes through territorial waters and internal navigable waterways.

APPENDIX I

MEMORANDUM ON THE CLAIM OF SWITZERLAND TO A MARITIME FLAG COMMUNICATED TO THE PRESIDENT OF THE PARIS PEACE CONFERENCE IN 1919

The realization of the principle of free access to the sea, which means the fulfilment of a wish that has long been cherished by Switzerland, adds to the importance of the claim which is indissolubly connected with the question of a national navigation, viz. the claim to a general recognition of the Swiss flag in the Ocean-traffic.

Although the right of flying the national flag as an emblem of sovereignty must be considered as a part of the fundamental rights of every independent State, the Swiss Confederation would attach great value to a formal recognition of this right by the Powers, all the more so since Switzerland, in spite of her land-locked situation in the heart of the continent, has a considerable share in the world's commerce. At the present time, when the Powers are about to place all international relations on the basis of Right, the Swiss Government feels particularly justified in expressing this wish for an international confirmation of their country's claim to navigation, which is founded as well on the plainness of their unquestionable rights, as on the economic exigencies of the day.

Ever since modern international law has been established, there has been an undisputed axiom, that every State has the right of unrestricted navigation upon the open sea. Owing to the fact that the flag of a ship presents the only outward mark of nationality, it has been recognized both by theory and practice of international law, that seafaring countries may sail their ships under a special national flag. Moreover, on the high sea, the flag is the symbol of a State's sovereignty over the ship. From the fact that the right of a country of flying a flag must be considered an attribute of sovereignty, may be drawn the conclusion, that this right, to become effective, must simply be notified to the other Powers, and is in no way dependent on their recognition. A recognition, however, of the national emblems by water and by land is certainly considered an international duty, resulting from the fundamental right of respect to which every State may lay claim.

Accordingly, the right of inland countries to navigating remained, on principle, undisputed and whenever objections were raised, it was generally not a question of right but of practical difficulties which opposed themselves to the exercise of this right on the part of States, that are deprived of any access to the sea. Therefore the authors on international law, as far as they take at all this question into consideration, pronounce for the greatest part in favour of the right of land-locked countries, and above all of Switzerland. If a difference were to be made in the treatment of inland countries and of littoral States, inasmuch as to exclude the former from the benefit of a right which, according to the rules of the law of nations, is the due of every State, the principle of equality of States, on which all international relations shall be founded, would be entirely disregarded.

Moreover, a refusal to recognize any country's flag on the high seas would be inconsistent with equity and with the notion of international right. The inevitable consequence would be that the navigation of this country would be legally and practically absorbed by the commerce of the surrounding States. The menace of such an event must necessarily be felt by an industrious people loving its independence. The Swiss Government therefore joyfully welcomed the programmatic message read by the President of the United States on January 22nd 1917, by which he declared that all States, especially countries with no access to the sea, should be provided with the means of communicating freely with the sea-shore towards which they appear to have a natural outlet. From this principle the Swiss people gladly draws the inference, that Switzerland will be enabled to regulate her navigation at her own discretion within the limits of the international rules, which for all States are equally binding, and that her right to carry her national flag on the open sea will be fully recognized.

The unalterable character of the Swiss claim is fully confirmed by a series of important precedents: on the boundary lakes of Switzerland the Swiss flag is as unreservedly recognized as the flags of the neighbouring States. An essential difference between the maritime flag and the flag carried on inland waters does not exist: it is simply a question of technical practicability, whether vessels, coming from the sea can reach the Rhine port of Bale on the international highway of the Rhine; and there is no reason why a sea-faring vessel forming a part of a Swiss Rhine-fleet, should not postulate the recognition of her nationality and therefore of her flag on the open sea.

In observance of the principle of equality of States Switzerland has actually been admitted to the first Convention on international maritime right, which was open to all States, viz. the Paris declaration of 1856. And, in conformity with this precedent, Switzerland signed, both on the first and second Hague Conferences, the conventions that are only applicable with regard to maritime States (viz. the conventions VI, VII, VIII, IX, X, XIII of October 18, 1907), without raising opposition on the part of any of the Powers.

Taking the claim of Switzerland to a maritime flag tacitly for granted, the ship that conveyed the first Swiss legation to Japan, in 1864, hoisted the Swiss colours, which were accordingly given a salute by the European and American ships lying at anchor in the Japanese waters.

Even though the right of Switzerland to a maritime flag seems not to have been disputed in itself, it appears nevertheless, as has already been observed, that the practicability of this claim has under former circumstances been repeatedly questioned. One argument adduced against the recognition of Swiss navigation, was based on the fact that Switzerland possessed no harbours of her own for sheltering the ships flying her colours. Although in a moment when the principle of free access to the seas, which comprises the claim of inland countries to the free use of certain ports, is about to be confirmed in international law, the aforesaid argument cannot carry much weight in the special case of Switzerland, which is virtually connected with the sea by the international Rhine, this reservation is entirely unfounded. Also the fact, that Switzerland will have no navy at her disposal exercising an effective control over her merchant vessels, may not be considered as a sufficient reason for refusing the recognition of its flag. States, with an undoubtedly seafaring character can either utterly lack the possession of men-of-war, as is the case of Belgium, or else be only provided, as for instance Norway, with a navy that must be regarded as entirely insufficient for the purpose of exercising a control over the country's trading vessels.

In laying down these reasons the Swiss Government hope to have sufficiently proved their claim to be firmly established. They wish, however, to point out the fact that the development of the economic life of Switzerland fully justifies the establishment of a Swiss national navigation and even makes it appear a necessity of the present time.

The desire of Switzerland to create a commercial fleet of her own, enjoying the same rights and being subject to the same duties as the fleets of other countries, is not dictated by reasons of international policy, as might be the case with a larger country, nor by the aspiration of making her navigation subservient to the purpose of economic conquest or colonial expansion. Undoubtedly Switzerland feels the inconvenience of being entirely dependent on foreign maritime trade for the transmission of her correspondence and for her intercourse with her representatives abroad. Nevertheless, when she sustains her claim to an ocean-traffic under her own flag, she is mainly prompted by the needs of her economic life. These needs are the result of the special character of the Swiss industry, which by reason of the smallness of the inland market and of the scarcity of the raw materials is entirely dependent on importation and exportation; moreover, the existence of a comparatively dense population, which entails the necessity of revictualling the country from beyond the sea. The remarkable share in the world's commerce, which Switzerland owes above all to her expansive industry and to the high standard of labour in the country, makes it necessary for the Swiss Government to find means by which the interchange of Swiss goods might be effected by a national maritime trade. The necessity of adopting this point of view is confirmed by the following statistical data which it may be useful to record: in normal times the exportation of agricultural products of the country amounts to one-seventh of the whole production, a remarkably high figure for a country which has a chiefly industrial character. On the other hand, two-fifths of the country's total food supply is being imported and the entire grain production of Switzerland before the war would barely have covered the wants of the country during a period of sixty days. Of the goods manufactured in Switzerland, on the average, two-thirds were exported, whereas in some branches of industry the proportion of exported goods even rises to 95 per cent, a figure which again exceeds by far the record numbers reached in any other country.

The Swiss Government would be highly gratified if in stating these facts they had succeeded in convincing the Powers of the legitimacy of their claim as well as of the necessity for Switzerland to possess a recognized maritime navigation. They feel bound to express their deeply felt hope that their national flag, which is connected with so many glorious memories and which gave its name, its colours and its emblem to the universally cherished institution of the Red Cross, be soon granted a general and illimited recognition by the Powers.

APPENDIX II

Note dated 13 May 1919, addressed by the Swiss Delegation to the Commission on the International Regulation of Ports, Navigable Waterways and Railways of the Conference of the Powers in Paris

The nations of Europe have every confidence in the work now being prepared in Paris. Now, after a most terrible war, they are looking to the Conference of the Great Powers to reassert the essential principles of international law without which there can be no lasting peace.

After a struggle in which they were pitted against one another and from which they one and all, victors and vanquished, belligerents and neutrals, emerged scarred and war-weary, these nations of Europe feel the need to find as far as possible an expression of their ideal of solidarity.

This solidarity will remain an empty catchword, if the nations do not succeed in establishing mutual relations. It is scarcely necessary to appeal to history and recall the fact that the decline of the Roman Empire and the barbarity of the Dark Ages were the consequence of the gradual disappearance of communications in conjunction with depopulation. The present situation in part of Europe offers only too many examples in support of this contention.

Europe expects of the Great Powers a solemn declaration defining and developing the guarantee of international free transit, the imperative need for which was recognized by article 5 of the Treaty of Paris of 30th May 1814 in similar circumstances. This article reads: " the future Congress will examine and decide (as well as for the Rhine) in how far, with a view to facilitating communications between the peoples and rendering them gradually less strange to one another, the above provision can be extended to all the other rivers the navigable reaches of which separate or traverse different States."

In those far-off days, the international rivers and in particular the Rhine, were the cheapest and most rapid method of international transit traffic.

Now, as in 1814, it is necessary, in order to ensure lasting peace, to seek to render the nations gradually less strange to one another and ever more interdependent within the League of Nations, by endowing the principle of international free transit, already recognized in several international agreements, with the enhanced prestige of a permanent general principle of universal *jus gentium*.

The universal postal and telegraphic conventions and the so-called Berne Convention on the transport of goods by rail, to mention but two examples, have already given tangible expression to the principle of free international transit.

If the Great Powers assembled in Paris were to proclaim their intention of permanently guaranteeing " free international intercourse ", for which they fought the last war at the cost of heavy sacrifice, this would be in keeping with their best traditions.

As for the European States whose territories are completely surrounded by that of other powers, such as Switzerland and the Czechoslovak Republic, the guarantee of free international transit is indispensable for their economic and political independence.

Free access to the sea will be but an empty phrase unless *jus gentium* gives these countries the assurance that their communications by rail, waterway, telegraph and telephone etc. will not depend on temporary agreements which can be revoked by other States at will.

It is imperative that this guarantee be furnished in a more definite and at the same time more general form, that can be adapted to the future development of lines of communication.

REQUESTS

Consequently the Swiss Confederation has the honour to propose to the Great Powers the recognition of the following principles of *jus gentium*.

I

General Principle

Liberty, equality of rights and continuity

All civilized nations now admit that international transit between two States through the territory of one or more other States should be free and the definition of this liberty now presents no difficulty.

It can be drafted as follows:

Transit between two States through the territories of one or more other States is and shall be perpetually free.

It may not be subjected to any hindrance or restriction whatsoever, and in particular to any transit or customs duty or any other charge whatsoever over and above the cost of transport properly speaking. These costs may not be higher than those of internal transport.

The States whose territories are crossed shall treat on a footing of complete equality between one another and with their nationals, all persons, goods, boats, wagons, coaches, mail or other property or means of communication or transit traffic on their territories, irrespective of nationality, origin or destination.

II

Freedom of Transit as applied to Inland Navigation

It is hardly necessary to remind the Great Powers that the legal status of the great international waterways, as incorpo-

rated in the *jus gentium* of 1814/1815, is nothing more nor less than an application of the principle of free international transit traffic.

In this connexion, the legal work accomplished in the 19th century contains gaps which it is very necessary to fill in today.

To take only one instance, the treaties of 1839 and 1868, whereby some States sought to guarantee liberty of international transit traffic by water between the Rhine and Belgium, contain the double defect of being *res inter alias acta* as far as Switzerland and other States are concerned, being imperfectly drafted and especially of not constituting a permanent rule of European *jus gentium*.

Other international waterways in Europe, and very important ones, are not even the subject of a plurilateral agreement ensuring free navigation between the international navigable waterway and the nearest great sea port, when such port is not situated on the river itself.

Jus gentium does not contain a single principle furnishing inland navigation with a minimum of guarantees either (1) within such sea ports not situated on the river itself (such as Antwerp, for instance), (2) in the matter of transit through these ports of ships navigating or persons and goods conveyed by river, proceeding to or from oversea countries or (3) as regards the extent of the right to fly a flag on international waterways.

We crave permission to say a few words concerning these serious gaps in the present *jus gentium*.

The modern States desirous of developing their ports have every reason for wishing to grant more favourable treatment than that accorded to their internal traffic to international transit traffic in these ports and in their territorial waters, as also to that on the great navigable canals linking their sea ports with neighbouring international waterways. In point of fact, these favours have the effect of increasing the demand for freight, distributing general harbour dues over a more considerable tonnage etc. To ensure to river craft and their passengers, crews and cargoes equality of treatment in these ports and on entering and leaving these ports and to allow them to proceed in transit freely on a footing of perfect equality with the nationals of the country is in reality to accord them a minimum: indeed, it is really tantamount to conferring a legal character on a universally acknowledged custom, so that one almost wonders whether it is necessary to accord express recognition to this obligation of *jus gentium*.

In order still further to restrict and define the scope of this legal guarantee, the following could, if necessary, be specified:

(*1*) The waterway systems to which it is granted;

(*2*) The sea port or sea ports to benefit by this guarantee in the case of each of these systems.

Thus it could be definitely stated that this guarantee only applied to the great European rivers such as the Rhine, the Danube, the Elbe, the Po, etc., and mention made, in the case of the Rhine, for instance, of Antwerp, it being in the obvious interests of the Netherlands themselves to offer to include other ports not situated on the Rhine but, for instance, on the Waal or the Leck.

(*3*) The countries to benefit by this régime in each of the waterway systems.

To sum up, Switzerland asks that the right of free navigation on international waterways shall, by means of a general convention, be expressly stated to include:

A

(*1*) The right of free navigation between the international river and the great sea port or ports nearest to the navigable estuary, even when the communication between these ports and this river is by canal or by the territorial seas of one or more States;

(*2*) The right to national treatment for shipping in such sea port or ports used for transhipment;

Switzerland would agree, if necessary, to restrict this guarantee to the shipping, boats or cargoes of the countries whose territories are completely surrounded by those of other States, such countries being specified, for each waterway " system ", by the General Convention, this right implying the utilization on the same footing as nationals of installations for the unloading, loading and transhipment etc. of goods in the sea port or ports or on rivers that have to be used for transit.

B

The right to national treatment in the sea port or ports to be determined for each international river in Europe for the transit of vessels and goods proceeding to or from oversea countries.

Here again, Switzerland woud agree to restrict this guarantee to transit traffic to or from States whose territories are completely surrounded by those of other States, on condition that it was accorded to the flags of all States adhering to the General Convention.

C

Precise guarantees concerning the right to fly a flag

In connexion with the application of transit rights, the Swiss Government desires to submit to the Great Powers, for their favourable consideration, some questions which have not up to the present received any definite or satisfactory solution in practice (through agreements) or even in theory.

Article 109 of the final Act of the Congress of Vienna of 9 June 1815 does not, as we know, mention the existence of a " right to fly a flag " on international rivers and the divergences of interpretation to which the principle of freedom of navigation " for the trade of all nations " has given rise are also a matter of common knowledge. As regards the Rhine for instance, the regulations in execution of the Act, which were to be " conceived in a uniform manner for all " were in fact drafted and applied for the benefit of some of the riparian States to the disadvantage of other countries concerned — Switzerland and the non-riparian States.

The Rhine Convention of 1868 opens with an article guaranteeing freedom of navigation " to all nations ", but Art. 2 limits this right to vessels " belonging to Rhine shipping " which are defined as those " having the right to fly the flag of one of the riparian States and in a position to substantiate this claim by means of a document issued by the competent authority."

The 1868 régime must now be abolished and, in the interests of Europe and peace, replaced by a more liberal and precise régime which will effectively guarantee free navigation for all the Rhenish countries, and free transit not only for their goods but also for their vessels, irrespective of whether they belong to regular Rhine shipping or no.

The first question is:

As the 1868 right to fly a flag on the Rhine (which is tantamount to the application of a uniform régime for all the riparian States) is to be changed, by what system should it be replaced?

Obviously maritime law could not be applied as it stands on the Rhine. On the other hand it should be taken into consideration as far as possible with a view to facilitating river navigation of sea-going vessels and vice versa.

If it were left to the States represented on the Rhine Commission to provide a special system for the Rhine only, it is to be feared that, in spite of the creation of the League of Nations, the riparian States would be tempted to secure advantages for themselves at the expense of other States.

On the other hand, it seems scarcely possible immediately to provide, within a universal convention, one uniform system applicable to the right to fly a flag on all rivers or even on all European rivers.

This being so, the second question would seem to be:

Would it not be well, as a first step, to determine for the Rhine, by means of a general convention to which the great maritime powers, the small European maritime powers and the States through whose territories the Rhine flows would adhere,

the general legal guarantees to be accorded with immediate effect to the ships of all nations on the Rhine,

or, in other words, to draw up regulations governing the right to fly a flag on the Rhine and

the legal status of shipping and international transit traffic on the Rhine?

We venture to bring to the attention of the Great Powers the questions of public international law and international law calculated to give rise to legal disputes between riparian and non-riparian States, or rather between the principle of territorial sovereignty and the right to fly the national flag (see appendix I).

It would then be for a restricted conference of the States more especially concerned or for the new Central Rhine Commission to draw up the technical and executory provisions.

In order to produce satisfactory work in the general interest, account should be taken, when considering these general principles, of the legal conflicts that might arise in connexion with free transit traffic on the Rhine with the ports of Antwerp, London etc., not only in time of peace but also in war time, between the States adhering to these general principles and special regulations.

III

International Rail Transit Traffic

When transit is effected by rail, it would not be possible, by analogy with river shipping, to give the countries of origin or destination the right to carry out, direct or supervise transport in the transit countries, without inadmissible and unnecessary interference with the sovereignty of these countries in the matter of the structure and operation of their railways.

It would be sufficient to require the transit countries, in addition to the obligation not to hinder the free passage of persons, goods and mail by any fiscal or other measures, to see to it that their railway authorities accept for transport such persons, goods, letters etc. in transit and convey them to the railways of the next State. The acceptance of this obligation would be all the easier as it would be absolutely reciprocal for all countries.

This obligation should however be exactly defined. It would not constitute an effective guarantee, if the railway and postal authorities etc. of the transit countries were in a position to slow down transport at will, overcharge for it or fail to take the necessary precautions to safeguard goods, mail etc.

Provision should be made for a minimum of guarantees in respect of the duration of transport, the amount of the charges, the distances on the basis of which delays and charges can be calculated and finally the question of responsibility. In expressing the wish that transit traffic be not treated, in any of the ways we have mentioned, less favourably than inland traffic, we believe that we are proposing a solution acceptable to all the States concerned.

This object can, it seems to us, be achieved by adopting the following wording, for instance, for goods traffic :

Each State shall see to it that those in charge of the railway lines on its territory used for transit are under the obligation to accept, for transport, goods in transit through its territory and do not treat such goods, in the matter of conveyance or charges, less favourably than inland transport.

This minimum guarantee would no doubt, in the majority of cases, be replaced by arrangements more favourable to transit, as this would naturally be in the interests of the transit countries.

In any case, the peace congress will, by incorporating the principle of freedom of transit in *jus gentium,* be accomplishing a splendid piece of work in the interests of peace, which will come to be regarded as one of its outstanding achievements.

IV

Mixed Transit Traffic

The Swiss Delegation does not feel justified in suggesting the internationalization of railways, which would, it seems to them, meet with serious practical difficulties, even when the railways were merely an extension of an international waterway.

On the other hand, the guarantee of free transit by rail is indispensable in mixed international traffic by river and rail combined ; this applies in particular to States surrounded by the territory of other States.

In this connexion, it would be desirable to guarantee the following right :

National treatment for the conveyance in transit of persons and goods from or to countries surrounded by the territory of other countries :

(*1*) on railways linking these countries with an international river or linking the international river with the sea ;

(*2*) in river ports used for transhipment from railway to navigable waterway.

V

Freedom of Postal, Telegraph and Telephone Communications, etc.

Any guarantees of free transit would be illusory if traders were for instance prevented from using the telegraph, telephone or other means of communication in the transit States.

It is particularly important that this legal safeguard should be incorporated in the *jus gentium* of the twentieth century.

In other words, we request, especially for States surrounded by other States, the right to use, in the same way as nationals, the postal, telegraph and telephone services and all other methods of communication present and future of the States which separate them from other States, in so far as this may be necessary to enable them to exercise the right of transit.

VI

Freedom of Innocent Transit in Wartime

Frequently, in time of war, a minimum of legal guarantees in favour of innocent transit for the non-belligerent States and *a fortiori* for reciprocal transit for friendly and allied countries has been found absolutely necessary.

It would be in the interests of the belligerents themselves that the extent of this right of transit through their territories should be more clearly defined. It has not infrequently been found that, for lack of clear regulations, minor officials who are over-zealous or carried away by the sense of their responsibilities, on their own initiative hinder transit traffic from or to other States to the detriment not only of these States but also of their own.

Today, when the League of Nations is founded on the principle of solidarity between the nations, would it not be eminently judicious and politic to apply this principle of solidarity to cases in which the members of that League might be called upon to assist one another at the sacrifice of all they hold most precious — that is to say, during a League of Nations war against an external enemy ?

Would it be admissible that one of the associated States should be permanently deprived by its own allies of the right to cross the territory of its co-associates, on the usual pretext of military interest?

This question is particularly important for States surrounded by others and especially for a neutral State like Switzerland, in the matter of its access to the sea.

It will be in the interests of the League of Nations to link together the States belonging to it, so as in future to ensure the minimum transit indispensable between friendly States, on the hypothesis of another war. *A fortiori,* it would be well to grant to the States belonging to the League of Nations a similar guarantee in respect of transit through the territory of States not belonging to the League.

The highest military interest could not justify a claim to the right permanently to deprive a friendly country of all access to the sea.

A distinction must be made between the zone of hostilities properly speaking and the remaining territory of the belligerent countries.

The exigencies of war might conceivably have to take precedence of any other consideration, even where friendly countries were concerned, but these exigencies are always local and temporary.

On the other hand, experience in time of war goes to show

that, even within this limited zone, it is often possible for military chiefs to allow trains or special convoys to pass for innocent purposes, on condition that every precaution is taken to ensure, for instance, the secrecy of military operations etc.

Another objection to international transit, even outside the zone of hostilities, is the shortage of means of transport in the belligerent country, whose territory is crossed.

This objection is particularly ill-founded when the State requesting admission for its goods for the purpose of transit is surrounded by the territory of another State and offers to have its goods conveyed in its own wagons or barges. The fact that the State surrounded by the territory of another usually hesitates to make an offer of this kind is that it is afraid of the risk of its wagons or barges being requisitioned.

We believe that we are acting in the general interest in proposing the following wording :

The right to free international transit of a friendly State surrounded by the territory of another may not be permanently restricted save on the communications of the territory crossed which are situated in the zone of hostilities.

It may only be suspended in the zone of hostilities if the State whose territory is surrounded by those of others and is a friendly State refuses to submit to the military security measures demanded by the belligerent State or States whose territories it desires to cross or if it does not offer to have the goods conveyed in its own wagons or barges.

Traffic of the friendly State using the territory of another State for purposes of transit shall be exempt from all requisitioning.

Vessels of this friendly State which are mainly or exclusively used for the river traffic of that State are not subject to the regulations peculiar to maritime warfare (seizure etc.) when they are obliged to cross the territorial waters of belligerents in transit, in order to reach one of the sea ports nearest to the international river from which they have come, or vice versa to proceed from one of those sea ports to the international river of destination.

Annex 6

ACCESS TO THE SEA OF LAND-LOCKED COUNTRIES :
DRAFT ARTICLES SUBMITTED BY THE CZECHOSLOVAK DELEGATION

Part I. MAIN PRINCIPLES

Article 1

RIGHT TO THE FREE ACCESS TO THE SEA

The principle of the freedom of the high seas which guarantees to all States equal use of the high seas, universally recognized by international law, embraces also the right of States without a seacoast [land-locked states] to free access to the sea.

Commentary

The noble principle of the freedom of the high seas signifies, as provided under article 27 of the Draft of the United Nations International Law Commission, that the high seas are open to all States. All states are therefore entitled to enjoy the advantages accruing from the freedom of the high seas. The principle of the freedom of the high seas, universally recognized at the present time, indubitably also includes the right of states without a seacoast [land-locked States] to free access to the sea and that by highway, by rail, by waterway and by air. The said principle also includes the right to fly a flag and the right to the use of maritime ports. Without these fundamental rights land-locked states could not exercise any of the powers incorporated in the principle of the freedom of the high seas.

This article does not apply to enclaves on the territory of a foreign State nor to the access of coastal States to seas other than those along their coast.

Article 2

RIGHT TO FLY A FLAG

1. Land-locked States have the right to sail ships, registered in a specific place within their territory ; this place is the port of registry for these ships.

2. Ships sailing under the flag of a land-locked State shall receive guarantees of equal treatment with ships of coastal states on the high seas, during passage through territorial waters and in entering internal waters.

Commentary

The right of land-locked States to fly a flag on the sea was first codified in the Peace Treaties [article 273 of the Versailles Treaty, article 153 of the Neuilly Treaty — in which this right is accorded to all land-locked States belonging to the Allied and Associated Powers, further in article 209 of the Trianon Treaty and article 225 of the Treaty of Saint-Germain, which accorded this right to all land-locked States which are contracting parties to the said Treaties].

" The Declaration recognizing the right of States without a seacost to fly a flag on the sea " unanimously adopted at the Barcelona Conference on the freedom of navigation and transit in 1921 " has for all times embodied the right of all States not having a seacoast to fly a flag on the sea ", to cite the President of the Barcelona Conference, Mr. G. Hanotaux.

The right of land-locked states to fly a flag at sea has thus become a lasting principle of international law, recognized and applied by all States.

Article 3

THE RIGHT TO USE MARITIME PORTS

1. Land-locked States have the right that ships sailing under their flags may use maritime ports.

2. The coastal State is obliged to ensure to the ships of a land-locked State most favoured treatment, and in no event shall such treatment be worse than that enjoyed by its own vessels in maritime ports under its sovereignty or authority, in particular as regards the freedom of access to the port, its use and full enjoyment of the facilities it provides with respect to navigation and commercial operation to ships and vessels, their cargoes and passengers and with respect to payments and charges of all kinds.

Commentary

In respect of land-locked countries, unlike coastal States, the exercise of the right to use the high seas is subject to their right to use maritime ports. The term " maritime port " should for the purposes of the present article be understood to signify ports receiving naval vessels and serving international economic relations or the transit of a land-locked State.

The right to use maritime ports applies to all vessels sailing under the flag of a land-locked State, irrespective of its owner, or operator, whether a State, a private person or a public agency. It applies equally to vessels exersising the power of control over the vessels of a land-locked State. The same right appertains to land-locked States also in respect of fishing vessels.

The granting of the best possible conditions to the land-locked State and in all cases at least treatment equal to that enjoyed by, and according to, the vessels of the coastal State is fully justified, if it is at least partially to compensate for the very considerable disadvantages arising from the unfavourable situation of the land-locked State. It has, moreover, already been accorded under certain treaties. Comp. article 11 of the Convention between Italy and Czechoslovakia on the granting of concessions and facilities in favour of Czechoslovak

transport in the port of Trieste of 23 March 1921. [*L.o.N., Recueil des traités,* vol. XXXII, p. 256.] Article 2 of the Statute of the International Régime of Ports of 9 December 1923 likewise rests on the same principle. [*L.o.N., Recueil des traités,* vol. LVIII, p. 300.]

Paragraph 2 of article 3 regulates the legal status of vessels in maritime ports alone, and in no way affects the rights of the coastal State, as for instance the exclusive right of the coastal State to operate cabotage.

Article 4

FREE ZONES IN PORTS

1. For the purpose of free and duty-free movement of goods between a land-locked state and the seacoast, the coastal state may establish by agreement with a land-locked state and for the use there a free zone in certain of its ports.

2. A free zone is a zone exempted from the customs territory of the state where it has been established, which however remains subject to the jurisdiction of that state especially with regard to safety of operation, working conditions and public health.

Commentary

As the experiences of the past years have shown, the needs of the land-locked countries may require the establishment of a free zone in one of the maritime ports. The Versailles Peace Treaty in its articles 363 and 364 regulated the right of Czechoslovakia to establish free zones in the ports of the North Sea as " les besoins tout particuliers de la République tchécoslovaque, conséquence de sa situation géographique " [Report of the Transport Commission to the Conference of 7 April 1919]. Land-locked states have concluded international agreements with a view to the establishment of free zones in ports. As an example it is possible to cite the Treaty between Czechoslovakia and Italy of 23 March 1921 on concessions and facilities en favour of Czechoslovak transports in the Port of Trieste [Convention entre l'Italie et la Tchécoslovaquie accordant des concessions et des facilités en faveur des transports tchécoslovaques dans le port de Trieste : *L.o.N. Recueil des traités,* vol. XXXII, p. 250 *et seq.*] ; the Convention of 2 August 1929 between Italy and Ethiopia, envisaging the establishment of a free zone in the port of Assab [Martens, *Nouveau recueil général de traités,* 3e série, vol. XXX, p. 335].

The free zones were also established to provide transit facilities to land-locked states in foreign ports. Compare the Greek-Serbian convention of 10 May 1914 on transit traffic through Salonika whose text served as a model for the wording of article 363 of the Peace Treaty of Versailles ; the convention between Greece and Yugoslavia of 10 May 1923 concerning the regulation of transit through Salonika, supplemented by the Protocols of 17 March 1929 ; convention between Great Britain and Belgium with a view to facilitating Belgian Traffic through the territories of East Africa, signed at London, 15 March 1921.

This article only lays down the obligation to give the land-locked State the possibility of establishing a free zone. As a rule, the land-locked State will not feel the need to establish a free zone in maritime ports where a free port exists. However, it need not necessarily be so in all cases. Thus, for instance, the Yugoslav free zone in the port of Salonika established by the Convention of 10 May 1923 does not form a part of the Salonika free port.

From the practices of States it is possible to deduce some general principles of the régime of free zones. A free zone within the terms of article 4 and within the meaning of this principle remains under the sovereignty of the State in the territory of which it has been established. The purpose of a free zone is first and foremost to facilitate transit. Therefore this zone is only excluded from the customs territory of the State and with regard to customs is considered, even in relation to the state in the territory of which it has been established, as foreign territory. The turnover of goods between the free zone and other countries with the exception of the territorial State, is subjected neither to the customs duties nor to any other import or export charges.

The law of the State in the territory of which the free zone is established extends in principle to the free zone as well. This law governs in particular the safety of operations, working conditions and questions of public health. The State in transit has, however, the right to perform the customs formalities in the free zone through its own organs.

Apart from facilitating transit, the free zone at the same time serves certain commercial needs. In the free zone it is permitted to store goods in customs and other depots, to inspect them, to select, pack and re-wrap them, to treat them with a view to perfecting them and to perform other operations in connexion with the transhipment of goods, without the presence or assistance of the customs authorities of the country in the territory of which the free zone is established.

The interests of the coastal States are sufficiently protected by the provision of article 7, under which the establishment of the free zone shall be carried into effect by agreement between the land-locked State and the coastal State.

Article 5

OBLIGATIONS OF THE COUNTRIES OF TRANSIT

Countries situated between the land-locked State and the seacoast [countries of transit] shall allow the transit of persons and goods proceeding from land-locked States to the sea and vice versa by highway, rail, waterway and air.

Commentary

The obligation of the countries of transit to permit the transit of persons and goods proceeding from land-locked States to the sea and vice versa ensues from the right of the land-locked states to free acces to the sea. This right would be ineffective if the corresponding obligation would not be imposed upon the countries of transit. The obligation of the countries of transit shall apply to all means of transport, since it is the only way how to give the land-locked States compensation for their unfavourable geographical situation. Each of the said means of transportation, be it transport on highways, railways, waterways and airways, have their specific features with regard to expense, expediency and adaptability. Should any of these ways of transit be denied to the land-locked State, that State would be discriminated in comparison with the coastal States.

In this connexion the necessity arises to define the country of transit. For the purposes of the present articles the term " country of transit " is understood to denote any country situated between the land-locked State and a maritime port, which according to natural conditions enters into consideration for transit between the land-locked State and the seacoast.

The right of land-locked countries to the use of transit routes is reflected in General Assembly resolution 1028 (XI) of 20 February 1957, concerning land-locked countries and the expansion of international trade. The resolution reads as follows :

" *The General Assembly,*

" *Recognizing* the need of land-locked countries for adequate transit facilities in promoting international trade,

" *Invites* the Governments of Member States to give full recognition to the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries."

In considering the provisions of article 5 it is necessary to stress the mutual advantage of transit trade. Transit from a land-locked country to the sea is economically beneficial to the countries of transit, particularly to the coastal countries. By imposing certain obligations to the country of transit, article 5 ensures to it at the same time indirectly also the enjoyment of the advantages ensuing from its position as a country of transit.

Article 6

PROHIBITION TO LEVY CUSTOMS DUTIES IN TRANSIT

The country of transit is not authorized to levy customs duties or other charges on goods shipped in transit from the sea to the land-locked State or from that State to the sea.

Commentary

The principle that the goods shipped in transit are exempt in the country of transit from customs duties and other charges is universally recognized and accepted. Article 6 merely applies this principle to the goods shipped in transit from the sea to the land-locked State and vice versa.

Article 7

MODALITIES OF THE EXERCISE OF THE RIGHT OF ACCESS TO THE SEA

The modalities under which the land-locked State shall exercise the rights mentioned under articles 4 and 5 shall, if they are not determined by existing international treaties or other rules of international law, be laid down by agreement between the land-locked State and the countries of transit.

Commentary

The purpose of article 7 is to safeguard the sovereign rights of the State of transit, which imply its contractual freedom to determine the conditions under which the land-locked State shall be granted certain powers for the exercise of its rights to free access to the sea. This freedom is of course subject to the limitations of existing international treaties or other universally recognized rules of international law to the effect that the conditions agreed upon shall not be less favourable than those which are laid down by those treaties and rules.

Article 8

EXCLUSION OF THE APPLICATION OF THE MOST-FAVOURED-NATION CLAUSE

These articles, as well as agreements on the conditions of transit between land-locked States and countries of transit are excluded from the application of the most-favoured-nation clause.

Commentary

The purpose of article 8 is not to place any obligation upon the State of transit which respects the present Convention and with a view to free access to the sea accords the land-locked State special facilities in the Agreement governing the conditions of transit, also to grant these same facilities to a third State in virtue of the most-favoured-nation clause.

The fundamental right of a land-locked State to free access to the sea, derived from the principle of the freedom of the high seas, constitutes a special right of such a State, based on its natural geographical position. It is natural that this fundamental right belonging only to a land-locked State cannot be claimed, in view of its nature, by any third State by virtue of the most-favoured-nation clause. The exclusion from the effects of the most-favoured-nation clause of agreements concluded between land-locked States and countries of transit on the conditions of transit is fully warranted by the fact that such agreements are derived precisely from the said fundamental right.

Article 9

RIGHTS OF THE COUNTRY OF TRANSIT TO PROTECTION

1. The country of transit may take measures which are indispensable in order to prevent the exercise of the right of free access to the sea from infringing upon its security, customs, fiscal and health interests.

2. In exceptional cases, in particular at a time of international crisis, the State of transit may, temporarily and for a period as short as possible, limit and it may even, if it deems it indispensable for reasons of public safety or for military reasons, temporarily suspend, in a part of its territory, the exercise of the right of transit. However, such measures must apply with equal force to the transit of all States and must be notified in time to the land-locked State.

Commentary

The purpose of paragraph 1 of this article is to determine the exact limit of the exercise of the right of the land-locked State to access to the sea and to achieve a certain balance between the rights and obligations of both land-locked States and States of transit. In principle the exercise of the right of the land-locked State may in no way entail a threat to the sovereignty or to any other important interest of the State of transit. On the other hand it is only natural that the measures taken to protect the sovereignty of the State of transit may not depass the limit of what is essential and may not entail discrimination in the transit of persons or goods transported from the land-locked State to the sea and vice versa.

Paragraph 2 provides for special instances of the restriction of the exercise of the right of transit. The reason for additional restrictions, of course for a period as short as possible, can be an exceptional situation under which the State of transit cannot, if it is not to act to the detriment of its own vital interests, permit the full exercise of the right of transit through its territory. The State of transit may resort to such measures as would affect the transit of the land-locked State the most seriously, and which might even lead to its suspension, only for urgent reasons of public security or for military reasons, while at the same time such suspension may only be a temporary one and may be localized only to a certain part of the state territory of the country of transit. In no event may these measures be used as a means of discrimination or pressure against a land-locked State. The previous notification of such measures to the land-locked State is an essential condition.

Similar provisions have, for instance, been incorporated in article 7 of the Statute of the Freedom of Transit drawn up at Barcelona on 20 April 1921.

Article 10

RELATION OF THE NEW REGULATION TO PREVIOUS AGREEMENTS

1. Articles 1 to 9 neither abrogate agreements which exist between the contracting parties on questions regulated under the said articles, nor preclude the conclusion of similar agreements in the future, provided that those will not be in conflict with the present regulation.

2. However, the contracting parties undertake that, in case such existing agreements deviate from the provisions set out under articles 1-9, they shall at the earliest occasion bring them in accord with the present regulation, unless such deviations would be justified by specific geographical, economic or technical conditions.

Commentary

The regulation represents the codification of the essential principles governing the right of land-locked countries to access to the sea. In evaluating its place among the other norms of international law it is necessary to proceed from its general nature. The regulation does not exclude, but to the contrary, ensues from the assumption of a detailed contractual regulation of the modalities and individual aspects. The conditions for the application of the principles of this regulation will differ from region to region of the world and from country to country. Existing treaties, in so far as they are not directly in contradiction with the present regulation, will constitute an important part of the regulation of relations between the land-locked countries and countries of transit. In those cases where the existing regulation deviates in principle from the present regulation and where such deviation is not justified by particular geographical, economic or technical conditions, it is desirable that the existing treaties be brought in to accord as early as possible and in an appropriate manner [revision, etc.] with the present regulation. This procedure was chosen for instance in the case of article 10 of the Statute of the Freedom of Transit concluded in Barcelona on 20 April 1921. It is natural that any future treaties should take into account the principles of the present regulation.

Article 11

SETTLEMENT OF INTERNATIONAL DISPUTES

1. Disputes that may arise in connexion with the interpretation or application of the above articles 1 to 10 and that could not be settled by negotiation or by any other means of peaceful settlement under an agreement between the parties, shall be brought before a mixed commission.

2. The mixed commission shall be composed of six members. Each party to the dispute shall nominate three members, out of whom only two may be nationals of the State on that side, while the third must be a national of a State not party to the dispute, and must not have his permanent residence within the territories of either of the States parties to the dispute; nor must he be in any way engaged in their services. The mixed commission shall decide by simple majority and its decisions shall be final and binding on the parties concerned.

3. Failing the constitution of the mixed commission within three months from the date of the original request by one of the parties or if, within a period of six months from the constitution of the Commission, or within a prolonged period agreed upon by the parties, there shall be a failure to bring the proceedings before the Commission to a settlement of the dispute, each of the parties concerned has the right to submit the case for decision to the Permanent Court of Arbitration at The Hague, in accordance with the provisions of the Convention on the Pacific Settlement of International Disputes of October 18, 1907.

Commentary

In principle it is left to the agreement of the parties concerned to determine what means of peaceful settlement they wish to resort to in the event of any dispute arising from the interpretation or application of the regulation. In so far as the dispute is not capable of a solution by any of these means (i.e., the means cited in Article 33, paragraph 1 of the Charter of the United Nations), the dispute shall be brought before a Mixed Commission, the composition, competence and manner of decision of which are governed by the provisions of paragraph 2, article 11, of the present regulation. The Mixed Commission in this instance represents an appropriately adapted modification of an Arbitral Tribunal, and in view of the nature of the disputes that may eventually arise from the interpretation or application of the present regulation appears to offer the most appropriate means for their peaceful settlement. It permits of a speedy, operative and competent consideration of the situations in dispute, where, in the majority of cases, technical moments will be predominant.

Failing the constitution of the mixed commission or in the event of its failure to bring about a settlement of the dispute within the period of time established therefor, each of the parties concerned shall have the right to submit the case for decision to the Permanent Court of Arbitration at The Hague in accordance with the provisions of the Convention on the Pacific Settlement of International Disputes of 18 October 1907. The procedure envisaged by The Hague Convention of 1907 offers the respective guarantees for the parties to assert their will and to ensure their influence with respect to the appointment of the Arbitral Tribunal. Besides this, the use of this procedure preserves the aspect of the expert competence of the Arbitral Tribunal, since the list of arbitrators of the Permanent Court of Arbitration and the manner of their selection offer wide possibilities for the appointment of an Arbitral Tribunal, the composition of which can, in each case, be adapted to the nature of the dispute in question.

Article 12

EFFECTS OF AN ARMED CONFLICT

The provisions of this part (articles 1 to 11) do not affect the rights and duties of belligerents and neutrals in time of armed conflict; they shall, however, continue in force even in time of armed conflict in so far as such rights and duties permit.

Commentary

This provision seems necessary in view of the purposes of the new regulation. For these reasons the regulation should in no event belong to that category of treaties which are suspended from the moment an armed conflict breaks out. The extent to which the provisions of the regulation will apply at the time of an armed conflict will naturally be governed by the status of the contracting parties in such a conflict. A similar provision was embodied in article 8 of the Statute on the Freedom of Transit which is a part of the Barcelona Convention on the Freedom of Transit of 20 April 1921.

Part. II. FORM OF THE NEW REGULATION

The articles contained in part I could either constitute a separate declaration which would be open, as the other contractual instruments agreed upon at the conference, to signature and ratification, or for accession by states, or could be included in some broader agreement, preferably in the Convention on the Régime of the High Seas, if it is negotiated at the conference. There are serious considerations speaking in favour of the second alternative. For this is the only way of ensuring that the said articles receive the broadest possible recognition by States. Final decision as to the form in which the provisions concerning the free access to the sea of land-locked states should be presented can be made at the conference according to the situation.

The principles concerning the modalities of transit should be incorporated in a special resolution so as to provide a basis for discussion between land-locked States and States of transit and furnish directives for eventual later elaboration of model treaties in the Transport and Communication Commission of the Economic and Social Council.

Annex 7

PRINCIPLES ENUNCIATED BY THE PRELIMINARY CONFERENCE OF LAND-LOCKED STATES

The delegates of the States which have no direct territorial access to the sea, gathered in Geneva from 10 to 14 February 1958, for a preliminary consultation, desirous to obtain the reaffirmation during the Conference of the Law of the Sea convened by the United Nations, or their rights of free access to the sea, taking into consideration the fact that other States which are not placed in the same geographic situation should not be requested to apply the most-favoured-nation clause, hold that access to the sea of land-locked countries is governed specifically by the following general principles which are part of existing international law:

Principle I

RIGHT OF FREE ACCESS TO THE SEA

The right of each land-locked State of free access to the sea derives from the fundamental principle of freedom of the high seas.

Principle II

RIGHT TO FLY A MARITIME FLAG

Each land-locked State enjoys, while on a footing of complete equal treatment with the maritime State, the right to fly its flag on its vessels which are duly registered in a specific place on their territory.

Principle III

RIGHT OF NAVIGATION

The vessels flying the flag of a land-locked State enjoy, on the high seas, a régime which is identical to the one that is enjoyed by vessels of maritime countries; in territorial and on internal waters, they enjoy a régime which is identical to the one that is enjoyed by the vessels flying the flag of maritime States, other than the territorial State.

Principle IV

RÉGIME TO BE APPLIED IN PORTS

Each land-locked State is entitled to the most favoured treatment and should under no circumstances receive a treatment less favourable than the one accorded to the vessels of the maritime State as regards access to the latter's maritime ports, use of these ports and facilities of any kind that are usually accorded.

Principle V

RIGHT OF FREE TRANSIT

The transit of persons and goods from a land-locked country towards the sea and vice versa by all means of transportation and communication must be freely accorded, subject to existing special agreements and conventions.

The transit shall not be subject to any customs duty or specific charges or taxes except for charges levied for specific services rendered.

Note. — The Austrian delegation presumes that principle V does not have a further scope than the obligations resulting from the statute of Barcelona of which Austria is a signatory.

Principle VI

RIGHTS OF STATES OF TRANSIT

The State of transit, while maintaining full jurisdiction over the means of communication and everything related to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the right of free access to the sea shall in no way infringe on its legitimate interests of any kind, especially with regard to security and public health.

Principle VII

EXISTING AND FUTURE AGREEMENTS

The provisions codifying the principles which govern the right of free access to the sea of the land-locked State shall in no way abrogate existing agreements between two or more contracting parties concerning the problems which will be the object of the codification envisaged, nor shall they raise an obstacle as regards the conclusion of such agreements in the future, provided that the latter do not establish a régime which is less favourable than or opposed to the above-mentioned provisions.

DOCUMENT A/CONF.13/C.5/L.6

Afghanistan, Albania, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxembourg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia and United Arab Republic: proposal

[*Original text: French*]
[*26 March 1958*]

I

Right of free access to the sea

Every State without a coast (land-locked State) has the right to free access to the sea. This rights derives from the fundamental principle of the freedom of the high seas.

II

Right to a flag

Every State without a coast possesses, on terms of complete equality of treatment with maritime States, the right to a flag in respect of such of its ships as are duly registered in a specific place in its territory; that place shall be the port of registry for such ships.

Commentary

Needless to say, equality of treatment implies equality of rights and obligations.

III

Right to sail in the territorial sea and in internal waters

Every State without a coast has the right to claim that ships flying its flag shall enjoy in the territorial sea and the internal waters of any maritime State a régime identical to that accorded to the ships of other maritime States.

IV

Régime applicable in ports of the coastal State

1. Every State without a coast shall be entitled to most favourable treatment, and in no event shall such treatment be less favourable than that accorded to ships of the coastal State, in maritime ports under the sovereignty or authority of the coastal State, as regards freedom of access to the ports, the use of the ports and the full enjoyment of the facilities of all kinds generally granted.

2. The expression "coastal State" means, for the purposes of this article, any State whose territory can, in the light of the geographical and economic circumstances, be reasonably regarded as constituting the means of access to the sea for a specific State without a seacoast.

3. For the purposes of this article, the expression "maritime ports" means ports normally used by merchant ships and open to international trade.

V

Right of free transit to the sea

1. Transit from a land-locked country towards the sea and vice versa by all means of transportation and communication shall be freely accorded, subject to existing special agreements and conventions.

2. The transit shall not be subject to any customs duty or special charges or taxes levied by the coastal State or by the State of transit, except for charges levied for specific services rendered.

Note. — The Austrian delegation is of the opinion that the principle expressed in article V has no wider implications than the obligation deriving from the Statute of Barcelona, of which Austria is a signatory.

VI

Form of the exercise of the right of access to the sea

The form in which the land-locked State is to exercise the rights mentioned in articles IV and V shall, in so far as it is not determined by existing international treaties, be laid down by agreement between the land-locked State and the coastal States and States of transit.

VII

Rights of protection of the State of transit

The coastal State or State of transit, maintaining full sovereignty over its territory and in particular over the means of communication and all matters relating to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the rights mentioned in articles IV and V shall in no way infringe any of its legitimate interests whatsoever, especially its interests in security and public health.

Commentary

It was pointed out that it might be desirable to provide for a system of peaceful settlement of disputes, so as to ensure the rapid settlement of any controversies which might arise in connexion with the interpretation of the expression "legitimate interests".

Note. — The delegation of Bolivia stated that its arrangements for transit through the territory of the coastal States towards the Pacific were broad and liberal and that they remained in force at all times and in all circumstances, and that consequently the clause included in article VII was not applicable to those arrangements.

VIII

Relation of the new regulations to previous agreements

Articles I to VII neither abrogate nor affect agreements which are in effect between two or more of the contracting parties concerning questions regulated under the said articles, nor do they preclude the conclusion of similar agreements in the future, provided that such future agreements do not institute a less favourable régime and do not conflict with the aforesaid articles.

IX

Exclusion of the application of the most-favoured-nation clause

The present provisions as well as those of multilateral and bilateral agreements concluded or to be concluded between land-locked States and countries of transit and coastal countries are excluded from the application of the most-favoured-nation clause.

Note. — The delegations of Austria, Luxembourg and Switzerland reserve their position as to the form and mode of codification of the rights of land-locked States.

DOCUMENT A/CONF.13/C.5/L.7

Italy, Netherlands and United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text: English*]
[*27 March 1958*]

This proposal, which comprises parts I and II below, is submitted on the understanding that no major change will be suggested by other committees in the structure of the following provisions concerning the law of the sea adopted by the International Law Commission (A/3159):

(*a*) The first paragraph of article 15;

(*b*) The first phrase in article 27;

(*c*) Article 28;

(*d*) Article 49;

(*e*) The first paragraph of article 61.

Should any amendments of substance be made to any of the above-mentioned provisions, the Fifth Committee reserves the right to make further proposals.

I

1. The Fifth Committee recommends to the Conference the insertion in the main Convention on the Law of the Sea of the following new article:

"Any reference in this convention to 'all States', 'each State' and 'every State' shall be understood to comprise land-locked States as well as States possessing a sea coast."

2. The Fifth Committee recommends to the Conference the addition to article 28 of the following sentence:

"Ships flying the flag of land-locked States enjoy on the high seas the same régime as that enjoyed by ships flying the flag of States that possess a sea coast."

II

The Fifth Committee recommends to the Conference the adoption of a resolution on "Free Access to the Sea of Land-locked Countries" in the following terms:

The United Nations Conference on the Law of the Sea,

Whereas the General Assembly of the United Nations, in resolution 1105 (XI) of 21 February 1957, recommended that an international conference of plenipotentiaries "should study the question of free access to the sea of land-locked countries, as established by international practice or treaties",

Whereas the Economic Conference of the Organization of American States, held at Buenos Aires from 15 August to 4 September 1957, adopted a declaration and three resolutions pertaining to the question of free access to the sea of land-locked countries,

Whereas at the invitation of the Swiss Federal Government, a preliminary conference of States without direct territorial access to the sea was held in Geneva from 10 to 14 February 1958 and this conference enunciated certain principles on the question of access to the sea of land-locked countries,

Whereas the United Nations Conference on the Law of the Sea, which met in Geneva from 24 February to 24 April 1958, entrusted one of its main committees (the Fifth Committee) with the task of studying the question of free access to the sea of land-locked countries,

1. *Recognizes* the importance to land-locked countries of free access to the sea, if, having regard to their geographical situation, those countries are to enjoy the benefits of the freedom of the seas in an equal manner with countries possessing a sea coast;

2. *Considers* that such free access consists essentially in the ability to sail ships on the high seas, to transport persons and goods across the territory of States situated between land-locked countries and the sea coast, and to use the ports of coastal States;

3. *Considers further* that the question of free access to the sea of land-locked countries falls within, and is governed by, the same principles of international law (including reciprocity) as regulate transit and the use of ports between all countries, both those having and those not having a sea coast;

4. *Takes note* that, in article 28 of the Convention on the Law of the Sea (hereinafter referred to as "the Convention") of today's date, the principle embodied in the "Declaration recognizing the Right to a Flag of States having no Sea Coast" adopted at Barcelona on 20 April 1921, has been reaffirmed;

5. *Notes* that in the same convention the following rights and freedoms are also guaranteed to land-locked countries on the same basis as other countries:

(*a*) The right of innocent passage (article 15);

(*b*) The freedoms of the high seas (article 27);

(*c*) The right for their nationals to engage in fishing on the high seas (article 49);

(*d*) The rights to lay telegraph, telephone or high-voltage power cables and pipelines on the bed of the high seas (article 61);

6. *Considers* that it would be to the benefit both of land-locked countries and of countries situated between them and the sea coast if all countries concerned, which are in a position to do so, were to become parties to the Convention and Statute on Freedom of Transit concluded at Barcelona on 20 April 1921, and the Convention and Statute on the International Régime of Maritime Ports concluded at Geneva on 9 December 1923, as well as the Protocol of Signature thereto:

7. *Recognizes* that the provisions of the Convention of today's date, as well as those of the international instruments referred to in paragraph 6, may be usefully supplemented in individual cases by local or regional agreements, and that many such agreements have been entered into;

8. *Expresses the hope* that, in concluding such agreements in the future, the parties concerned will be guided[4] by a spirit of mutual co-operation, by the principles of the instruments referred to in paragraph 6 and by a desire to promote international trade and commerce generally, due regard being paid in particular to the difficulties created for land-locked countries by their geographical situation.

DOCUMENT A/CONF.13/C.5/L.8

Chile: amendment to document A/CONF.13/C.5/L.6

[*Original text: Spanish*]
[*2 April 1958*]

Replace section I by the following text:

I

Right of free access to the sea

Every land-locked State has the right to free access to the sea. This right consists essentially in the free transit of persons and goods through the territory of the States situated between the land-locked countries and the coast, and in the use of the ports of maritime States.

DOCUMENT A/CONF.13/C.5/L.9

Letter from the Chairman of the First Committee to the Chairman of the Fifth Committee

[*Original text: English*]
[*9 April 1958*]

At its 34th meeting, held on 2 April 1958, it was the sense of the First Committee that the following proposal, submitted by the representative of Bolivia, should, in accordance with the oral understanding reached between the Chairmen of the First and Fifth Committees, be referred to the Fifth Committee for its consideration:

"Ships of a land-locked State shall have a special right of passage through the territorial sea and internal waters of the coastal State contiguous to its territory, for the purpose of entering or leaving ports of the latter State."

I shall be obliged if you will kindly bring this matter to the attention of the Fifth Committee.

(*Signed*) K. H. BAILEY
Chairman of the First Committee

DOCUMENT A/CONF.13/C.5/L.10

United States of America: amendment to document A/CONF.13/C.5/L.7

[*Original text: English*]
[*9 April 1958*]

Delete paragraph 3 of part II and substitute the following:

"3. *Having studied* the question of free access to the sea of land-locked countries, as established by international practice or treaties, in accordance with resolution 1105 (XI) adopted by the General Assembly of the United Nations on 21 February 1957:

"(*a*) *Considers* that States should grant the greatest possible facilities to land-locked countries for access to the sea and that they should co-operate with each other to this end, and

"(*b*) *Recognizes* the need of land-locked countries for adequate transit facilities in promoting international trade and considers that governments should give full recognition to the needs of land-locked countries in the matter of transit trade and, therefore, accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries."

DOCUMENT A/CONF.13/C.5/L.11

Sweden: proposal

[*Original text: English*]
[*9 April 1958*]

TERMS OF REFERENCE OF WORKING PARTY

That a working party be established with the following terms of reference:

To report to the Fifth Committee not later than 11 April its recommendations concerning the form or forms in which the results of the Committee's work should be expressed.

DOCUMENT A/CONF.13/C.5/L.12

Hungary: amendment to document A/CONF.13/C.5/L.11

[*Original text: English*]
[*9 April 1958*]

Replace the words following "its recommendations concerning" by the words "the instrument or instruments in which the results of the Committee's work should be embodied."

DOCUMENT A/CONF.13/C.5/L.13

Bolivia: proposal

[*Original text: Spanish*]
[*10 April 1958*]

To appoint a working party, composed of representatives of four land-locked States, four States of transit and four States other than those included in the two preceding categories, and to instruct it, after taking into account all the proposals submitted to the Fifth Committee, together with the relevant amendments and the statements which the Committee has heard,

(1) to draft and embody in a single text all the points on which agreement has been reached, irrespective of the final form which the Conference may give to them; and

(2) to embody in another single text the contents of the points on which agreement has not been reached and, as regards them, to suggest the form or forms which the Conference might give to them.

DOCUMENT A/CONF.13/C.5/L.14

Austria: amendment to document A/CONF.13/C.5/L.11

[*Original text: French*]
[*10 April 1958*]

Replace the words "the results of the Committee's work" by the words "sections II and III of document A/CONF.13/C.5/L.6".

DOCUMENT A/CONF.13/C.5/L.15

Switzerland: proposal

[*Original text: French*]
[*11 April 1958*]

I

The Swiss delegation proposes that article 15, paragraph 1, article 27, and article 28 in the International Law Commission's draft be worded as shown below. [Should articles 15, 27 and 28 of the draft be modified by the committees concerned, these amendments should be adapted to the final wording.]

Article 15

"1. Subject to the provisions of the present rules, ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the territorial sea."

Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia,* both for coastal and for land-locked States: [*The rest of the article is unchanged.*]"

Article 28

"Every State, whether coastal or land-locked, has the right to sail ships under its flag on the high seas."

II

In order to codify the right of free access to the sea for land-locked States, the Swiss delegation proposes an additional article, to be inserted in the International Law Commission's draft in the appropriate place, worded as follows:

"*Access to the sea for land-locked States*

"Article...

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, land-locked States shall have free access to the sea. To this end, States situated between the sea and a land-locked State shall

(*a*) Accord the land-locked State, on a basis of reciprocity, free transit through their territory, and

(*b*) Guarantee to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and a land-locked State shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the land-locked State, all matters relating to equal treatment in ports and freedom of transit."

DOCUMENT A/CONF.13/C.5/L.16

Report of the Working Party to the Fifth Committee

[*Original text: French and English*]
[*12 April 1958*]

1. At its 17th and 18th meetings held on 10 and 11 April 1958 the Fifth Committee decided to appoint a working party consisting of the representatives of Bolivia, Czechoslovakia, Nepal and Switzerland (land-locked States), Chile, the Federal Republic of Germany, Italy and Thailand (States of transit), and Ceylon, Mexico, Tunisia and the United Kingdom of Great Britain and Northern Ireland (States not included in the two preceding categories), with the following terms of reference:

"To report to the Fifth Committee not later than 12 April its recommendations concerning the form or forms in which the results of the Committee's work should be expressed."

2. The Working Party held two meetings, on 11 and 12 April 1958, with Mr. Perera (Ceylon) in the chair.

3. The Working Party had before it draft recommendations submitted by the United Kingdom representative, the first two paragraphs of which are worded as follows:

"The Working Party makes the following recommendations to the Committee:

"1. That articles, suitable for inclusion in a convention, be prepared on the subject matter covered by:

"(*a*) Section II and III of the nineteen-power proposal (A/CONF.13/C.5/L.6);

"(*b*) Part I of the three-power proposal (A/CONF.13/C.5/L.7) and paragraph 4 of the three-power draft resolution (A/CONF.13/C.5/L.7, part II);

"(*c*) The Bolivian proposal transmitted by the Chairman of the First Committee (A/CONF.13/C.5/L.9);

"2. that a resolution be prepared on the subject matter covered by

"(*a*) Sections I, IV, V, VI, VII, VIII and IX of the nineteen-power proposal,

"(*b*) the whole (other than operative paragraph 4) of the three-power draft resolution (A/CONF.13/C.5/L.7, part II),

"(*c*) the Chilean amendment to the nineteen-power proposal (A/CONF.13/C.5/L.8), and

"(*d*) the amendment of the United States of America to the three-power proposal (A/CONF.13/C.5/L.10)."

4. The Working Party decide to base its work on this draft (hereinafter referred to as the basic document).

5. The Working Party first discussed which of the proposals and amendments before the Fifth Committee should be included in paragraph 1 of the basic document as matter which should be embodied in a convention. After an exchange of views, the Working Party decided by a majority that paragraph 1 of the basic document should include section I of the nineteen-power proposal (A/CONF.13/C.5/L.6), the Swiss proposal (A/CONF.13/C.5/L.15), and the Chilean amendment (A/CONF.13/C.5/L.8) to the nineteen-power proposal.

6. It was unanimously decided to retain in paragraph 1 of the basic document sections II and III of the nineteen-power proposal (A/CONF.13/C.5/L.6), the first part of the three-power proposal (A/CONF.13/C.5/L.7) and paragraph 4 of the three-power draft resolution (A/CONF.13/C.5/L.7, part II), and the Bolivian proposal transmitted by the First Committee to the Fifth Committee (A/CONF.13/C.5/L.9).

7. The Working Party then discussed whether the matters dealt with in the other documents before the Fifth Committee should be embodied in a resolution or a declaration. It was unanimously decided that the matters dealt with in the three-power draft resolution (A/CONF.13/C.5/L.7, part II) (except for operative paragraph 4), and the United States amendment (A/CONF.13/C.5/L.10) to the three-power proposal, should be embodied in a resolution. It was decided by a majority that the matters dealt with in sections IV to VIII of the nineteen-power proposal (A/CONF.13/C.5/L.6) should be embodied in a declaration. A proposal that the matter dealt with in section IX of the nineteen-power proposal should be embodied in a declaration was rejected by a majority.

8. All the decisions taken by the Working Party concern merely the form or forms in which the results of the Committee's work should be expressed, and therefore do not signify that the Working Party either approves or disapproves of the substance of the proposals or amendments to which it refers in its decisions.

9. The Swiss delegate maintained that there were five possible types of instruments. These in the ultimate analysis conformed to the views of the Group that the entire subject matter could be dealt with under (i) a convention, or (ii) a declaration or resolution, with a judicious combination of both these categories where applicable.

10. The Working Group was a representative group, and there is no doubt that on the lines indicated finality could be reached by the Committee. It will be seen that, within the term of reference, the Working Group was able to resolve many of the conflicts which raged in the Committee. At least one major achievement was that the Group could now focus the attention of the Committee on the nature of the instruments in which the subject matter would be finally embodied.

11. In consequence of the decisions taken by the Working Party, certain reservations were made as shown below.

12. The delegates of the Federal Republic of Germany, Italy, Thailand and the United Kingdom explained

(1) That they could not accept as suitable for inclusion in a convention the following matters, which in their view should be dealt with in a resolution:

(*a*) Section I of the nineteen-power proposal, and

(*b*) The Chilean amendment to the nineteen-power proposal;

(2) That they could not accept as suitable for inclusion in a declaration the matters covered by sections IV, V, VI, VII and VIII of the nineteen-power proposal, which in their view should be dealt with in a resolution;

(3) That their agreement that the subject matter covered by the Swiss proposal should be treated as suitable for inclusion in a convention was solely with regard to that particular proposal, on which they reserved the right to express their views in the full Committee and to which they reserved the right to propose amendments.

13. The delegations of Nepal and Czechoslovakia considered that section IX of the nineteen-power proposal had a close bearing on the sections that preceded it, that is on sections IV, V, VI, VII and VIII and should, therefore, in their opinion, be incorporated in a declaration. The principle contained in section IX of the nineteen-power proposal is both in the interests of the land-locked countries and States of transit, inasmuch as the latter will not be obliged by virtue of a most-favoured-nation clause to grant the same kind of facilities to other States which are not in the same geographical position as the land-locked countries. Furthermore, examples of the exclusion of the application of the most-favoured-nation clause are found in international law and practice.

DOCUMENT A/CONF.13/C.5/L.17

Federal Republic of Germany: amendment to document A/CONF.13/C.5/L.15

[*Original text: French*]
[*14 April 1958*]

Replace the text of part II, paragraph 1, by the following:

"To enable land-locked States to enjoy the freedoms of the sea on equal terms with coastal States, the latter shall

(*a*) Accord the land-locked State free transit through their territory on the basis of reciprocity and of the other principles enunciated in the Statute of Barcelona, and

(*b*) Accord to ships flying the flag of that State treatment equal to that accorded to the ships of any other State as regards access to sea ports and the use of such ports."

DOCUMENT A/CONF.13/C.5/L.18

France: amendment to document A/CONF.13/C.5/L.15

[*Original text: French*]
[*14 April 1958*]

At the end of part II, paragraph 2, replace the full stop by a comma and add the following words:

"... if the States concerned are not already signatories to the Convention and Statute on Freedom of Transit of Barcelona of 20 April 1921 and to the Convention and Statute on the International Régime of Maritime Ports of Geneva of 9 December 1923."

DOCUMENT A/CONF.13/C.5/L.19

Ghana: proposal

[*Original text: English*]
[*14 April 1958*]

The Fifth Committee takes note of the report of the Working Party (A/CONF. 13/C.5/L.16) and accepts its finding that the recommendations of the Fifth Committee to the Conference should be in the form partly of a convention and partly of a resolution and declaration.

DOCUMENT A/CONF.13/C.5/L.20

United States of America: amendment to document A/CONF.13/C.5/L.15

[*Original text: English*]
[*14 April 1958*]

In part II, paragraph 7, substitute the word "should" for the word "shall" in the first sentence. In the second sentence, delete the word "shall" and substitute the words "should co-operate to".

This paragraph will then read as follows:

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, land-locked States should have free access to the sea. To this end, States situated between the sea and a land-locked State should co-operate to

(*a*) Accord the land-locked State, on a basis of reciprocity, free transit through their territory, and

(*b*) Guarantee to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports."

DOCUMENT A/CONF.13/C.5/L.21

Netherlands: amendment to document A/CONF.13/C.5/L.15

[*Original text: English*]
[*15 April 1958*]

The text of part II to read as follows:

"1. In order to enjoy the freedom of the seas on equal terms with States having a sea coast, land-locked States shall have free access to the sea. To this end, States situated between the sea and a land-locked State shall

(*a*) Accord the land-locked State, on a basis of reciprocity, free transit through their territory in conformity with the rules of law embodied in existing international conventions, and

(*b*) Accord to ships flying the flag of a land-locked State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports, in conformity with the rules of law embodied in existing international conventions.

"2. A land-locked State shall settle by bilateral or regional agreement with the State or States situated between the land-locked State and the sea all additional matters relating to freedom of transit and equal treatment in ports taking into account the special conditions of the States concerned."

DOCUMENT A/CONF.13/C.5/L.22

Iceland and Indonesia: proposal

[*Original text: English*]
[*15 April 1958*]

TERMS OF REFERENCE OF WORKING PARTY

That the Working Party, established at the 17th and 18th meetings of the Fifth Committee, be given the following additional terms of reference:

"To prepare, not later than 18 April, its recommendations concerning the substance and wording of provisions suitable for inclusion partly in a convention and partly in a declaration not subject to ratification and also in a resolution along the lines of its previous recommendation concerning the form of documents to be adopted, having regard to all existing proposals and amendments thereto before the Committee."

DOCUMENT A/CONF.13/C.5/L.23

Bolivia: amendment to document A/CONF.13/C.5/L.15

[*Original text: Spanish*]
[*15 April 1958*]

Part II

Replace the word "Accord in paragraph 1, sub-paragraph (*a*) by the word "Guarantee" and add after the word "reciprocity" in the same sub-paragraph the words "and in conformity with the agreements in force on the subject".

DOCUMENT A/CONF.13/C.5/L.24

Ghana: amendment to document A/CONF.13/C.5/L.15

[*Original text: English*]
[*16 April 1958*]

Part II

In sub-paragraph (*a*) of paragraph 1, after the words "Accord the land-locked State, on a basis of reciprocity, free transit through their territory" add paragraph 2 of section V of the nineteen-power proposal (A/CONF.13/C.5/L.6).

Add as paragraph 3, section IX of the nineteen-power proposal (A/CONF.13/C.5/L.6).

DOCUMENT A/CONF.13/C.5/L.25

Pakistan: amendment to document A/CONF.13/C.5/L.15

[*Original text: English*]
[*16 April 1958*]

Part II

Replace paragraph 1 of part II by the following text:

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, land-locked States should have free access to the sea. To this end, States situated between the sea and a land-locked State should co-operate to

(*a*) Accord the land-locked State, on a basis of reciprocity and/or through bilateral and multilateral agreements, free transit through their territory, and

"(*b*) Guarantee to ships flying the flag of that State treatment equal to that accorded to the ships of any other State, as regards access to sea ports and the use of such ports."

DOCUMENT A/CONF.13/C.5/L.26

Bolivia, France, Federal Republic of Germany, Netherlands and United States of America: amendment to document A/CONF.13/C.5/L.15

[*Original text: English, French and Spanish*]
[*16 April 1958*]

Substitute the following for the two numbered paragraphs in part II:

"*Access to the sea for States having no sea coast*

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast may have free access to the sea. To this end a State situated between the sea and a State having no sea coast shall by common agreement with the latter and in conformity with existing international conventions accord

"(*a*) To the State having no sea coast, on a basis of reciprocity, free transit through its territory, and

"(*b*) To ships flying the flag of that State treatment equal to that accorded to its own ships, or to the ships of any other States, as regards access to sea ports and the use of such ports.

"2. A State situated between the sea and a State having no sea coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions."

RECOMMENDATIONS OF THE FIFTH COMMITTEE TO THE CONFERENCE

(A/CONF.13/L.11, section XI)

The Fifth Committee recommends that the Conference should:

I

Draft the articles to be adopted by the Conference on the basis of the International Law Commission text, articles 15, 27 and 28, to read as follows (the proposed additions are italicized):

Article 15, paragraph 1

" Subject to the provisions of the present rules, ships of all States, *whether coastal or not,* shall enjoy the right of innocent passage through the territorial sea."

Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia, both for coastal and non-coastal States*:

(1) Freedom of navigation;
(2) ...
(3) ...
(4) ..."

Article 28

"Every State, *whether coastal or not,* has the right to sail ships under its flag on the high seas."

II

Insert the following new article at an appropriate place in one of the conventions to be adopted by the Conference:

"*Access to the sea for States having no sea-coast*

"*Article ...*

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

"(*a*) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and

"(*b*) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and the State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions."

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