

Another important convention was concluded between the Greek Government and the Kingdoms of Serbs, Croats and Slovenes for the regulation of transit via Salonika signed at Belgrade on 10th May, 1923. Another convention relating to ports was concluded between Italy and Czechoslovakia on 23rd March, 1921 regarding concessions and facilities to be granted to Czechoslovakia in the port of Trieste.

It was only after the First World War that many European land-locked countries emerged, and for that reason the Treaty of Versailles in Articles 338 and 379 considered the problems of transit an important question. Article 23(e) of the Covenant which contains the relevant provisions, made the Council of the League on 19th May, 1920 adopt a resolution for a Conference on Freedom of Transit in Barcelona and under the same resolution a Commission of Enquiry of Freedom of Communications and Transit was established. It was the same Commission which submitted a series of useful documents, among them a Draft Convention on Freedom of Transit which was adopted in Barcelona in 1921.

The Barcelona Convention remained indeed a useful convention, particularly for European land-locked countries, until the establishment of the United Nations.

Indeed, it was the United Nations who were faced with a considerable number of land-locked countries in Asia, Latin America and then in Africa. The land-locked countries today altogether form one-fourth of the nations of the world, a large segment of the community of nations. (In Asia: Afghanistan, Laos, Mongolia, Nepal, Bhutan and Sikkim. In Africa: Botswana, Burundi, Chad, Central African Republic, Lesotho, Malawi, Mali, Niger, Rwanda, Rhodesia, Swaziland, Uganda, Upper Volta, and Zambia. In Europe: Austria, Czechoslovakia, Holy See, Hungary, Luxemburg, Switzerland, and San Marino. In Latin America: Bolivia and Paraguay).

In the United Nations the first political attempt for solving the problems of land-locked countries was made at the Economic Commission for Asia and the Far East when during its eighth session the Committee on Industry and Trade of the Economic Commission approved a resolution in which it recommended:

"That the needs of the land-locked member States and members having no easy access to the sea in the matter of transit trade be given full recognition by all member States and that adequate facilities therefor be accorded in terms of international law and practice in this regard".

During its eleventh session, the General Assembly of the United Nations adopted a Resolution 1028 (XI) in which it invited the member States to recognize the needs of land-locked countries in the matter of transit trade.

It was during the same Assembly on 21st February, 1957 when on the recommendation of the Sixth Committee, the historic Resolution 1105(XI) was adopted in which it was requested that the Plenipotentiary Conference on the Law of the Sea should examine in addition to the draft prepared by the International Law Commission, the question of free access to the sea of land-locked countries as established by international practice of treaties. This request was submitted by the representatives of Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay to the Sixth Committee. After the adoption of this Resolution the representatives of the land-locked countries, by the initiative of Afghanistan, began consultation in New York which resulted in the submitting of an official memorandum by the Government of Afghanistan on 26th August, 1957 to the Secretary-General of the United Nations.

C. 1958 Conference of land-locked States in Geneva

A Preliminary Conference of States without direct territorial access to the sea was held at Geneva from 10th to

14th 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, as well as Members of the United Nations, many of whom 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, to which the observer of Switzerland to the United Nations had been invited to attend. All these New York meetings were held under the Chairmanship of the author.

These meetings were based mainly on paragraph 3 of Resolution 1105(XI) adopted by the General Assembly on 21st 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 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 at 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.

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 had issued invitations to the members of Preliminary Conference.

The States invited to the Preliminary Conference were all 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 : State Members of the United Nations and State Members of specialized agencies. Invitations were therefore sent to following States : Afghanistan, Austria, Bolivia, Byelorussian Soviet Socialist Republic, Czechoslovakia, Holy See, Hungary, Laos, Luxemburg, Nepal, Paraguay, San Marino and Switzerland. The Head of the Swiss delegation, Ambassador Ruedger, was elected President of the conference. Mr. Weingart, of the Federal Political Department, Berne, was appointed Secretary.

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 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.

The Preliminary Conference devoted the greater part of its meeting 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 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 as well.

(a) *Note dated 26th August, 1967 by the Permanent Mission of Afghanistan to the United Nations*, distributed in New York to the representatives of the States concerned. 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 31st January, 1968 by the Swiss Government*, 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 a period of nearly 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.

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 moment and of the possibilities which it offered for a reiteration, on the occasion of the proposed codification of the Law of the Sea, of the right granted by

jus gentium to land-locked countries. They considered that, notwithstanding 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 upto-date formulae.

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 findings which were also the conclusions reached by the Sixth Committee of the United Nations General Assembly at its 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. Prof. Zourek, the Czechoslovak delegate, was appointed Chairman of the Working Group.

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 14th February as follows :

Principles enunciated by the Preliminary Conference of the land-locked States

The delegates of the States which have no direct territorial access to the sea, gathered in Geneva from 10th to 14th 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 of 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 would 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 regime which is identical to the one that is enjoyed by vessels of maritime countries; in territorial and on internal waters, they enjoy a regime 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

Regime 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.

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 land-locked States 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 does not establish a regime which is less

favourable than, or opposed to, the abovementioned provisions.

These seven principles which were the result of the joint efforts of all land-locked countries (12 at that time) was the basic paper before the 1958 Law of the Sea Conference. The gist of these principles is as follows :

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.

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 call for more detailed explanation.

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 in territorial and in internal waters is the logical corollary of this, but here the equality naturally applies only to the regime 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 rights of engaging in coast-wise traffic.

Principle IV, adopted at the Preliminary Conference deals with 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 parti-

cular, Article 2 of the Statute on the International Regime 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 abovementioned convention explicitly exempting countries with no sea coast from the condition of reciprocity otherwise laid down by the Convention and the Statute on the Regime 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.

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 to 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.

Principle VI, expressing the right of a State of transit to take measures to protect its sovereignty and legitimate interests, must 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 on the fundamental prerogatives of a coastal State, 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.

The purpose of *Principle VII* was 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 regime which is less favourable than that based on the seven principles. 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 regime.

Such were 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 regime accorded to them as a result, there is no reason to accord that special regime *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.

I must add that the preparatory work of the Preliminary Conference of twelve land-locked countries which led to the adoption of the seven principles cited above was a great step forward and very useful for further work done at the Fifth Committee of the First Law of the Sea Conference.

This brief meeting had a dual importance: First, the general discussion gave an almost complete view of the problems and circumstances under which all the land-locked countries were living in various parts of the world, and secondly, for the first time in history, all the land-locked countries of the world for a common cause and purpose exchanged views on the exercise of their right of free access

to the sea. The views expressed by the representatives of the land-locked countries in Geneva during the Preliminary Conference 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.

But the main achievement of the Preliminary Conference could be considered the general support of the land-locked countries for common principles representing a minimum common denominator of the requirements for governing the right of passage to and from the sea. It should be borne in mind that these principles accepted as common denominators were not new, because the right of free access, as we have stated in the previous chapter, was already recognized in international law. However, it was a restatement of legal rules in a single codified system much clearer than was done by the International Law Commission in regard to land-locked States.

For the first time these restatements of rules of international law on the right of free access represented 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 such as the innocent passage over the territory of the coastal States and the use of ports, were clearly stated in the seven articles formulated in the Preliminary Conference.

Above all, the Preliminary Conference provided an outstanding example of co-operation and co-existence between countries who had a common problem because of their special geographic position.

CHAPTER III

THE RECOGNITION OF THE RIGHT OF FREE ACCESS BY THE FIRST LAW OF THE SEA CONFERENCE IN 1958

The first Law of the Sea Conference of Geneva in 1958, after The Hague Peace Conference of 1907, the London

Naval Conference of 1908-1909, and the Conference for the Codification of International Law held at The Hague in 1930, could be considered an historic conference indeed.

One of the reasons that the 1958 conference was one of the most important conferences of our generation in the field of codification and progressive development of international law was careful preparation of work by the International Law Commission of the United Nations and the experiences obtained from the previous conferences, particularly the 1930 Hague Conference. Under Resolution 1105(XI) of the 11th Assembly the purpose of the conference was two-fold, namely :

1. "To examine the Law of the Sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate (paragraph 2 of Resolution 1105(XI)).
2. "To study the question of free access to the sea of land-locked countries, as established by international practice or treaties'.

As I have stated above, at no time did the International Law Commission since its establishment include the question of free access to the sea on its agenda, but did include in its agenda, at its first session (1949) the regime of the high seas and the regime of the territorial sea. At its eighth session the Commission completed its work on both these topics and submitted to the General Assembly seventy-three articles concerning the Law of the Sea as a whole, but no article on the right of free access to the sea. It was on the eve of the first Law of the Sea Conference that the Assembly itself, because of the initiative of land-locked countries, included the question related to land-locked countries on the agenda of the conference.

Under the report of the Secretary-General on the method and procedures of the conference the work of the conference was divided into four main Committees as follows :

- (a) First Committee (Territorial Sea and Contiguous Zone) ;
- (b) Second Committee (High Seas ; General Regime) ;
- (c) Third Committee (High Seas ; Fishing, Conservation of Living Resources) ;
- (d) Fourth Committee (Continental Shelf).

The Secretary-General proposed that these four main committees should devote their tasks to Draft Articles prepared by the International Law Commission. On the question of free access to the sea the Secretary-General did not think that it was within the scope of the Law of the Sea, therefore he proposed the establishment of a special committee to consider this question. On this point the author, who took part as the representative of Afghanistan during the first Law of the Sea Conference, challenged the view of the Secretary-General during the first plenary session of the conference and stated that the question of free access to the sea has a direct bearing on the Law of the Sea because this right derives from the cardinal principle on the freedom of the sea. The conference supported the contention of the author and the special committee of land-locked countries was considered as the fifth main committee of the Assembly, and the procedure proposed by the Secretary-General was amended accordingly.

The main difficulty for the land-locked countries during the 1958 Conference was the element of the cold war and its effects on the whole atmosphere of the fifth committee and the claim for free access. In 1958, at which time the Law of the Sea Conference convened in Geneva, relations between East and West were not cordial. Hungary, Czechoslovakia and Mongolia were Communist land-locked countries, therefore,

the West looked towards the whole problem at that time from the point of view of the cold war.

It was under such difficult political relationships that the land-locked countries were asking for the recognition of this right. It is also interesting to state that the European land-locked countries such as Austria, Switzerland and Luxemburg, who had no problems of transit whatsoever at that time, took a very conservative attitude, both during the Preliminary Conference and during the consideration of this issue in the Law of the Sea Conference. The reason was the political relationships between East and West in which they did not want to become involved at that time.

During the discussion of this question in the Fifth Committee various proposals were introduced. Among them these were noteworthy :

(I) *Proposal submitted by Afghanistan, Albania, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxemburg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia and the United Arab Republic :*

1. Right of Free Access to the Sea

Every State without a coastline (land-locked State) has the right to free access to the sea. This right derives from the fundamental principle of the freedom of the high seas.

2. Right to a Flag

Every State without a coastline 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.

Right to sail in the Territorial Sea and in Internal Waters

Every State without a coastline 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 regime identical to that accorded to the ships of other maritime States.

4. Regime Applicable in Ports of the Coastal State

- (a) Every State without a coast shall be entitled to the 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.
- (b) 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 sea coast.
- (c) For the purposes of this Article, the expression "maritime ports" means ports normally used by merchant ships and open to international trade.

5. Right of Free Transit to the Sea

- (a) 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.
- (b) 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 was of the opinion that the principles expressed in Article V had no wider implications than the obligation deriving from the Statute of Barcelona, of which Austria is a signatory.

6. Form of the Exercise of the Right of Access to the Sea

The form in which a land-locked State is to exercise the rights mentioned in Articles IV and V shall, insofar as it is not determined by existing international treaties, be laid down by agreement between the land-locked States and the coastal States and States of transit.

7. 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 on 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 connection 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.

8. 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 regime and do not conflict with the aforesaid articles.

9. Exclusion of the Application of the Most-Favoured-Nation Clause

The present provisions as well as those of multi-lateral 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, Luxemburg and Switzerland reserved their position as to the form and mode of codification of the rights of land-locked States.

(II) Proposal by Italy, the Netherlands, and the United Kingdom

This proposal, which comprised Parts I and II, was submitted on the understanding that no major change be suggested by other committees in the structure of the various provisions concerning the Law of the Sea adopted by the International Law Commission (A/3159) but it was too far from the real needs of the land-locked States.

(III) Proposal by Switzerland

1. The Swiss delegation proposed that Article 15, paragraph 1, Article 27 and Article 28 in the International Law Commission's draft should 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".

2. 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 and 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 State, coastal States shall,

- (a) Accord the land-locked States, 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.