

2. The Tribunal shall decide whether proceedings shall be suspended until the opinion sought has been made available.

Article 80

Any organ of the Authority and the Economic and Technical Commission may request the Tribunal to give an advisory opinion on any legal question connected with the subject matter of the Convention.

Section 2

Arbitration

(Basic provisions, with reference to Annex III with detailed rules)

CHAPTER IX AMENDMENT AND REVISION

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CHAPTER X DEFINITIONS

"Limit of national jurisdiction" shall mean the line, every point of which is not more than.....miles from the nearest points on the baselines from which the breadth of the territorial sea of each State is measured.

(Other definitions to be added)

CHAPTER XI FINAL PROVISIONS

Signature—ratification—implementing legislation—colonial clauses denunciation—suspension—depository functions. The agreement to be open to all States, with multiple depositaries, if necessary.

ANNEXES

ANNEX I

STATUTE OF THE SEA-BED DEVELOPMENT CORPORATION

ANNEX II

BASE FOR CALCULATION OF SCALE FOR APPORTIONMENT OF REVENUES

ANNEX III

ARBITRATION PROCEDURE

(IV) WORKING PAPER ON
"RIGHT OF TRANSIT FOR LAND-LOCKED
COUNTRIES"

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CHAPTER I

International lawyers such as Charles De Visscher believe that "access is a right conferred by nature on every country". Others, such as Marcel Silbert, consider that the principle of freedom of the sea is the foundation of access and yet many others take the view that a country without a sea coast is the beneficiary of servitude of passage across a country having a sea coast. It is significant to note that the high seas conventions and the provisions of the Conventions relating to the Law of the Sea, adopted in 1958 in Geneva, recognise access to sea for the land-locked countries as a matter of right which takes its root in established rules and doctrines of international law. Although the recognition of the freedom of the high seas is connected with the name of Hugo Grotius, nevertheless the right of the land-locked countries to have access to the sea for the purpose of using the high seas, has never been disputed even before Grotius. Since antiquity the high seas are considered as "*Respublica*", "*Res-nullius*" or "*Res-communis*" of mankind. Therefore, if the high seas belong to all nations, land-locked and coastal States alike, then the prerequisite for enjoying the right derived from the freedom of the high seas is the *free transit to the sea*. If the land-locked countries are denied the right of access to the sea, then obviously their right to benefit from the freedom of the high seas on equal footing with the

coastal States, would become illusory and without practical meaning.

Furthermore, the right of transit was considered as one of the fundamental rights of States, and the refusal of this right since the twelfth century has been regarded legally as a just cause of war. The collection of laws in 1151 A.D. by *Gratian* known as *Gratian's Decree* considered war as just because innocent passage had been refused.

The right of transit, especially the innocent passage, was regarded by many countries as an accepted right and the passage to the sea was always considered free. After the First World War, three more land-locked countries emerged on the territories of the former Austro-Hungarian Empire and as a consequence, all European countries recognised the right of land-locked countries to have their national flags flown by their vessels on the high seas. Article 273, as also Articles 331 to 345 of the Versailles Peace Treaty, Article 255 of the Treaty of Saint-Germain, Article 209 of the Treaty of Trianon and Article 153 of the Peace Treaties of Neuilly were nothing more than the recognition of the rights of land-locked States and were meant to protect the interests of European as well as other land-locked countries of the world. The most important action taken by the League of Nations was indeed the convening of the Barcelona Conference of 1921, in which two important conventions, namely, the Convention on the Freedom of Transit and the Convention on the Regime of Navigable Waterways were drawn up. It was on the basis of the work done at the Barcelona Conference that in December 1923, the Convention and Statute on the International Regime of Railways, the Convention and Statute relating to International Regime of Maritime Ports and the Convention on the Transmission in Transit of Electric Power, were signed which had a direct bearing on the rights of land-locked States. I may add also that on the basis of the principles laid down in Article 23 (e)

of the League Covenant, the recognition of the problems facing land-locked States and the need for the solution of those problems was an important post-war development.

The spirit of understanding, after the Second World War was, however, changed considerably because of the political interests of nations everywhere. Nevertheless the first international effort, after World War II, in favour of land-locked countries, was taken by the General Agreement on Tariffs and Trade (GATT) which came into force on 1st January, 1948, vide Article 5 of the Agreement. Annex (P) of the Havana Charter entitled "Interpretative Notes" also made reference in favour of land-locked countries.

However, the practical approach on a universal scope was taken during the XI General Assembly by the joint efforts of land-locked countries such as Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay, which resulted in the adoption of Resolution 1028 (XI) under which the United Nations General Assembly invited the member States to recognise the needs of land-locked countries in the matter of transit trade. The Resolution of 21st February, 1953, No. 1105 (XI) also requested the plenipotentiary conference on the Law of the Sea to study the question of free access to the sea of land-locked countries as established by international practice and treaties.

The efforts of land-locked countries at the preliminary conference of Geneva in 1958 and the First Law of the Sea Conference in 1958 led to the adoption of Articles 2, 3 and 4 of the High Seas Convention on the right of transit. The adoption of the eight principles during the first UNCTAD Conference in 1964 and finally the conclusion and coming into force of the 1965 Convention on Transit Trade of Land-Locked Countries, legally and economically, opened a new horizon for the relations of countries without sea coast and their transit neighbours. The number of land-locked countries increased to more than thirty nations in less than a

decade, a large number indeed with a common problem of of not having an outlet to the sea and faced with transit problems.

Now the other important factor which should be taken into account, is the growing number of land-locked countries in the community of nations, who form a quarter of the membership of the United Nations, and also half of the Group of 77 developing countries. All these countries are in need of economic development and badly in need of access to world markets and to the resources of the high seas for the purpose of food supply as well as other resources. It was, therefore, as a matter of necessity in view of growing populations and needs of all States including land-locked countries for food supply from the important food reserves of mankind and to benefit from the sea-bed and the ocean floor as well as the subsoil thereof, that the General Assembly of the United Nations decided by resolutions 2467A (XXIII) and 2574A, B, C and D (XXIV) that the exploitation of these resources should be carried out for the benefit of mankind as a whole. The UN General Assembly on 15th December 1969 as well as during 1970, recognised in line with the basic principle of the freedom of the seas, the right of the land-locked countries to share the resources of the sea-bed and ocean floor and of the subsoil thereof. The Sea-Bed Committee at its last meeting held in July-August 1971 in Geneva, recognised the fact that in any future international machinery for the sea-bed area the role of land-locked countries in proportion to their number and in accordance with their needs, as developing countries should be fully recognised. The high seas which is the common heritage of mankind should be saved from the danger of pollution as well as from nuclear tests which is a great menace to the living resources of the sea, and the land-locked countries, which are without potential naval and military power, could help the community of nations to establish machinery for protection of peace on the high seas, the sea-bed and the ocean floor and the subsoil thereof.

CHAPTER II

INTERNATIONAL EFFORTS TO SOLVE THE PROBLEMS OF TRANSIT OF LAND-LOCKED COUNTRIES

A. Bilateral and multilateral agreements before the First World War

The oldest bilateral agreement designed to facilitate transit of a land-locked State is the one signed on 16th March, 1816, between Sardinia, the Swiss Confederation and the Canton of Geneva, Article V of which exempts from all transit duties, goods and products from the free port of Geneva to the State of Geneva.

Mention could be made also of the Convention of 24th July, 1890 between Great Britain and Portugal and of 2nd August, 1929 between Italy and Ethiopia. In Latin America treaties signed between Bolivia, a land-locked country, with Argentina on 9th July, 1868 and 26th March, 1947, with Brazil on 27th March, 1867, 12th August, 1910 and 25th February, 1938, with Chile 20th October, 1904, 6th August, 1912 and 3rd January, 1955, and with Peru on 5th November, 1863, 27th November, 1905, January 1917 and 30th July, 1955 are worth mentioning.

In Asia the Trade Conventions between the United Kingdom and Afghanistan on 5th June, 1923, the Soviet Union and Afghanistan on 28th June, 1955, Nepal and India 31st July, 1950, and between Thailand and Laos, are among so many bilateral agreements for the solution of transit problems.

B. Multilateral agreements after the First World War

The first international convention concluded in consequence of the Treaty of Versailles and the Conference of Barcelona was the one between Germany, Poland and the Free City of Danzig on 21st April, 1921 concerning freedom of transit between East Prussia and the rest of Germany.