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Question of Free Access to the Sea of Land-Locked Countries

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QUESTION OF FREE ACCESS TO THE SEA OF LAND-LOCKED COUNTRIES

MEMORANDUM BY THE SECRETARIAT OF THE UNITED NATIONS

(Preparatory document No. 23)

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CONTENTS

Introduction

1. By resolution 1028 (XI) concerning land-locked countries and the expansion of international trade, adopted on 20 February 1957, the General Assembly invited Member States to recognize the needs of land-locked countries in the matter of transit trade. In resolution 1105 (XI) on the international conference of plenipotentiaries to examine the law of the sea, adopted on 21 February 1957, it included the specific recommendation that the conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties.

2. Chapter I of this study contains a summary of the discussions held on the subject in certain United Nations bodies. Chapter II consists of an analysis of a few theoretical aspects of the problem, while chapter III discusses certain bilateral agreements, some of which

were concluded before and some after the World War of 1939-1945.

3. The free access of land-locked countries to the sea is inseparably linked with the more general question of transit, as persons and goods proceeding from those countries to the coast must pass through interjacent States. It is for this reason that chapter IV gives an account of the work done in this field by the League of Nations and refers to the multilateral agreements concluded under its auspices, especially the Barcelona Convention.

4. The sole object of this memorandum is to indicate the present position of the problem of free access of land-locked countries to the sea and to describe past efforts to solve the problem.

CHAPTER I

The question of free access of land-locked countries to the sea: discussions in United Nations bodies

1. DISCUSSIONS IN THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY (ELEVENTH SESSION)

5. In chapter II of its report on the work of its eighth session[1] (23 April to 4 July 1956), the International Law Commission submitted draft articles on the law of the sea and, being of the opinion that its work had sufficiently prepared the ground, recommended that the General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea. The draft articles did not, however, contain any provision regarding land-locked countries.

6. The Commission's report was considered by the Sixth Committee of the General Assembly at its 481st meeting on 21 November 1956 and from its 485th to 505th meetings (28 November to 20 December 1956).

7. A draft resolution (A/C.6/L.385 and Add. 1 to 3) submitted by twenty-two Powers endorsed the Commission's recommendation and proposed, *inter alia,* the calling of a conference of plenipotentiaries.

8. An amendment submitted by Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay (A/C.6/L.393) proposed the addition of a new paragraph as follows:

"9. *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."

This text now appears, with only slight amendments, as operative paragraph 3 of resolution 1105 (XI) adopted by the Assembly on 21 February 1957. The paragraph now reads as follows:

"3. *Recommends* that the conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties."

9. During the debate several references were made, particularly by representatives of land-locked States, to the need for giving express recognition in any future convention to the rights of such countries, including not only the right of navigation on the high seas, but also "a right of free passage without restrictions in the territorial sea" and "the related right of free passage over land".[2]

10. During the discussion on the draft resolution and the various amendments, many representatives expressed sympathy with the object of the amendment submitted by certain land-locked States. The importance of the problem was duly stressed and attention was drawn to the fact that one-sixth of all the States in the world have no sea coast. The Committee generally agreed that it would be only just to recognize the rights of those States in any codification of the law of the sea and that the solution of the problem should not present any insurmountable difficulties, because "the rights of these States were already recognized in international practice and in international treaties, and it would largely be a question of confirming these rights".[3]

11. The principal arguments advanced during the debate in the Sixth Committee by the advocates of the right of free access to the sea are summarized below:

(*a*) The representative of Paraguay stated that "all States, including those with no coasts of their own, were entitled freely to engage in trade and to have access to the worlds markets and to the raw materials necessary for their economic prosperity".[4] He added: "...the security of a land-locked country was inevitably connected with that of its maritime neighbours..."

(*b*) At the 497th meeting, the representative of Czechoslovakia,[5] recalling that merchant ships flying the Czechoslovak flag were taking part in maritime traffic, stressed that:

(i) Any universal agreement on those questions would have a favourable influence on the further development of international relations;

(ii) Increasing economic co-operation tended to reduce the importance of the distinction between maritime States and land-locked States;

(iii) A code of rules governing the law of the sea should therefore confirm the right of land-locked States to utilize the sea, in common with the maritime States, as a means of communication and as a source of natural wealth;

(iv) The most important problem in such a code was

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[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159).

[2] *Ibid., Annexes,* agenda item 53, document A/3520, para. 56.

[3] *Ibid.,* A/3520, para. 79.

[4] *Official Records of the General Assembly, Eleventh Session, Sixth Committee,* 491st meeting, para. 32. At the twelfth session of the General Assembly (681st plenary meeting) the Paraguayan representative referred to the problem of land-locked countries in the following words:

"The country's most serious problem, from its earliest days as an independent nation, has been the fact that it is land-locked. My Government feels that it is entitled to raise the problem in the United Nations and to request the latter's assistance in solving it."

At the same time, the same representative stressed that the Brazilian Government had financed the construction of international highways giving Paraguay access to the sea, provided Paraguay with free port facilities on the Atlantic and built an international bridge over the Paraná which would make available to Paraguay the benefits of Brazil's sea coast.

[5] *Ibid.,* 497th meeting, paras. 31, 32 and 38.

how to reconcile the sovereignty of the coastal State with the interests of other States using the high seas;

(v) Under international law, inland States had the right to sail ships under their flags on the high seas.

(c) At the 499th meeting, the representative of Afghanistan contended[6] that no convention on the law of the sea would be complete unless it guaranteed the right of States which had no sea coasts; indeed, he said, without such a guarantee it would be valueless, because:

(i) No State could survive without an outlet to the sea;

(ii) Maritime communications were indispensable to all States;

(iii) The right of innocent passage had been recognized for centuries and the Treaty of Versailles, like other bilateral agreements in force, had established the rights of States which had no sea coast;

(iv) No country could claim absolute sovereignty over historic sea lanes.

(*d*) At the same meeting, the representative of Bolivia[7] emphasized that the rights of access of land-locked States to the sea included the right of free transit over land and that the right of free passage should apply without restrictions in the territorial sea, in channels open to trade and in the approaches to the sea itself.

(*e*) Also at the 499th meeting, the representative of Nepal[8] associated himself with those who had demanded guarantees of the rights of land-locked States.

(*f*) At the 502nd meeting, the representative of Chile said that, under the terms of the Treaty of 1904, Chile's neighbour Bolivia enjoyed "the fullest rights of passage through Chilean territory, both for merchandise and persons, and both upon entry and exit".[9]

(*g*) The representative of Argentina[10] supported the draft resolution on the rights of land-locked States (A/C.6/L.393), saying that it was in conformity with the principles applied by Argentina in its relations with Bolivia and Paraguay.

(*h*) The representative of Bolivia,[11] amplifying his earlier statement, said that, as juridical equals, all States had the right to free access to the sea. He added: "It would be the conference's responsibility to define that right, which should be complete and attended by the necessary guarantees."

(*i*) Similarly, the representative of Czechoslovakia[12] stated that:

"Under international law, all States enjoyed freedom of navigation on the high seas and the right of innocent passage in the territorial sea. It was a condition of the effective exercise of those rights by land-locked countries that their right of free access to the sea should be recognized."

(*j*) Lastly, the representative of Peru[13] recalled that, under a treaty between Peru and Bolivia, the latter had the right of free transit through Peruvian territory.

2. Discussions in the Second Committee of the General Assembly (Eleventh session)

12. The problem was discussed in the Second Committee (443rd, 444th and 445th meetings), in connexion with the report of the Economic and Social Council. The principal points raised by representatives are briefly summarized below.

13. At the 443rd meeting of the Second Committee Afghanistan, Bolivia, Laos and Nepal presented a draft resolution (A/C.2/L.332) proposing that the General Assembly should recognize "... the need of land-locked States and States having no access to the sea for adequate transit facilities..." by urging Governments to give full recognition to the needs of land-locked Member States and Members having no access to the sea in the matter of transit trade and recommending "... that adequate facilities therefore be accorded in terms of international law and practice in this regard".

14. In the light of the discussion which took place during the 444th meeting, a revised text of the draft resolution, of which Paraguay became a fifth sponsor, was approved by the Committee at its 445th meeting. The text was finally adopted by the General Assembly on 20 February 1957.

15. Under the terms of that resolution (1028 (XI)), the General Assembly recognized:

"... the need of land-locked countries for adequate transit facilities in promoting international trade..."

and 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."

16. In introducing the draft resolution, the representative of Afghanistan emphasized:[15]

(i) That the economic development of land-locked countries depended on their ability to export agricultural products and to import essential equipment and manufactured goods;

(ii) That an increase in the transit facilities available to them would help them to expand their foreign trade and would thus contribute to the growth of world trade as a whole;

(iii) That a resolution on the same subject had already been adopted in 1956 by the Economic Commission for Asia and the Far East.

17. The representative of Laos[16] stated that, despite the excellent relations between his country and its neighbours, "Laos' foreign trade was considerably

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[6] *Ibid.*, 499th meeting, para. 9.

[7] *Ibid.*, para. 15.

[8] *Ibid.*, para. 25.

[9] *Ibid.*, 502nd meeting, para. 7.

[10] *Ibid.*, para. 15.

[11] *Ibid.*, para. 19.

[12] *Ibid.*, para. 23.

[13] *Ibid.*, para. 53.

[14] *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 12, document A/3545, para. 16.

[15] *Ibid., Second Committee*, 443rd meeting, paras. 62 and 63.

[16] *Ibid.*, para. 65.

handicapped by the natural obstacles which made it geographically dependent on its neighbours...."

At the same meeting, the Peruvian representative pointed out that the problem was both economic and juridical in nature.[17]

18. At the 444th meeting, the representative of Paraguay,[18] another land-locked country, recalled that Argentina had made available bonded warehouse facilities at Rosario and Buenos Aires, and that Brazil had provided technical and financial assistance for the construction of a first-class road linking Paraguay with an Atlantic port to be built shortly.

19. The representative of China[19] expressed the view that there were no established principles of international law in the matter. Land-locked countries were entitled to claim access to the sea and surrounding countries were under a duty to accord them adequate facilities, but (he said) bilateral agreement seemed to be the solution most frequently adopted.

3. Discussions in other United Nations bodies

20. The question has also been discussed from time to time in other United Nations bodies, either in the more general context of transit or as a specific problem confronting land-locked countries. Some of the relevant documents are summarized below.

(*a*) *General Agreement on Tariffs and Trade (GATT)*[20]

21. Although the relevant provisions of the General Agreement refer to transit, without any specific reference to land-locked countries, they are of sufficient importance to warrant summarizing at this point. The Agreement entered provisionally into force on 1 January 1948,[21] and was, according to the Final Act, "... directed to the substantial reduction of tariffs and other trade barriers and to the elimination of preferences, on a reciprocal and mutually advantageous basis."[22]

22. The provisions which have most bearing on the subject under discussion are contained in article V of the General Agreement; this article provides:

(i) Goods, including baggage, and also vessels and other means of transport, shall be deemed to be in transit when the passage across the territory of a contracting party is only a portion of a complete journey beginning and terminating beyond the frontier of that contracting party;

(ii) There shall be freedom of transit through the territory of each contracting party for traffic in transit to or from the territory of other contracting parties. The principle of non-discrimination must be observed;

(iii) Although any contracting party may require that traffic in transit through its territory be entered at a custom house, such traffic shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered;

(iv) All charges and regulations imposed on traffic in transit shall be reasonable;

(v) As far as traffic in transit and the applicable rates are concerned, each contracting party shall accord to every other contracting party most-favoured-nation treatment;

(vi) The foregoing provisions, while not applicable to the operation of aircraft in transit, are to apply to the air transit of goods, including baggage.

23. Article V of the General Agreement restates to a large extent the principles adopted at the Barcelona Conference (1921) and incorporated in the Barcelona Convention.[23] The point to be noted here, however, is that both the General Agreement and the Barcelona Convention and Statute on Freedom of Transit prescribe favourable treatment only for traffic proceeding to or from a contracting party. This seems to show that the signatories regarded freedom of transit less as a rule of the law of nations than as a right to be affirmed in multilateral or bilateral treaties.

(*b*) *The Havana Charter*

24. Article 33 of the Havana Charter for an International Trade Organization establishes under the title "Freedom of Transit", some principles very similar to those contained in the General Agreement. It is worth noting, however, that paragraph 6 of this article authorizes the Organization to:

"... make recommendations and promote international agreement relating to the simplification of customs regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objective of this article."[24]

Annex P of the Havana Charter, entitled "Interpretative Notes", makes an express reference to the land-locked countries in the commentary to article 33, paragraph 6. It states, among other things, that:

"If, as a result of negotiations in accordance with paragraph 6, a Member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs of article 33, such special facilities may be limited to the land-locked country concerned...."[25]

25. By admitting this principle, the Havana Charter clearly intended to facilitate the conclusion of agreements favourable to land-locked countries.

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[17] *Ibid.*, para. 68.

[18] *Ibid.*, 444th meeting, para. 9.

[19] *Ibid.*, para. 22.

[20] *United Nations Treaty Series*, vol. 55, 1950, No. 814, I (*b*), pp. 194 *et seq.*

[21] See Protocol of Provisional Application of the General Agreement on Tariffs and Trade, signed at Geneva on 30 October 1947. *Ibid.*, No. 814, I (*c*), p. 308.

[22] *Ibid.*, No. 814, I (*a*), p. 188.

[23] See chapter IV, *infra*.

[24] See *United Nations Conference on Trade and Employment, Final Act and Related Documents*, Havana, March 1948, p. 27.

[25] *Ibid.*, p. 64.

26. Despite the similarity between GATT and the Havana Charter, there are also certain differences between them which should be briefly mentioned:

(i) The interpretative note on article V of GATT is less general in scope than that on article 33 of the Havana Charter, especially on the point of special facilities for land-locked countries;

(ii) The paragraph from the Havana Charter cited above regarding the right of the Organization to undertake studies, make recommendations, and so forth, does not appear in GATT in any form whatsoever.[26]

(c) *The Economic Commission for Asia and the Far East and the question of land-locked countries*

27. At its eighth session (24 to 31 January 1956) the Committee on Industry and Trade of the Economic Commission for Asia and the Far East (ECAFE) approved a resolution in which it recommended:

"... that the needs of 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." [27]

28. At its twelfth session (2 to 14 February 1956) ECAFE approved the Committee's resolution.[28]

29. The secretariat of the Commission then prepared a report entitled "Problems of trade of land-locked countries in Asia and the Far East".[29]

After tracing the history of the question and referring the relevant multilateral and bilateral treaties,[30] the report makes certain recommendations which can be summarized as follows:

(i) That countries which have not so far acceded to the Barcelona Statute on Freedom of Transit be urged to do so;

(ii) That countries be urged to negotiate and conclude bilateral agreements in conformity with the principles of the Barcelona Statute, the Havana Charter and GATT as a means of facilitating the implementation of the basic principles of freedom of transit;

(iii) That the officials and personnel handling or dealing with the various phases of transit trade should receive proper training, not only in the principles of transit trade but also in the relevant administrative aspects.

30. The secretariat's report was considered at the ninth session of ECAFE's Committee on Industry and Trade (Bangkok, 7 to 15 March 1957).

31. At that session, this Committee received a report[31] from its Sub-Committee on Trade, in which the latter expressed general agreement with the secretariat's suggestions.

32. In its report to the Commission itself,[32] the Committee on Industry and Trade recommended that land-locked countries should be given transit facilities in accordance with the provisions of the Barcelona Statute and GATT, irrespective of membership.

33. In its annual report, ECAFE[33]

"... endorsed the recommendation of the Committee [on Industry and Trade] that land-locked countries should be given transit facilities in accordance with the Barcelona Convention and GATT, irrespective of membership, and recognized that this was a constructive step forward."

The Commission also took note of General Assembly resolution 1028 (XI), cited in paragraph 1 of the present memorandum.

34. In its report covering the period from 10 August 1956 to 2 august 1957, the Economic and Social Council[34] notes, without elaborating, that the Committee on Industry and Trade of ECAFE "... also considered questions of shipping facilities and freight rates and transit problems of land-locked countries".

Chapter II

The right of access to the sea: theoretical solutions

35. Although the access of land-locked countries to the sea is essentially a practical problem, it appears worth while to devote a few pages to a review of the theoretical foundations on which various writers have based their proposed solutions.

1. Theories based on natural law

36. Charles De Visscher, in his important work on the international law of communications,[35] states that the problem of free access to the sea is created by the clash of two great ideas which have always conflicted, that of ". . . freedom of communications, the expression of a universal community of interests..." and that of territorial sovereignty which, for its part, "... opposes by its particularism the indefinite extension of international regulation...". The function of international law is, accordingly, to strike "... a balance, reconciling these naturally opposing principles". The sea, says De Visscher, has at all times been regarded as a *res communis* of mankind, and this is the origin of the idea — which underlies the rules governing the right of riparian States to navigate on rivers passing through more than one State — that

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[26] For a more detailed discussion of the differences between GATT and the Havana Charter see ECAFE/I and T/Sub.4/2, paras. 6-16. See also the *List of Multilateral Conventions, Agreements, etc. on Communications and Transport,* published by the League of Nations (Geneva, 1945).

[27] E/CN.11/425, para. 103

[28] *Official Records of the Economic and Social Council, Twenty-second Session, Supplement No. 2,* para. 271.

[29] ECAFE/I and T/Sub.4/2.

[30] The bilateral treaties in question relate to Asian countries. They will be briefly considered in chapter III.

[31] E/CN.11/I and T/129, paras. 82 *et seq.*

[32] See *Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 2* (E/2959), para. 72.

[33] *Ibid.,* para. 240.

[34] *Official Records of the General Assembly, Twelfth Session, Supplement No. 3* (A/3613), para. 328.

[35] Charles De Visscher, *Le droit international des communications,* 1924, Ghent and Paris, pp. 6 *et seq.*

"... simple passage through one of the lower reaches of a waterway is a natural right which an enclosed country cannot legitimately be denied. This is the idea inherent in the statutory right of way, exercisable by reason of enclosure, which is known to the *jus civile*. In this respect, the river participates of the status of the sea to which it provides sole access ...".

37. This view of free access to the sea as a natural right has been sustained by many jurists, Grotius first and foremost, and by such statesmen as Thomas Jefferson, who relied on it in 1792 when stating the claims of the United States with regard to free navigation at the mouths of the Mississippi. The French Revolutionary Convention likewise expressed it, in eloquent terms, in the famous Decree of 20 September 1792 concerning freedom of navigation on the Scheldt and the Meuse.

2. Theories based on the principle of the freedom of the sea

38. Sibert defends the right of access of land-locked countries to the sea as a logical consequence of the freedom of the seas:

"Since the high seas form an asset the use of which is common to all, it would appear that the right to navigate freely on the high seas should be enjoyed by all members of the international community, including those which have no coastline." [36]

In his view, the right is a consequence of the "higher right" of every State to preserve itself and to develop, and hence it is in the interest of international peace itself that "... the forms of economic friction to which the position of an enclosed State may give rise should be removed".[37]

39. The view stated above is shared by Georges Scelle. Regarding the sea as the international public domain *par excellence*, he affirms that it should be accessible for navigation even to the nationals of a land-locked State. "A rule to the contrary", he observes, "under which the use of the sea would be denied to peoples having no maritime frontiers would plainly conflict with the nature of an international public domain...",[38] and the principle thus laid down applies *mutatis mutandis* to ports, roadsteads and places of shelter, which should be open to ships of all countries without discrimination.

40. Similarly, Hyde [39] seems to agree with the writers cited above, for he holds that:

"... the principle which the international society invokes in its demand that the territory of each of its members be accessible to and from the sea is broad enough to affect the use of any appropriate channel of communication, and is not incapable of practical application to modes of transit by land as well as water".

He emphasizes elsewhere [40] that no State, however remote from the sea, should be isolated from it by the will of the riparian State; but these, according to Hyde, are not principles recognized by international law but arrangements made by agreement.

3. Theory of public law servitude

41. Lastly, many writers liken the right of transit of land-locked States to an easement or right of way under public law. Scelle for example says:[41]

"Under French municipal law, enclosed properties have by statute access to means of communication ... the same rule was necessary, *mutatis mutandis*, in international law as regards the access of peoples to the sea, with the corollary that land-locked States may, consequently, have a maritime flag."

Scelle claims for this thesis the merit that it makes the right of passage of land-locked States over territories separating them from the sea independent of any treaty and, in theory, even of an international agreement. The right of transit belongs to the "dominant tenement" by virtue of its geographical position in relation to the "servient tenement"; the right will disappear if a union is formed between the two countries concerned, and will revive in the event of secession.

42. Some of the writers who have supported this doctrine and others who have questioned its validity are cited below.[42]

43. The "international servitude" is defined by one of its principal supporters [43] in these terms:

"An international servitude is a real right, based on an agreement between two or more States under which the territory of one State is subjected to the permanent use of another State for a specified purpose. The servitude may be permissive or restrictive, but it never creates a positive obligation to do something... It establishes between one territory and another a permanent relationship in law which cannot be affected by the transfer of sovereignty over either territory to other States. It cannot be terminated except by agreement, by renunciation on the part of the dominant State, or by the consolidation of the territories concerned under a single sovereign."

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[36] Marcel Sibert, *Traité de droit international public*, vol. I, Paris, 1951, p. 660, paragraph 397.

[37] *Ibid.*, p. 660, paragraph 399.

[38] Georges Scelle, *Manuel de droit international public*, 1941, part I, p. 389.

[39] Charles Cheney Hyde, *International law, chiefly as interpreted and applied by the United States*, 1947, vol. I, p. 618.

[40] *Ibid.*, p. 512.

[41] Scelle, *op cit.*, p. 389.

[42] (*a*) Geouffre de Lapradelle, "*Le droit de l'Etat sur la mer territoriale*", *Revue générale de droit international public*, vol. V, 1898, pp. 264 *et seq.*

(*b*) Pitman B. Potter, "The Doctrine of Servitude in International Law", *American Journal of International Law*, vol. 9, 1915, p. 627.

(*c*) Hall, *International Law*, p. 43.

(*d*) G. Crusen, "*Les servitudes internationales*", *Académie de droit international, Recueil des Cours*, 1928, II, pp. 5-74.

(*e*) Helen Dwight Reid, "*Les servitudes internationales*", *Académie de droit international, Recueil des Cours*, 1933, III, pp. 5-68.

(*f*) F. A. Vali, *Servitudes of International Law*, London, 1933.

(*g*) Claude Mercier, *Les servitudes internationales*, Doctoral thesis, Lausanne, 1939.

(*h*) Fauchille, *Traité de droit international public*, vol. I, part I, 1922 edition, pp. 668 *et seq.*

(*i*) McNair, "So-called State Servitude", *The British Year Book of International Law*, 1925, pp. 111 *et seq.*

(*j*) H. Lauterpacht, *Private Law Sources and Analogies of International Law*.

[43] Helen Dwight Reid, *op. cit.*, p. 15.

McNair,[44] who opposes this theory, asserts that its object is to bind in advance third States into whose hands the territories concerned may come. This object, however, will not be achieved (he says), for to enumerate a list of restrictions on territorial sovereignty and to call them servitudes proves nothing at all; and he draws the following conclusions:[45]

"(*a*) International law recognizes the existence of conventional restrictions upon territory which differ in juridical nature from the obligations *in personam* normally created by a treaty.

"(*b*) The main guide as to the juridical nature of any particular obligation must be the intention of the parties to the instrument creating it. Did they intend it to be permanent, objective, and irrespective of changes of sovereignty . . . ?

"(*c*) When the treaty creating the restriction is of the nature of an international settlement or of a dedication *urbi et orbi* of some natural advantage or facility, the presumption is that the territorial restrictions created by it are intended to form part of the body of public international law . . .

"(*d*) The attempt to apply to these restrictions the terminology and conceptions of the Roman law of servitudes is a legacy of a states system that has passed away and will probably do more harm than good."

44. It should be noted, lastly, that the theory has been mentioned in several cases in which the parties pleaded the existence of international servitudes.[46] In all these cases, with the exception of the Netherlands coal mines case, the adjudicating bodies did not rule specifically on the question whether servitudes in fact existed under international law.

Chapter III

The problems of transit and access to the sea: solutions offered by bilateral agreements

1. Provisions from some older treaties

45. Among the older bilateral treaties designed to facilitate transit the first noteworthy one is that of 16 March 1816[47] between Sardinia, the Swiss Confederation and the Canton of Geneva, which contains some provisions concerning the transit of Savoyard goods through the territory of the Canton in consignment to the city of Geneva. Article V exempts from all transit duties goods and produce from the free port of Genoa carried over the Simplon route, through the Canton of Valais and the State of Geneva. Article VI provides that customs duty is chargeable on these goods but that if, on entering Swiss territory, they are declared to be in transit, the duty is reimbursable at the point of departure from Swiss territory. Lastly, article VIII safeguarded the freedom of trade communications between the provinces of Savoy through the State of Geneva.

46. Under article V of a treaty[48] between Great Britain and Ethiopia signed at Addis Ababa on 15 May 1902 relative to the frontiers between the latter country and the Sudan, His Britannic Majesty's Government was granted the right to construct a railway through Abyssinian territory to connect the Sudan with Uganda.

47. A Convention of 24 July 1890[49] between Great Britain and the South African Republic for the Settlement of the Affairs of Swaziland recognized, in article 7, the right of the South African Republic to construct railways in Swaziland and to navigate and make waterways. Under article 8 the South African Republic was permitted to acquire the ownership of land for the purpose of construction of a railway across Swaziland, while Her Majesty's Government retained the right of passage across the land so acquired and the railway constructed by the South African Republic.

48. An Agreement concluded between Great Britain and Portugal[50] on 14 November 1890 related to the freedom of navigation of the Zambesi. Under article II, the King of Portugal engaged to permit and facilitate transit over the waterways of the Zambesi, the Shiré and the Pungué, and also over the land-ways where those rivers are not navigable. Under article III, the King of Portugal further engaged to facilitate communications between Portuguese ports and the territories included in the sphere of action of Great Britain, especially as regards the transport service and postal and telegraphic communications.

49. On 2 August 1929, a Convention was concluded between Italy and Ethiopia[51] concerning, firstly, the construction of a motor road from Assab to Dessie and, secondly, the grant to the Ethiopian Government of a free zone in the port of Assab. Since at the time Ethiopia had no direct access to the sea this Convention is of some interest.

50. The Ethiopian Government undertook to build the sector of the motor road running from Dessie to its frontier and the Italian Government that from the frontier to Assab (article 2). An Italo-Ethiopian company was formed which was to have the monopoly of the carriage of goods and passengers (article 31). In addition, the Italian Government ceded to the Ethiopian Government, for a term of 130 years, a zone in the port of Assab suitable as an anchorage and undertook to give sympathetic consideration to any request addressed to

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[44] McNair, *op. cit.*, p. 123.

[45] *Ibid.*, p. 126.

[46] For example:

(*a*) The North Atlantic Coast Fisheries case. References: *Revue générale de droit international public*, vol. XIX, 1912, pp. 421 *et seq.*; and *Fisheries Arbitration Argument of Elihu Root*, ed. J. B. Scott, World Peace Foundation, 1912, pp. 239-288;

(*b*) The case of the Netherlands coal mines in Prussian territory. References: *American Journal of International Law*, 1914, vol. VIII, p. 858, and *Zeitschrift für Völkerrecht*, vol. VIII, 1914, p. 433;

(*c*) The Aaland Islands Question. References: *League of Nations, Report of the International Commission of Jurists entrusted by the Council of the League of Nations with the Task of giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question*, Council Document 69, 20/4/238;

(*d*) The case of the S.S. "Wimbledon". References: *Publications of the Permanent Court of International Justice, Series A, No. 1.*

[47] De Martens, *Nouveaux Suppléments au Recueil de traités*, vol. I, 1761-1829, No. 69, p. 473.

[48] De Martens, *Nouveau Recueil général de traités, troisième série*, vol. II, p. 826.

[49] *Ibid., deuxième série*, vol. XVI, pp. 905 *et seq.*

[50] *Ibid.*, p. 942.

[51] *Ibid., troisième série*, vol. XXX, pp. 335 *et seq.*

it by the Ethiopian Government in the future for the enlargement of that zone. The Ethiopian Government was permitted to build a warehouse in the zone, and goods stored therein were to be exempt from all customs duties.

2. Some conventions concluded in consequence of the Treaty of Versailles and of the Conferences of Barcelona and Geneva

51. One of the first of these conventions was that concluded on 21 April 1921 between Germany, Poland and the Free City of Danzig concerning freedom of transit between East Prussia and the rest of Germany.[52] East Prussia had been separated from the rest of the *Reich* by the "Polish corridor", which gave Poland free access to Danzig and to the sea but which made East Prussia a German encalve in foreign territory. The Convention's eleven chapters deal with the following subjects:

General clauses (chapter I)

Railways (chapter II)

Military transit (chapter III)

Posts, telegraphs and telephone (chapter IV)

Navigation (chapter V)

Motor cars and motor cycles (chapter VI)

Customs (chapter VII)

Passports (chapter VIII)

Supplementary clauses (chapter IX)

Rules for the application of the Convention (chapter X)

Final provisions (chapter XI).

52. Inasmuch as only the principles adopted by the parties are relevant to the purpose of this memorandum, the passages which follow will do no more than summarize succinctly the principles embodied in this long Convention.

53. Article 1 laid down the guiding principle of the Convention, *viz.* Poland accorded to Germany freedom of transit over the territory (including territorial waters) ceded by Germany in virtue of the Treaty of Versailles; it was provided that this freedom of transit was to extend "... to all ways of communication and all means and methods of transport by land or by water. Among other matters it shall extend to the postal, telegraph and telephone services."

The same obligation was laid on the Free City of Danzig, while Germany promised Poland and Danzig the same freedom of transit over German territory situated on the right bank of the Vistula. Goods in transit were to be "exempt from all customs or other similar dues" (article 2) and, subject to special provisions, no discrimination was to be exercised in respect of the nationality of individuals and goods, the origin of goods or their destination (article 3). The same privilege was guaranteed to travellers, who were to enjoy in addition the special protection of the local authorities concerned (article 6). It was stipulated that the provisions of the Convention were not *ipso facto* to be rendered invalid in the event of war (article 9), and disputes arising out of the interpretation and application of the Convention were to be referred to a Tribunal of Arbitration sitting in Danzig (article 11).

54. With regard to railways, Poland undertook to forward by its own means traffic proceeding through the territory from one part of Germany to the other (article 22), and the parties undertook to maintain in good condition the railway lines employed for transit (article 25). Poland further undertook to develop the capacity of its railways so as to enable it to comply with the obligations it had assumed. The transit of soldiers was regulated in detail in the rules for the application of the Convention and in articles 44 to 49. In this context it is sufficient to say that under article 44, paragraph 6, one military goods train per week was permitted to run in each direction.

55. Germany had the right to use the railway lines appointed for transit in accordance with the requirements of its postal traffic (articles 50 and 51), and telegraphic and telephonic communication in transit was to be effected by means of the appropriate direct lines (article 62).

56. With regard to navigation the Convention provided:

> "There shall be free transit between East Prussia and the rest of Germany by water on all waterways suitable for navigation or rafting in the territory ceded by Germany..." (article 67)

No dues were to be collected on the voyage (article 68).

57. Motor cars and motor cycles in transit were to use such roads as were appointed for the purpose by the authorities of the country through which they passed (article 75).

58. With regard to customs, it was provided that goods trains would travel under the seals of the parties (article 79); passengers in transit and their luggage were exempt from all customs duties or other similar duties (article 81). Such passengers did not require either passports or identification papers (article 97).[53]

59. On 9 November 1920 Poland also concluded a Treaty concerning its relations with the Free City of Danzig[54] articles 8, 10, 18, 24 and 26 of which contain provisions pertinent to the subject of this memorandum. Under article 8 Poland was permitted to establish at Danzig "the necessary Polish administrative organisation... for the registration and for the inspection of the seaworthiness of Polish ships, and for the engagement of crews." Under article 10, the Free City of Danzig agreed to grant to Polish ships the same treatment in the port as that given to ships flying the flag of Danzig. Under article 18, an existing free zone in the port of

[52] *League of Nations Treaty Series*, vol. XII, 1922, No. 308, pp. 63 *et seq.*

[53] *Cf.* also Polish-German Agreement of 24 June 1922 regarding Privileged Transit Traffic between Polish Upper Silesia and the Remainder of Poland through German Upper Silesia (text in *League of Nations Treaty Series*, vol. XXVI, 1-4, 1924, No. 653, pp. 313 *et seq.*).

[54] De Martens, *Nouveau Recueil général de traités, troisième série*, vol. XIV, pp. 45 *et seq.*

Danzig was to be maintained and placed under the administration of a "Danzig Port and Waterways Board" composed of an equal number of Polish and Danzig representatives (article 19). One of the Board's functions was to assure the free passage of immigrants and emigrants from or to Poland (article 24); in addition, the Board was to guarantee to Poland "the free use and service of the port and the means of communication referred to in article 20,[55] without any restriction and in so far as may be necessary for Polish imports and exports...."

60. Another convention of interest in this context is that of 28 October 1922 between Finland and the Soviet Union concerning free transit through the territory of Petsamo.[56]

61. Under article 1, Finland granted to the Russian authorities and to Russian nationals free passage through the said territory from Russia to Norway and *vice versa*. The same principle was applicable to goods. Goods and cattle in transit were free of customs duties and transit or other dues (article 3) and persons and consignments of goods were not to break their journey unless it was necessary for them to do so in the ordinary course of travel. Unarmed Russian aircraft were granted the right to carry on air traffic between Russia and Norway over the said territory (article 9).

62. Of particular interest is the Convention between Greece and the Kingdom of the Serbs, Croats and Slovenes for the regulation of transit via Salonika, signed at Belgrade on 10 May 1923.[57]

63. Under article 1 of this Convention, the Greek Government ceded to the Yugoslav Government[58] for a period of fifty years "... a site in the port of Salonika, which shall be set apart for the use and placed under the customs administration of (Yugoslavia)". While remaining an integral part of Greece and subject to Greek laws, the said zone was to be administered by the Yugoslav customs authorities (article 2), which were to appoint all the officials and staff of the zone (article 4). In addition,

> "the berthing of vessels, the supervision of all loading and unloading operations, and, speaking generally, all harbour-master's duties, shall be carried out by an official who shall be a Serbian subject, but under the control of the Governor of the port of Salonika." (*Ibid.*)

Only the Governor of the port was allowed to enter the zone in order to ensure the carrying out of the police and judicial services (*Ibid.*).

64. All goods dispatched from the Yugoslav frontier to the zone and *vice versa* were regarded, from the Greek point of view, as goods in transit (article 5) and nothing could be done to hamper this passage.

65. The cost of the operations and construction to be carried out in the zone were to be borne by the Yugoslav Government, the existing installations being ceded to that Government (article 6).

66. In addition to these benefits, it was provided by article 8 that the Yugoslav Government was to be granted most-favoured-nation status in the case of any other free zones which might be created.

67. Article 12 vested in the Permanent Court of International Justice competence to settle any dispute arising in regard to the application of the agreement.

68. A "Protocol A" regulated railway traffic between the two countries, which was to be governed by the International Convention of Berne, 1890, the International Convention signed at Stresa in 1921 and the Barcelona Convention on Freedom of Transit (article 3).

69. A "Protocol A.2" regulated postal, telegraph and telephone communications in a very liberal spirit, and "Protocol C" dealt with customs formalities: in the zone, the customs service was to be operated by Yugoslav officials (article 1) who were to affix customs seals to the wagons at the dispatching station (article 3). No customs examination by Greek customs offices was permitted (article 4) but the Greek officials were, without charge, to affix customs seals at the exit or entrance stations besides the seals affixed by the Yugoslav customs officials (article 6). Vessels calling at the zone were entitled to do so without previous notification to the Greek authorities and without undergoing any control or supervision on the part of these authorities (article 8).

70. These, in outline, are the provisions of this famous Convention, which has been the subject of much comment. It was supplemented, over the years, by several protocols which interpreted and regulated the application of a number of clauses. It seems unnecessary to discuss them more fully in this memorandum.[59]

71. An important convention relating to ports is that between Italy and Czechoslovakia of 23 March 1921 regarding concessions and facilities to be granted to Czechoslovakia in the port of Trieste.[60]

72. By virtue of this Convention Czechoslovakia obtained the use of a shed to be utilized for the loading of goods to be exported immediately and for the unloading of goods to be forwarded immediately by rail; the Italian Government ceded the shed to Czechoslovakia to be administered by the latter for a rental which was calculated in accordance with the provisions of article 8 of the Agreement. Under article 11, the Italian Government guaranteed to Czechoslovak nationals equality of treatment with Italian citizens; the same article contains a most-favoured-nation clause. Czechoslovakia installed its own customs office in the warehouses in question and the Italian administration permitted the use of a Czechoslovak transit customs seal

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[55] Under this article, the Board was entrusted with the administration and exploitation of the port and waterways and the whole railway system specially serving the port.

[56] *League of Nations Treaty Series*, vol. XIX, 1923, No. 493, pp. 208 *et seq.*

[57] *Ibid.*, vol. XXV, pp. 442 *et seq.*

[58] For the sake of convenience, the expression "Yugoslav" is used instead of "Kingdom of the Serbs, Croats and Slovenes", which was the official name of Yugoslavia at the time of the Convention.

[59] The text of these instruments is reproduced in De Martens, *Nouveau Recueil général de traités, troisième série*, vol. XXI, pp. 708 *et seq.*

[60] *League of Nations Treaty Series*, vol. XXXII, 1925, pp. 250 *et seq.*

affixed to vehicles coming from the port and crossing Italian territory.

73. Another pertinent convention is that of 8 March 1923 between Hungary and Czechoslovakia concerning the passage of Czechoslovak trains over the Hungarian section of the Cata-Lucenec line.[61]

74. Under article 1, passage over the said line was guaranteed to passengers and goods of all kinds proceeding from Czechoslovakia. These consignments enjoyed

"... treatment at least as favourable, in all respects, as that enjoyed by consignments which are Hungarian as regards origin, country of export, ownership or dispatching station."

This free passage was granted, under article 2, "... irrespective of the nationality of travellers, the origin or destination of goods, or the nationality of the sender or addressee".

The goods remained exempt from all duty and taxes on Hungarian territory (article 3). The passengers and luggage in transit were to be under the "special protection" of the country crossed in transit (article 9), but military transports could be made only with the consent of, and subject to the conditions laid down by, the Hungarian Government.

75. Many of the provisions of the Convention were purely technical and hence will not be commented on here; reference should, however, be made to the arbitration clause (article 15) under which each of the Contracting Parties could refer disputes concerning the interpretation or carrying into effect of the Convention to a court of arbitration empowered to decide the issue "... in accordance with the provisions of the present Convention and general principles of law and equity".

3. Examples of Latin American treaties *

76. In Latin America, Bolivia, a land-locked country, has concluded a number of treaties with its neighbours assuring it of free communication with the sea. Some pertinent clauses extracted from these instruments are reproduced below.

Treaties between Bolivia and Argentina

77. Article 3 of the Convention concerning the transport of petroleum provides:[62]

"No transit dues or charges of any kind, whether national, provincial of municipal, shall be levied on petroleum, or on any petroleum product, which originates in Bolivia and passes through Argentine territory. The petroleum and petroleum products in question shall be loaded in tank-cars or drums and transported to the territory of Bolivia solely by the State Railways. Rail charges for this transport shall not be greater than those paid in Argentina by *Yacimientos Petrolíferos Fiscales* under similar conditions."

[61] *League of Nations Treaty Series*, vol. XLVIII, 1926, No. 1167, pp. 258 *et seq.*

* For paragraphs 77 to 81, see also the additional information supplied by the delegation of Bolivia and contained in the addendum to this document.

[62] Dated 19 November 1937; text in *Colección de tratados vigentes de la República de Bolivia*, vol. 4, p. 121.

The Treaty of Friendship, Commerce and Navigation of 9 July 1868 contains some clauses which are of interest in this context:[63]

"*Article 11.* The two Contracting Parties declare and recognize the free transit of home and foreign articles of commerce which exists and may exist by the sea and river ports of the one and the other Republic, by road, and by the railways which may be established, without further charges than the very moderate charges of storage, and bridge and road tolls which, on their creation, shall be respectively communicated by the Governments, in order that they may be subject to the strictest reciprocity. For this purpose the two Governments will, in due course, designate in a special Agreement the sea and river ports and depots, and the overland places of entry and depots on which they may agree, stipulating at the same time the formalities of transit, and all other conditions which may be necessary, with a view to the most ample privileges.

"*Article 12.* The Contracting Parties concede mutually to one another the free navigation of the river Plata and its respective tributaries, in accordance with arrangements to be agreed on in a special Convention.

"There will not be imposed on Bolivian ships in Argentine ports, nor on Argentine ships in Bolivian ports, other or higher dues for tonnage, lightage, anchorage or other dues, affecting the hull of the ship, than those which, in the same circumstances, are recoverable from ships of the nation to which the port belongs.

"The importation or exportation of merchandise or effects which it is or may be lawful to import or export from either of the territories of the Contracting Parties will pay the same duties, whether made in Bolivian or Argentine ships; and the rebates and exemptions to which merchandise or effects imported or exported in ships of the country may be entitled, will be extended to those imported or exported in ships of each of the contracting countries respectively.

"No prohibition, restriction or charge may be imposed on the reciprocal commerce of both countries, unless in virtue of a general arrangement applicable to the commerce of all other nations. If this prohibition, restriction or charge should devolve on importation or exportation, the ships of the respective countries will not be subject to it unless it is also applicable to importation or exportation in ships of the country itself.

"Bolivian and Argentine ships respectively will be permitted to enter all ports of each other's territory to which entry is permitted to ships of that country."

Treaties between Bolivia and Brazil

78. For some time now Brazil and Bolivia have regulated by contractual provisions the transit rights granted to Bolivia in Brazilian territory. Mention should be made firstly of articles 6 to 9 of the Treaty of Friendship, Commerce, Navigation and Extradition of 27 March 1867, which read as follows:[64]

"*Article 6.* The Republic of Bolivia and His Majesty the Emperor of Brazil agree in declaring the communication between the two countries to be free over the common frontier; and the transit of passengers and of luggage over the same exempt from every national or municipal impost, and only subject to the police and fiscal regulations which each of the two Governments will establish in its territories.

"*Article 7.* His Majesty the Emperor of Brazil permits, as a special favour, the waters of the navigable rivers running through Brazilian territory, to the ocean, to be free to the commercial navigation of the Republic of Bolivia.

[63] *Ibid.*, p. 35.

[64] *Ibid.*, p. 175.

"The Republic of Bolivia also reciprocally permits the navigable waters of its rivers to be free to the trade and commercial navigation of Brazil.

"It is, however, understood and declared that this navigation does not include that from port to port of the same nation, or the river coasting trade, which the High Contracting Parties reserve for their subjects and citizens.

"*Article 8.* The navigation of the river Madeira, from the waterfall of Santo Antonio upwards, shall only be permitted to the two High Contracting Parties, even should Brazil open the said river up to that point to third nations. Nevertheless, the subjects of these other nations shall enjoy the privilege of loading merchandise in Brazilian or Bolivian vessels employed in that trade.

"*Article 9.* Brazil undertakes to grant at once to Bolivia, under the same police and excise conditions as those imposed on its own subjects, saving the fiscal dues, the use of any road which it may hereafter open from the first waterfall, on the right bank of the river Mamoré, to that of Santo Antonio on the river Madeira, in order that the citizens of the Republic may avail themselves of the means which Brazilian navigation may afford, below the said waterfall of Santo Antonio, for the passage of persons and carriage of merchandise."

Article 7 of the Treaty of Petropolis, which deals with the construction on Brazilian territory of a railway usable by Bolivia for its communications with the port of Santo Antonio, is also relevant. It reads as follows:[65]

"*Article 7.* The United States of Brazil undertakes to construct on Brazilian territory, either as a public or a private undertaking, a railway from the port of Santo Antonio on the river Madeira to Guajará-Mirim, on the Mamoré, with a branch which, passing through Villa-Murtinho or some spot near (State of Matto-Grosso), shall reach Villa-Bella (Bolivia) at the confluence of the Beni and the Mamoré. Both countries shall make use of this railway, which Brazil shall endeavour to finish within four years, with equal rights as to tariffs and privileges."

The question of river navigation is dealt with in some important clauses of the Bolivian-Brazilian Treaty of Commerce and River Navigation of 12 August 1910:[66]

"*Article 1.* The Republic of Bolivia and the United States of Brazil, persevering in the sincere desire to provide all possible facilities and guarantees for the most complete freedom of land and river transit for each of the two nations in the territory of the other, this being the right of free transit which the High Contracting Parties recognized reciprocally in perpetuity in article 5 of the Treaty of 17 November 1903, agree to declare the transit of passengers, baggage and merchandise exempt from any national, state or municipal charges, subject to observance of the fiscal and police regulations now or hereafter in force, such regulations not to conflict, however, with the generality of the rights reciprocally recognized.

"*Article 2.* As a consequence of the principle laid down in article 5 of the Treaty of 17 November 1903, merchant vessels of all nations may freely navigate not only, as at present, the Paraguay river, between the Bolivian-Brazilian frontier south of Combra and the Brazilian port of Corumbá, but the Tamengo canal and Lake Cáceres between Corumbá and the Bolivian port of Guachalla, on the said lake.

"*Article 3.* By virtue of the same principle, Bolivian and Brazilian vessels may freely navigate the rivers, lakes and canals recognized as common to Bolivia and Brazil under the aforesaid Treaty of 17 November 1903; and Bolivian vessels shall have free access to the ports of Bolivia and free exit from them to the ocean through the river waters which are under the exclusive sovereignty of Brazil.

"*Article 4.* In the exercise of the right affirmed in the preceding articles, Brazilian merchant vessels may proceed freely through the Brazilian waters of the Paraguay river from Corumbá to the Mandioré, Gahyba and Uberaba lakes, as soon as Bolivia has established, after six months' prior notice, customs posts on any of these lakes for which corresponding Brazilian fiscal stations shall be established.

"*Article 8.* No charge shall be levied on the merchandise in transit carried on the Amazon, Madeira and Paraguay rivers from or to Bolivia in vessels of any nationality, or carried in transit on the other rivers to which this Treaty refers in Bolivian or Brazilian vessels, even if it is necessary to transship such merchandise from one vessel to another in the customs ports of the two countries or it is necessary for them to pass through and wait at intermediate ports or river and land depots whence they are to be forwarded by another vessel.

"In the latter case, warehousing and labour charges shall be levied in accordance with the legislation of each country.

"*Article 14.* With the exception of labour and warehousing charges (article 8) and the document or stamp duties referred to in article 10, no charge of any kind, either direct or indirect and regardless of its name or purpose, shall be levied in respect of either land or river transit."

Treaties between Bolivia and Chile

79. Bolivia has also entered into some important treaties with Chile. The first of these is the Treaty of Peace and Friendship of 20 October 1904[67] which contains the following provisions:

"*Article 3.* With the object of strengthening the political and commercial relations of both Republics, the High Contracting Parties engage to unite the port of Arica with the Alto de la Paz by a railway the construction of which will be contracted by the Chilean Government at its own cost within the term of one year to be reckoned from the ratification of the present Treaty.

"The property of the Bolivian section of this railway shall be vested in Bolivia at the expiration of fifteen years to be reckoned from the day of its completion.

"For the same purpose Chile engages to pay the obligations that might be incurred by Bolivia for guaranteeing up to 5 per cent on the capital invested in the following railways, the construction of which may be undertaken within a term of thirty years: Uyuni to Potosí; Oruro to La Paz; Oruro, via Cochabamba, to Santa Cruz; from La Paz to the Beni region; and from Potosí, via Sucre and Lagunillas to Santa Cruz.

"This obligation cannot bind Chile to an outlay larger than £100,000 sterling annually nor exceed the sum of £1,700,000 sterling, which is fixed as the maximum amount that Chile shall assign to the construction of the Bolivian section of the railway from Arica to the Alto de La Paz, and to the guarantees above referred to, and shall be null and void at the end of the said thirty years.

"The construction of the Bolivian section of the railway from Arica to the Alto de La Paz, as well as that of the other railways that may be constructed with the guarantee of the Chilean Government, shall be made the subject of special Agreements between the two Governments, and therein shall be taken into consideration the facilities that should be given to the commercial intercourse between the two countries.

"The cost of the said section shall be regulated by the

[65] Treaty dated 17 November 1903, *Ibid.*, p. 198.

[66] *Ibid.*, p. 226.

[67] *Ibid.*, p. 394.

amount of the tender which may be accepted in the respective contract for construction.

"*Article 6.* The Republic of Chile recognizes in favour of that of Bolivia, and in perpetuity, the fullest and most unrestricted right of commercial transit through its territory and ports on the Pacific.

"Both Governments will make, by special Agreements, the necessary regulations to insure, without prejudice to their respective fiscal interests, the purpose above referred to.

"*Article 7.* The Republic of Bolivia shall have the right to establish custom-house agencies at such ports as it may select for carrying on its trade. For the present it selects as such ports for its trade Antofagasta and Arica.

"The agencies shall take care that the goods intended for transit are sent direct from the pier to the railway station, and that they are conveyed to the Bolivian custom-houses in closed and sealed wagons, and accompanied by way-bills indicating the number of packages, weight and mark, number and contents, which shall be delivered against exchange way-bills.

"*Article 8.* Until the High Contracting Parties shall have concluded a special Commercial Treaty, the commercial intercourse between the two Republics shall be regulated by rules of the strictest equality with those applied to other nations, and under no consideration shall the products of either of the two Parties be placed in conditions of inferiority to those of a third. In consequence, the raw and manufactured products of Bolivia, as well as those of Chile, shall be subject, on being imported and consumed in one or the other country, to the payment of the same dues as those levied on those of other countries, and any favours, exemptions and privileges that either of the two Parties may grant to a third may, the conditions being the same, be claimed by the other.

"The High Contracting Parties mutually agree to apply to the national products of one or the other country carried over all the railways crossing their respective territories the same tariff that they may resolve to apply to the most favoured nation."

Further provisions relating to the subject of transit are contained in the Bolivian-Chilean Treaty of Commerce of 6 August 1912,[68] article 1 of which refers to the Treaty of Peace (see above). Articles 1 and 14 of the Treaty of 1912 provide:

"*Article 1.* The Government of Chile, in conformity with article 6 of the Treaty of Peace of 1904, guarantees free transit through its territory of foreign merchandise which is disembarked therein with destination for Bolivia, or which, proceeding from Bolivia, is embarked at any of the principal ports of the Republic of Chile with destination for foreign countries.

"*Article 14.* The exportation of Bolivian products from Chilean ports shall be made without any other formality than that of exhibiting to the Chilean customs authorities on the wharf the marks, numbering and quantity of packages, together with the manifest for the goods in bulk or the certificate of carriage by the railway which shall be viséd beforehand by the Bolivian customs agency. If the goods are not to be embarked immediately they shall be deposited in the warehouses for goods in transit, the exhibition of their markings, etc., being made when the goods are unloaded.".

Similarly, article 1 of the Convention concerning transit[69] reaffirms a principle which is laid in several of the bilateral treaties cited above. This article reads as follows:

"*Article 1.* The Government of Chile, in conformity with article 6 of the Treaty of Peace and Friendship of 1904, recognizes and guarantees the fullest and most unrestricted right of transit through its territory and major ports for passengers and freight crossing its territory to and from Bolivia. Within the provisions in force between Bolivia and Chile, free transit shall be understood to extend to every kind of freight at any time, without any exception."

Treaties between Bolivia and Paraguay

80. The Treaty of Peace and Friendship entered into between Bolivia and Paraguay on 21 July 1938[70] contains similar provisions:

"*Article 7.* The Republic of Paraguay guarantees the fullest freedom of transit through its territory, and especially through the zone of Puerto Casado, for merchandise arriving from abroad for Bolivia and for products leaving Bolivia for shipment abroad through the said zone of Puerto Casado. Bolivia shall be entitled to establish customs offices and to construct depots and warehouses in the zone of the said port.

"Regulations for the application of this article shall be embodied in a commercial convention to be concluded later between the Governments of the two Republics."

Treaties between Bolivia and Peru

81. Bolivia has also signed several treaties with Peru guaranteeing its right of transit; for example, the Treaty of Peace and Friendship of 5 November 1863[71] contains the following provisions:

"*Article 24.* Both the Contracting Parties bind themselves to enter, after the conclusion of the present Treaty, and at the latest within four months from its having been signed by the Plenipotentiaries, into a Treaty of Commerce and Customs, in which a Consular Convention shall be included, and it is understood that from now the establishment of consuls is permitted, as is the case with the most favoured nations, and with their respective consular assistants.

"They also agree to give the most ample freedom for the reciprocal commerce of both countries, and to establish full exemption from duties on the natural products of both. Consequently, only those [duties] shall be collected which are known as 'municipal', such as highway, bridge and other dues reputed as a remuneration for services which the merchant receives and not as an imposition."

The Treaty of Commerce and Customs of 27 November 1905[72] contains the following provisions relating to transit:

"*Article 1.* Bolivia and Peru establish their commercial relations on the basis of the most complete reciprocity.

"*Article 2.* Both countries agree to free commercial transit for all the natural products and industries of the two countries, and for the foreign products which are introduced by the routes of Mollendo and Puno to La Paz, and of Mollendo to Pelechuco via Cojata or *vice versa.*

"*Article 4.* Both countries bind themselves to grant reciprocally the same advantages or commercial immunities which they concede to the most favoured nation, in such a manner that if one of the Contracting Parties stipulates or has stipulated with a third Power that its natural, industrial or manufactured products shall be introduced into its territories free of import

[68] *Ibid.*, p. 463.

[69] Dated 16 August 1937; text *ibid.*, p. 499.

[70] *Ibid.*, p. 331.

[71] *Ibid.*, p. 373.

[72] *Ibid.*, p. 420.

or consumption duties, or that those to be paid are less than those which have to be paid on merchandise of the other Contracting Party, the latter will at once have the right to enjoy the same reductions, immunities and concessions ; therefore, in no case can either of the Contracting Nations be charged by the other with higher taxes, duties, charges or tariffs than those already existing for similar products of the most favoured nation, nor shall they be placed in a less advantageous position than those of any other country."

The Convention of 21 January 1917[73] concerning commercial traffic through Mollendo (Peru) contains certain guarantees in favour of Bolivia :

"*Article 1.* The Government of Peru guarantees free transit through its territory in respect of merchandise arriving at the port of Mollendo which is consigned to Bolivia and in respect of products originating in Bolivia which are to be shipped through Mollendo, in conformity with the provisions of the Treaty of Commerce and Customs of 27 November 1905.

"*Article 19.* This Convention shall apply to traffic through the port of Ilo or through any other port which the Government of Peru designates for transit traffic to Bolivia."

A protocol of 2 June 1917[74] concerning traffic through Santiago de Huata is also of interest in this connexion. It consists of the following single clause :

"*Single article.* Meeting in the Ministry of Foreign Affairs at La Paz on 2 June 1917, their Excellencies, Mr. Plácido Sánchez, Minister of Foreign Affairs of Bolivia, and Mr. Felipe de Cama, Envoy Extraordinary and Minister Plenipotentiary of Peru, have agreed that the rules established by the Convention signed on 21 January 1917 shall be extended to imports brought in through Santiago de Huata and to exports shipped from that port ; it being understood that, until the Government of Peru appoints a customs agent to be on duty at Santiago de Huata, the return receipt referred to in article 11, signed by the customs officer of Santiago de Huata, shall constitute a sufficiently valid document."

The last provisions to be cited in this section are taken from the Treaty of Friendship and Non-aggression entered into between Bolivia and Peru on 14 September 1936,[75] by which the two Parties grant each other the fullest freedom of transit through their respective territories :

"*Article 5.* In conformity with tradition and with the principles guiding their international relations, Bolivia and Peru grant and guarantee to each other the most complete freedom of transit through their respective territories for persons, merchandise and material of any kind crossing those territories *en route* for or proceeding from either State or other countries. If necessary, the application of this Treaty shall be regulated by special treaties or regulations, but the absence or lapse of such treaties or regulations shall not suspend or restrict the application of this Treaty.

"*Article 6.* Bolivia and Peru grant to each other the most complete freedom of commerce and navigation on their common rivers, subject only to fiscal, police and health regulations."

4. Examples of treaties effective in Africa and Asia

82. The first convention to be mentioned here is that of 17 June 1950 between the United Kingdom and the Republic of Portugal relative to the Port of Beira and Connected Railways,[76] the purpose of which was to secure additional outlets to the sea for some African territories under British administration, *viz.* Bechuanaland, Nyasaland, Southern Rhodesia, Northern Rhodesia, Basutoland and Swaziland.*

83. The Contracting Governments undertook not to permit any discrimination in railway freight rates within the territories concerned or alterations of railway freight rates which might contribute materially to the diversion of normal traffic from the Port of Beira (article II).

84. The Portuguese Government undertook to maintain the Port of Beira and the Beira Railway in a state of efficiency adequate to the requirements of the traffic proceeding to or from Southern Rhodesia, Northern Rhodesia and Nyasaland (article III). In the interest of these territories, a free zone was established in the Port of Beira (article VII). The Portuguese Government undertook to establish an Advisory Board to advise on the best means of developing the traffic passing through the Port of Beira and on related matters (article X).

Treaty of Commerce between India and Nepal of 31 July 1950[77]

85. In article 1, the Indian Government recognized in favour of the Government of Nepal full and unrestricted right of transit of all goods and manufactures through the territory of India. Such commodities may be transmitted across Indian territory to such places in Nepal as may be approved by the two Governments (article 2). Furthermore, goods and merchandise of Nepalese origin in transit through India are exempted from excise and import duties (articles 3 and 4). Civil aircraft of either country are permitted to fly over the territory of the other.

Customs Agreement between Thailand and Laos[78]

86. Goods in transit to the territory of either Party are accorded, in the territory of the other Party, the in-transit rights in accordance with the principles of the "Statute on Freedom of Transit" of the Barcelona Convention (article I). The goods in question remain subject, however, to customs tariffs and formalities in connexion with exchange control as well as to other laws of the country through which they pass (article II). In addition, the two States agreed that they would take steps to prevent smuggling.

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[73] *Ibid.*, p. 452.

[74] *Ibid.*, p. 461.

[75] *Ibid.*, p. 493.

[76] *H.M. Stationery Office, Cmd. 8061* (London).

* *Note by the Secretariat :* At the 6th meeting of the Fifth Committee held on 14 March 1958, the representative of the United Kingdom drew attention to the fact that, in the preamble to the convention, it was stated that the purpose of the convention was 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".

[77] ECAFE/I and T/Sub.4/2.

[78] *Ibid.*

Treaty between the Government of Afghanistan and the British Government for the Establishment of Neighbourly Relations, of 22 November 1921 [79]

87. The provision of this Treaty which is most pertinent is article 6, by which the British Government agreed that "whatever quantity of material is required for the strength and welfare of Afghanistan... which Afghanistan may be able to buy from Britain or the British dominions, or from other countries of the world, shall ordinarily be imported without let or hindrance by Afghanistan into its own territories from the ports of the British Isles and British India". Similarly, the British Government acquired the right to purchase and export to India every kind of goods from Afghanistan.

88. With a view to carrying that provision into effect, the Parties also agreed that: "No customs duties shall be levied at British Indian ports on goods imported under the provisions of article 6 ..." (article 7). Customs duties levied upon entry into India on goods intended for Afghanistan were to be reimbursed in full.

Anglo-Afghan Trade Convention of 5 June 1923 [80]

89. The Trade Convention of 5 June 1923, with two appendices, supplemented the Treaty of 22 November 1921.

Agreement between the Government of the Union of Soviet Socialist Republics and the Royal Afghan Government on Transit Questions, of 28 June 1955 [81]

90. Under the terms of article 1, the Union of Soviet Socialist Republics granted to Afghanistan the right of free transit of goods through its [USSR] territory "...on the same conditions applicable to transit of goods belonging to third countries through the territory of the Union of Soviet Socialist Republics".[82] This right was extended to all categories of goods, regardless of their origin or destination.

91. Afghanistan granted the same right to goods of USSR origin (article 2). The transport and consignment dues for transit goods are to be calculated according to the lowest tariffs applicable at the sites where dispatching and consignment of goods are carried out (article 3). The right of free transit also applies to unaccompanied private property of citizens of the two countries (article 6).

5. Treaties concluded since the World War * of 1939-1945

92. Among the treaties concluded since the World War of 1939-1945, attention should be drawn to the Convention regarding the Regime of Navigation on the Danube, of 18 August 1948,[83] and to various pertinent provisions of the Treaties of Peace.[84]

Another instrument which should be briefly considered is the Communications Agreement between the Polish Republic and the Czechoslovak Republic,[85] appearing as annex No. 6 to a Convention for ensuring economic co-operation concluded between those two countries on 4 July 1947.[86]

93. In the preamble, the two countries express their desire to guarantee one another the most advantageous conditions with regard to all types of communications, while in article I, referring to article III of the Convention itself[87] they agreed to establish a "Polish-Czechoslovak Communications Commission" to ensure co-operation with regard to communications.

94. The question of transit is dealt with in article II and the subsequent articles of the Agreement. The Contracting Parties undertook (article II, paras. 2 and 3) to apply on this point: "the provisions of valid bilateral and multilateral conventions to which they have acceded or may in future accede". "In international transit communications, the provisions of the Convention and Statute on Freedom of Transit, signed at Barcelona on 20 April 1921 [shall be applied]".[88]

This provision is in agreement with that of article XXII of annex No. 1 to the Convention, which is a Treaty of Commerce between the two countries.

95. As regards seaports, Poland agreed to permit the use by Czechoslovakia of the seaports of Stettin and Gdynia-Gdansk "...as technical shipping bases for Czechoslovak merchant vessels" (article XVIII of the Agreement in annex No. 6).

96. Pursuant to this Agreement, the Polish Government leased to Czechoslovakia certain sectors of the Customs-free zone in the port of Stettin (article XIX). Furthermore, under article XXI of the Agreement, Czechoslovakia or the Czechoslovak agencies designated for that purpose received the right, in Polish seaports, "to the exclusive use under lease of strictly delimited stretches of water adjacent to the port areas or warehouses leased to them".

97. Under article XXVII of the Agreement, each of the Contracting Parties undertook to accord to the other, in the seaports under its sovereignty, treatment equal to that accorded to its own shipping firms, "as regards free access to and use of ports and unrestricted enjoyment of the facilities granted to shipping firms, the commercial operations of vessels, their crews, cargoes and passengers..."

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[79] *Ibid.*

[80] *League of Nations Treaty Series*, vol. XXI, p. 113.

[81] ECAFE/I and T/Sub.4/2.

[82] *Ibid.*

* For paragraphs 92 to 102, see also the additional information supplied by the delegation of Czechoslovakia and contained in the addendum to this document.

[83] *United Nations Treaty Series*, vol. 33, 1949, No. 518, pp. 197 *et seq.*

[84] *Ibid.*, vol. 41, Nos. 643 and 644.

[85] *Ibid.*, vol. 85, 1951, pp. 262 *et seq.*

[86] *Ibid.*, No. 1146, pp. 204 *et seq.*

[87] *Ibid.*, No. 1146, p. 208.

[88] The relevant references are: *League of Nations Treaty Series*, vol. VII, p. 11; vol. XI, p. 407; vol. XV, p. 305; vol. XIX, p. 279; vol. XXIV, p. 155; vol. XXXI, p. 245; vol. XXXV, p. 299; vol. XXXIX, p. 166; vol. LIX, p. 344; vol. LXIX, p. 70; vol. LXXXIII, p. 373; vol. XCII, p. 363; vol. XCVI, p. 181; vol. CIV, p. 495; vol. CXXXIV, p. 393; vol. CXLII, p. 340.

98. The nationality of a vessel is to be determined "in accordance with the laws of the State to which the vessel belongs" (article XXXII).

99. Article XXXIII states that vessels shall be completely exempt from customs duties and all import and export charges, provided that "they enter the Customs zone... as conveyances for the carriage of goods or passengers and leave again — either with or without a cargo...."

100. Article XXXIX and the subsequent articles of the Agreement cover inland navigation and inland ports. As in the case of seaports, special undertakings may be established for purposes of navigation and the Contracting Parties agreed to accord to each other most-favoured-nation treatment. Czechoslovakia was authorized to establish and operate an inland navigation undertaking on the river Oder.

101. Under article L a Polish-Czechoslovak Committee of Studies for Oder-Danube Waterway Problems was to be established to deal with the technical, organizational and economic problems connected therewith.

102. These, very briefly summarized, are some of the pertinent provisions of this important Agreement.

103. Another important instrument is the Agreement between Austria and Italy regarding the Utilization of the Port of Trieste[89] (text in *Bundesgesetzblatt* of 3 February 1956). Article 7 of the Agreement provides that goods proceeding to and from Austria which are in transit through the port of Trieste shall be accorded most-favoured-nation treatment in the said port with respect to duties and taxes and handling operations, whether they are carried in vessels flying the Italian, the Austrian, or any other flag. Furthermore, the port of Trieste may be used as the home port of merchant vessels flying the Austrian flag (article 8). In the perimeter of the "Free Port", appropriate warehouses shall be made available to the Austrian Government at a reduced rent (article 9). The transit of goods proceeding from Austria through Trieste to a destination overseas is free (article 11), "in conformity with multilateral international agreements".

Chapter IV

The problems of transit and access to the sea: solutions offered by multilateral treaties

104. As was pointed out in the introduction, the access of land-locked countries to the sea is but one aspect of the more general problem of the transit of persons and goods from one State across the territory of one or several other States.

105. There have been numerous attempts to find a general solution of this vast question. Especially vigorous efforts were made after the First World War under the auspices of the League of Nations, which had received instructions to that effect under the Treaty of Versailles.

106. It may be appropriate, at this stage, to outline the League's considerable accomplishments in this field, particularly in connexion with the Barcelona Conference. The land-locked States were represented at the Conference; they defended their interests vigorously and succeeded in securing recognition of their right to a flag in a solemn declaration.

107. The main object of this chapter is to sum up the work of that Conference and the agreements resulting from it.

108. Before dealing with those instruments, however, some mention should be made of the position of the so-called "international" rivers, which provided the basis for the earliest international solutions of the problems of transit and access to the sea.

1. International rivers: the régime of the Rhine

109. The problem of the access of land-locked States to the sea acquired great importance in consequence of the Peace of Westphalia, which divided Central Europe into a large number of States, some of which — by no means the smallest — had no sea coast.

110. The principal and, in any event, the most economical means of communication at the time was offered by the rivers which crossed the territories of several adjacent States and debouched into the sea. Consequently, the practice of States and the evolution of international law in the matter of transit are rooted in the law relating to rivers and the régimes gradually established with a view to the utilization of these waterways on a footing of equality.

111. This is not the context for a detailed treatment of this extremely interesting and important question. Brief reference must, however, be made to the rules of the law relating to rivers which developed and are still applicable.

112. This section will be confined to a succinct description of the régime of the Rhine. This European river has been selected as the best example, because the regulation of navigation thereon and related problems have been the object of sustained efforts by the riparian States for several centuries. It is also the river whose régime has attained relatively the greatest degree of perfection.[90]

113. In brief, the Powers which in 1814 conceived for the first time in history a régime applicable to the entire navigable portion of the Rhine agreed that the waterway should be governed by the following principles:

(i) Navigation should be free along the entire navigable section, both up and down stream;

(ii) The right to navigation could not be denied to the nationals of any State;

(iii) Any charges which a riparian State was authorized to levy should be the same for all and should not be such as to impede international trade;

[89] ECAFE/I and T/Sub.4/2.

[90] This is not to say that the régimes of other European and African rivers, and the principles applied in Latin America are not of interest; this analysis is only confined to the régime of the Rhine because the rules applicable to that waterway have been developed in the greatest detail and useful lessons may therefore be learned from them.

(iv) These rules should be applicable to all rivers crossing or separating several States.

114. These principles, reaffirmed in practice in the various treaties concluded on the subject of navigation on the Rhine, now constitute an established set of rules, the main features of which, as amended by the Treaty of Versailles, may be summarized as follows: [91]

(i) Navigation on the Rhine between its mouths and Basel is free;

(ii) All States have the right to issue boatmen's licences;

(iii) It is the duty of the riparian States to maintain towing paths and the navigable channel of the river in good condition; they must refrain from carrying out any works which would impede navigation; if they are situated opposite each other, they must inform each other of any hydrotechnical projects the execution of which might have a direct effect on the part of the river belonging to them;

(iv) There is a "Central Commission" competent to supervise the application by the Parties of regulations agreed upon by the Governments of the riparian States, to consider proposals of these Governments designed to promote navigation on the Rhine, and to hear appeals from judgements of courts of first instance relating to such navigation;

(v) The Central Commission is composed of representatives of the riparian States and of the following non-riparian States: the United Kingdom, Italy and Belgium;

(vi) All vessels, of whatever origin, and their cargoes enjoy the rights and privileges accorded to the vessels regularly engaged on Rhine traffic.

115. Charles De Visscher [92] describes the principles underlying this régime in the following terms:

"... freedom of transit means that any transport which is obliged to traverse a foreign territory ... shall not, during this unavoidable passage through an intermediate country, encounter any obstacles, or difficulties, or be subject to any charges which would not have been encountered or imposed if the entire journey had been effected in the territory of one and the same State."

It may be added that it is in the interests of the riparian States to undertake jointly to maintain the navigable part of the river in a condition meeting the requirements of modern technology, and that the establisment of a central organ competent to draw up regulations and technical projects relating to the navigable portion of the river, to supervise the application of the treaty and of regulations and decisions taken in concert and to exercise certain judicial powers, would seem to be an excellent method of ensuring freedom of transit through the territories in question.

[91] The basic document is the Statute of Mannheim of 17 October 1868 (*De Martens, Nouveau Recueil général de traités*, vol. XX, pp. 356 *et seq.*).

[92] De Visscher, "Le droit international des communications", Ghent and Paris, pp. 11-12.

2. Multilateral agreements on transit and related questions

116. The Powers which met at Versailles after the war of 1914-1918 attached great importance to the solution of the problem of freedom of transit. Several articles of the Treaty of Versailles refer to that problem and the future League of Nations was entrusted with its solution.

(*a*) *Relevant provisions of the Covenant of the League of Nations*

117. Article 23 (e) of the Covenant, which contains the relevant provisions, reads as follows:

"Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

"(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connexion, the special necessities of the regions devastated during the war of 1914 to 1918 shall be borne in mind".

118. The development of freedom of transit resulting from this provision has been described in a great many works, some of which are mentioned in the present study. This development was also summarized in the "Preparatory Documents" published by the League of Nations in connexion with the Barcelona Conference, extracts from which will be cited in the summary that follows.[93] It should also be noted that part XII of the Treaty of Versailles, although applicable particularly to Germany, contained a statement of principles which the Allied and Associated Powers were desirous of carrying into effect with a view to a solution of the problem of freedom of transit as a whole, and this naturally implied acceptance of the principles by all European States and, if possible, by all the nations in the world.

(*b*) *General Conferences on communications and transit held at Barcelona (1921) and Geneva (1923) and the Conventions adopted by them*

119. By a resolution of 19 May 1920, the Council of the League of Nations invited the Members of the League to send representatives to a General Conference to draw up the measures which might be taken in fulfilment of Article 23 (e) of the Covenant (text cited above) as well as the conventions on the régime of ports, waterways and railways referred to in articles 338 and 379 of the Treaty of Versailles.

The Conference was also invited to organize a Permanent Communications Committee to consider and propose "measures calculated to assure freedom of communications and transit at all times..." [94]

[93] *League of Nations, Document 20/31/58, First General Conference on Freedom of Communications and Transit, Preparatory Documents.* See also, in addition to the works already cited, Jean Hostie, "*Le rôle de la Société des Nations en matière de communications et de transit*", *Revue de droit international et de législation comparée*, 1921 Third Series, Vol. II, Nos. 1-2, pp. 83-124.

[94] League of Nations, General Conference, *op cit.*, page 3.

120. A second resolution of the same date defined the relations between the Council and the Assembly of the League and the technical organizations concerned with communications and transit set up by the League.[95]

121. The Commission of Enquiry on Freedom of Communications and Transit, established under the resolution of 19 May 1920, submitted a report to the Conference in which it stated its implicit belief that the Conference would be "inspired by just those principles of freedom in the loftiest sense, and of equal respect for the rights and interests of every nation, which the Commission, in spite of the difficulties presented by technical questions, and of the complex... nature of existing conditions, has never failed to maintain and assert".[96]

122. The Commission submitted the following documents[97] to the General Conference:

(i) Draft convention on freedom of transit;

(ii) Draft convention on the international régime of navigable waterways;

(iii) Draft convention on the right to a flag of States not possessing a sea coast;

(iv) Draft convention on the international régime of railways;

(v) Resolution relative to an international régime for ports;

(vi) General scheme for the organization of the General Communications and Transit Conference and of the Permanent Communications and Transit Committee.

Each of these texts was accompanied by an article-by-article commentary, extracts from which will be cited below wherever they are helpful for a better understanding of the provisions in question.

(i) *Convention and Statute on Freedom of Transit*[98]

123. In article 1 of this Convention, as adopted at Barcelona, the Contracting Parties declare that they accept "the Statue on Freedom of Transit" annexed to and deemed to constitute an integral part of the Convention. In the preparatory Commission's draft, the relevant provisions were contained in the Convention itself and not in a separate annex.

124. Article 1 of the Statute, which repeats almost verbatim article 1 of the original draft of the Convention, explains that the following shall be deemed to be in transit across the territory of the Contracting States:

"Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport... when the passage across such territory... is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place."

125. In its general commentary, the Commission of Enquiry on Freedom of Communications and Transit (hereinafter referred to as "the Commission") stated that goods in transit

"crossing national territory but originating in and destined for places outside that territory cannot be impeded or restricted at the will of the State exercising sovereignty over such territory, without resultant injury to other States... [which is] inadmissible in iself... Just as, under existing legislation in most countries, a person who has to cross his neighbour's property in order to leave his house and reach the thoroughfare enjoys a right of way over the property, in the same way every State whose external trade is absolutely or virtually forced to pass across neighbouring territory ought likewise to enjoy a guaranteed right of freedom of transit across that territory."[99]

126. These were the guiding principles in the drafting of the Conventions adopted by the Barcelona Conference; even today these principles might serve as the basis of an international regulation concerning the right of access of land-locked countries to the sea across the territory of surrounding countries.

127. Article 2 of the Statute lays down the principle that free transit should be facilitated by the States concerned "on routes in use convenient for international transit"; it also stipulates that no distinctions of any kind are to be made between the States using the routes in question.

128. Broadly speaking, the article is in keeping with the draft prepared by the Commission, which, in its commentary,[100] explained that the words quoted in the preceding paragraph had been inserted because of its desire to lay down that the right of free transit may not be exercised except over routes in existence, and that a demand may not be made for the construction of new routes "but only for freedom to use those which, at a given moment, and taking into account all considerations of traffic, congestion, etc., are the most suitable for international traffic..."[101]

129. Article 2 of the Commission's draft convention includes the following phrase:

"... it being understood that the crossing of territorial waters is free."[102]

The text adopted by the Conference modified this provision as follows:

"In order to ensure the application of the provisions of this article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters."

130. The Swiss delegation had proposed, with regard to the words "flag flown by vessels" appearing in article 2, that the text should include a recognition of the right to a flag on the part of land-locked States. The Commission considered the treatment of that subject to be out of place in the Convention.[103]

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[95] *Ibid.*, p. 5.

[96] *Ibid.*, p. 11.

[97] *Ibid.*, pp. 103 to 153.

[98] *League of Nations, Treaty Series,* Vol. VII, 1921-1922, Nos. 1-3, pp. 11 *et seq.*

[99] *League of Nations, Preparatory Documents, op cit.,* p. 33.

[100] *Ibid.*, p. 35.

[101] *Ibid.*

[102] *Ibid.*, p. 113.

[103] *Ibid.*, p. 43.

131. According to the Commission's commentary, the article should be read in conjunction with the other provisions, in particular article 6, which provides for limitations on freedom of transit.[104] Article 6 stipulates that the Convention does not impose any obligation to grant freedom of transit to a non-contracting State, "except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that, for the purposes of this article, goods in transit under the flag of a Contracting State shall, if no transhipment takes place, benefit by the advantages granted to that flag".

132. According to the commentary,[105] this wording represents a compromise between States which, like Switzerland and the Netherlands, proposed to treat all nations on a basis of perfect equality whether they adhered to the Convention or not, and those which opposed such liberal treatment.

133. Article 3 of the Convention laid down the principle that traffic in transit should not be subject to any special dues, except "dues intended solely to defray expenses of supervision and administration entailed by such transit...", the rate of such dues corresponding with the expenses which they are intended to cover.

134. Article 4 deals with the charges generally applicable to the routes used in the transit traffic and stipulates that they should be "reasonable as regards both their rates and the method of their application..." and article 5 authorizes the Contracting States to prohibit the transit of passengers or goods the admission of which into its territory is prohibited.

135. These articles should be read in the light of the Commission's comment:[106]

"Freedom of transit implies equality in the conditions of transit... without this equality freedom of transit would be but an empty phrase... The equality which it has been the unanimous hope of the Commission to see realized is equality between all nations. Nevertheless, the Commission did not consider it equitable to insert this idea in the Convention..."

The principal reason for this restrictive interpretation of freedom of transit seems to have been the fact that, since the conventions covered by the Commission's report were open to accession by all nations, "it was only reasonable to reserve their benefits to those who had assumed their obligation..."[107]

The primary purpose of the other articles summarized in paragraph 134 above was to add "other more precise guarantees as to the reasonable regulation of transit, and the economic and financial obligations to which it may be subjected".[108]

136. Under the terms of article 7, temporary restrictions on freedom of transit are permitted in case of an emergency "affecting the safety of the State or the vital interests of the country", while the subsequent articles (9-12) refer to the rights and duties of belligerents, to the non-abrogation of treaties on the same subject concluded by the Contracting Parties before the signing of the Barcelona instrument and to privileges temporarily granted to States whose territory had been devastated during the war. These articles require no comment.

137. On the other hand, closer attention must be given to article 13, the subject of which is the settlement of disputes which may arise between the Contracting States as to the interpretation or application of the Statute.

138. This article provides in such cases for the compulsory jurisdiction of the Permanent Court of International Justice, "unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means". In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertook to submit them "to any body established by the League of Nations as the advisory and technical organization of the Members of the League in matters of communication and transit".

139. Ordinarily, therefore, the Contracting States would have at their disposal two successive means of recourse: an attempt at friendly conciliation before the "body" established by the League of Nations and, if this attempt proved a failure, the obligatory jurisdiction of the Permanent Court of International Justice.

140. This "advisory organization" was the Permanent Communications and Transit Committee, the framework for which was proposed by the Commission in its "General Scheme for the Organization of the General Communications and Transit Conference of the Permanent Communications and Transit Committee".[109]

141. It should be mentioned briefly that article 376 of the Treaty of Versailles provided that disputes which might arise between the interested Powers with regard to the interpretation and application of part XII of the Treaty "shall be settled as provided by the League of Nations", while article 37 of the Statute of the Permanent Court stipulated that in all cases where a treaty provided for the reference of a matter "to a tribunal to be instituted by the League of Nations, the Court will be such tribunal". The technical communications organization was established in pursuance of the above-mentioned resolution of the Council (of the League of Nations) of 19 May 1920,[110] under the name "Permanent Communications Committee"; under the terms of that resolution the Committee was required, *inter alia,*

"...[to undertake] the investigation of any disputes which may be referred to the League under Articles 336, 376 and 386 of the Treaty of Versailles, and corresponding articles in the other Treaties of Peace, and [to] endeavour to adjust such disputes whenever possible by conciliation between the Parties; in the event of such disputes being brought before the Permanent Court of International Justice, the Committee may be called upon to assist the Court."

142. The Committee itself was a subordinate body

[104] *Ibid.*, p. 41.

[105] *Ibid.*, p. 49.

[106] *Ibid.*, p. 35.

[107] *Ibid.*, p. 37.

[108] *Ibid.*

[109] *Ibid.*, p. 103.

[110] *Ibid.*, p. 3.

of the "General Communications and Transit Conference", one of the purposes of which was, within its domain, to draw up general conventions to be submitted for the ratification of members of the League.[111]

143. According to De Visscher,[112] this system was in harmony with the character of the League of Nations which, not having the power to compel Members to comply with the provisions of the Convention, could offer no guarantee of observance except the recognized right of all Contracting Parties to treat alleged violations as the basis of a claim which could be referred for adjudication to an impartial tribunal.

144. It should also be mentioned that in a resolution adopted 21 June 1946,[113] the United Nations Economic and Social Council decided to establish a "Transport and Communications Commission", empowered, among other things:

"(*f*) On instructions of the Economic and Social Council and when so authorized by convention or agreement between the parties, to perform the task of conciliation in cases of disputes between States and (or) specialized agencies, on problems concerning international transport and communications where not dealt with by other means." [114]

145. The system established by the Convention on Freedom of Transit affords clear proof of the firm determination of the States represented at the Barcelona Conference to recognize the right of the land-locked countries to transit through surrounding territories, a right supported by strong guarantees regarding equality of treatment and permanent enjoyment and by machinery for the settlement of disputes to which its implementation might give rise.

146. Lastly, it should be noted that most of the Latin American representatives at the Barcelona Conference "took pains to point out that the drafts submitted to them were too exclusively European in character and did not take sufficient account of the special position, in fact and in law, of the States of the New World".[115]

(ii) *Convention and Statute on the Régime of Navigable Waterways of International Concern* [116]

147. By this Convention which, like the preceding one, was adopted at Barcelona on 20 April 1921, the signatories undertook to comply with the Statute annexed to the Convention; the Statute itself was approved by the Conference on 19 April and is therefore an integral part of the Convention. The Convention, as provided in its article 2, did not affect the rights and obligations arising out of the Treaty of Versailles. It was open to accession by States Members of the League of Nations and to States not Members of the League "to which the Council of the League may decide officially to communicate the present Convention". It made provision for denunciation by any Party after the expiry of five years from its entry into force (article 8).

148. Article 1 of the Statute defines "navigable waterways of international concern" in these terms:

"1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States...

"(*b*) Any natural waterway or part of a natural waterway is termed 'naturally navigable' if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used...; by 'ordinary commercial navigation' is to be understood navigation which, in view of the economic conditions of the riparian countries, is commercial and normally practicable."

"2. Waterways or parts of waterways, whether natural or artificial, expressly declared to be placed under the régime of the General Convention regarding navigable waterways of international concern..."

149. In its commentary, the Preparatory Commission [117] says that, in preparing the draft, it was guided by the relevant principles in force in the legislation of European States. It described the draft convention which it submitted to the Barcelona Conference as a "Revised Act of Vienna", though the document differs substantially from these earlier instruments. The commentary states:

(1) Navigation on "rivers accepted as international by the Congress of Vienna... is now only one element in interior international navigation". Hence, the preamble extends the principle of freedom of communications to national waterways. [This preamble does not appear to have been adopted by the Conference.]

(2) As a consequence of the technical evolution since the Congress of Vienna it is now possible to use river waters either as a source of electric power or for purposes of agriculture, forestry and fishing. Cases may therefore arise where the carrying out of such works, although harmful to the interests of navigation, would nevertheless be legitimate.

150. Article 2 of the Statute defines as navigable waterways of international concern, for the purpose of articles 5, 10, 12 and 14 of the Statute, "navigable waterways for which there are international commissions upon which non-riparian States are represented", and those "which may hereafter be placed in this category". Articles 3 and 4 of the Statute call for equality of treatment for all users of the river, and article 5 authorizes the riparian States, except those referred to in article 2, to reserve cabotage between ports in their own territory for their own flag. Article 10 of the Statute states the principle that riparian States are bound "to refrain from all measures likely to prejudice the navigability of the waterway or to reduce the facilities for navigation...." In addition, it imposes on the riparian States the duty to execute such works as are necessary for the maintenance and improvement of navigability, "...in the absence of legitimate grounds for oppo-

111 *Ibid.*, pp. 19-21.

112 De Visscher, *op. cit.*, pp. 23 and 24.

113 *Journal of the Economic and Social Council, First Year, 13 July 1946*, No. 29, pp. 515 *et seq.*

114 *Ibid.*, p. 516.

115 De Visscher, *op. cit.*, p. 95.

116 *League of Nations, Treaty Series*, vol. VII, pp. 36 *et seq.*

117 *League of Nations, Preparatory Documents, op. cit.*, pp. 59 *et seq.*

sition by one of the riparian States... based either on the actual conditions of navigability in its territory or on other interests such as... the maintenance of normal water-conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication...." (paragraph 3)

The riparian State may, by agreement with other riparian States, entrust such other States with works of upkeep (paragraph 4). Where there is a river commission, "decisions in regard to works will be made by that Commission" (paragraph 5). The settlement of any dispute arising as a result of these decisions may be requested "on the grounds that these decisions are *ultra vires,* or that they infringe international conventions governing navigable waterways..." in the manner specified in article 22 of the Statute, *i.e.* by arbitration and conciliation or by reference to the Permanent Court of International Justice. This provision is similar to that referred to above in connexion with article 13 of the Statute on Freedom of Transit.

151. Article 12 of the Statute gives the riparian States, in the absence of an agreement to the contrary, the right of independent administration over the part of the international navigable waterway which traverses their territory and, among other things, the right to publish the necessary regulations.

152. Article 14 of the Statute provides for cases where there is an international commission, which is directed "to have exclusive regard to the interests of navigation" and which is described as "one of the organizations referred to in article 24 of the Covenant of the League of Nations..." This article states that "there shall be placed under the direction of the League the international bureaux already established by general treaties if the parties to such treaties consent".

153. It may be useful to summarize briefly the provisions of the Statute regarding equality of treatment of the States Parties to the Convention:

(1) No dues of any kind may be levied anywhere on the course or at the mouth of the waterway, other than those intended to cover expenditure actually incurred in maintenance and improvement (article 7);

(2) Article 8 lays down the principle that persons and goods in transit on an international waterway should be exempted from customs formalities;

(3) Article 9 guarantees to users who are nationals of Contracting States treatment equal to that accorded to the nationals of the riparian State in all that concerns use of ports, port installations and the like.

154. An additional Protocol, signed at Barcelona on 20 April 1921[118] by Albania, Belgium, the British Empire, Chile, Czechoslovakia, Denmark, Finland, Greece, India, New Zealand, Norway, Portugal, Spain and Sweden, provided that those States would, on condition of reciprocity, concede on all navigable waterways and naturally navigable waterways "... which ... are accessible to ordinary commercial navigation to and from the sea, and also in all the ports situated on these waterways, perfect equality of treatment for the flags of any State signatory of this Protocol as regards the transport of imports and exports without transhipment...."

155. It should be noted that article 3 of the draft Convention,[119] entitled "Equality of Treatment", included a reference to land-locked States. It stated that, in applying the article "... the High Contracting Parties shall recognize the maritime flag of vessels belonging to any High Contracting Party not possessing a sea coast...." This provision was originally inserted at the request of the Swiss delegation[120] and extended to the signatories of the Convention the provisions of article 273, final paragraph, of the Treaty of Versailles and of article 225 of the Treaty of St. Germain, which read as follows:

"The High Contracting Parties agree to recognize the flag flown by the vessels of an Allied or Associated Power having no sea coast which are registered at some one specified place situated in its territories and such place shall serve as the port of registry of such vessels."[121]

This provision is included, in more general terms, in article 4, last paragraph, of the Statute, which states:

"No distinction shall be made in the said exercise [of navigation], by reason of the point of departure or of destination, or of the direction of the traffic."

Although this clause does not refer directly to the flag of nations having no sea coast, it follows from it that persons and goods proceeding from or to those States are to enjoy freedom of transit along international navigable waterways. The question of the "flag" was, in fact, dealt with in a solemn "Declaration" adopted by the Conference, which will be discussed below.

(iii) *Declaration recognizing the right to a flag of States having no sea coast*[122]

156. The text of this Declaration resembles that of the provision in the Treaty of Versailles which was briefly commented on in the preceding paragraph. For the sake of greater clarity, the Declaration adopted by the Conference is quoted below:

"The undersigned, duly authorized for the purpose, declare that the States which they represent recognize the flag flown by the vessels of any State having no sea coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels."

157. In order to settle this question generally, that is, in order to render these clauses of the Treaties of Versailles and St. Germain applicable to all nations, the Commission[123] had proposed the special instrument

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[118] *League of Nations Treaty Series,* vol. VII, pp. 67 *et seq.*

[119] League of Nations, *Preparatory Documents, op. cit.,* p. 125.

[120] *Ibid.,* p. 69.

[121] De Martens, *Nouveau recueil général de Traités,* Third Series, vol. XI, pp. 533 and 773.

[122] League of Nations, Barcelona Conference, *Verbatim Records and Texts relating to the Convention on the Regime of Navigable Waterways of International Concern and to the Declaration recognizing the Right to a Flag of States having No Sea Coast,* Geneva 1921, p. 462.

[123] *Ibid.,* p. 421, and League of Nations, *Preparatory Documents, op. cit.,* p. 69.

quoted above. In the course of the discussion of the draft submitted by the Commission — which was adopted unanimously [124] — the representative of Great Britain observed that

"Certain difficulties are attendant upon the making of a Convention on this subject. ... It may be claimed that the right to a flag cannot be granted in a Convention which is open to denunciation. Legal difficulties might ensue. The vessels flying the flag of Switzerland, for example, might be considered as pirates. The opinion of the jurists is then that a declaration must be drafted."

158. The Conference concurred with this point of view and at it thirtieth meeting Mr. M. Valloton stated in his report, which was adopted unanimously, that the Committee on Navigable Waterways, after having adopted unanimously and without discussion the juridical principle contained in the draft convention, considered "that by means of an international declaration of a permanent character a higher juridical value could be secured for this recognition of the right to a flag of States which do not possess a sea coast".[125]

159. In consequence of this Declaration, the Swiss Confederation took the necessary action to give practical effect to these principles. The relevant texts have been published by the Swiss Federal Chancellery.[126]

(iv) *Recommendations relating to the International Régime of Railways and to ports placed under an international régime;*[127] *subsequent treaties*

Railways

160. The Barcelona Conference adopted, in addition, recommendations relating to the two matters mentioned above. The Conference proposed, with respect to railways, that States should adopt the following principles to govern railway traffic:[128]

(1) The international transport of goods should be facilitated by measures providing for:

(*a*) Through transport on the basis of a single waybill, subject throughout to the same obligations;

(*b*) Treatment of goods during the journey;

(*c*) Transhipment;

(*d*) The form in which international tariffs are to be established and the conditions of their application;

(2) The adoption by the Contracting States of measures to facilitate the international transport of passengers;

(3) The adoption by States of measures to facilitate the exchange of their rolling-stock;

(4) The adoption of the principle of non-discrimination with respect to passengers and goods;

(5) The creation of international bureaux which shall exchange any useful information relating to the exercise of their functions with the League of Nations.

161. These principles received concrete expression at the Second General Conference on Cumminications and Transit (Geneva, 15 November to 9 December 1923) in a Convention adopted by that Conference.[129] Like the Conventions on Freedom of Transit and the Regime of Navigable Waterways (*vide supra*), the Convention on the International Régime of Railways consists of the text of the Convention itself and of the Statute which, according to article 1 of the Convention, constitutes an integral part of the latter. It is hardly necessary at this point to discuss the instrument in detail; it consists of forty-four articles and its object is to give effect to the principles concerning transit laid down by the Barcelona Conference.

162. It should be noted, however, that by virtue of article 4, paragraph 2, the Contracting States undertook "... to give reasonable facilities to international traffic and to refrain from all discrimination of an unfair nature directed against the other Contracting States, their nationals or their vessel"; that the same provision recurs in article 20 (in the section dealing with scales of charges); that articles 35 and 36 contain the stipulations (considered above in another context) dealing with the settlement of disputes — conciliation and, if conciliation should fail, jurisdiction vested in the permanent Court of International Justice; and that the Protocol of Signature states: "that any differential treatment of flags based solely on the consideration of the flag should be considered as discrimination of an unfair nature in the sense of articles 4 and 20 of the Statute..."

Ports placed under an international régime[130]

163. The Barcelona Conference, while considering that the moment had not yet arrived for the conclusion of a general convention on the régime of ports, recommended that the following provisions should be applied:

"to the ports or parts of ports, with or without free zones, which may be placed under an international regime...

"(i) The nationals, property and flags of all nations shall enjoy complete freedom in the use of the port and shall be treated on a footing of absolute equality (article 1);

"(ii) This principle of equality shall also apply to charges imposed for the use of the port (article 2);

"(iii) In principle, the State in whose territory the port is situated shall be under an obligation to take measures to facilitate the operation of vessels in the port and to undertake works for upkeep and improvement (articles 3 and 4);

"(iv) In principle, the State which exercises sovereignty over the port shall be responsible for its administration. Similarly, the jurisdiction in administrative, civil, commercial or penal matters shall be that of that State (articles 5 and 6);

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[124] League of Nations, Conference of Barcelona, *Verbatim Records and Texts*, etc., sixteenth meeting of the Committee on Navigable Waterways, pp. 380 *et seq.*

[125] *Ibid.*, p. 384.

[126] *Recueil systématique des lois et ordonnances 1848-1947*, Berne 1951, vol. 7, pp. 502 *et seq.*

[127] League of Nations, Barcelona Conference, *Verbatim Records and Texts of the Recommendations Relative to the International Regime of Railways and of the Recommendations Relative to Ports Placed under an International Regime*, Geneva 1921.

[128] *Ibid.*, pp. 216-217.

[129] League of Nations, Document C.28.M.14.1924.VIII, pp. 85 *et seq.*, and official text in *League of Nations Treaty Series*, 1926, vol. XLVII, pp. 57 *et seq.*

[130] League of Nations, Barcelona Conference, *Verbatim Records and Texts Relative to ... the Recommendations Relative to Ports Placed under an International Regime*, Geneva 1921, pp. 241-244.

"(v) With respect to free zones, persons, goods, etc. proceeding to such a zone or to a third State shall be considered in transit across the territory of the State in which the port is situated (article 11);

"(vi) Any dispute concerning these principles shall be submitted to arbitration and, if necessary, to the judgement of the Permanent Court of International Justice (article 15)".

164. These principles were incorporated in a Convention and a Statute on the International Régime of Maritime Ports, which were adopted at the Second General Conference on Communications and Transit (Geneva, 15 November to 9 December 1923).[131]

165. This Convention, like those summarized above, referred in its preamble to article 23 (e) of the Covenant of the League of Nations and declared that the signatory States were desirous of ensuring, in the fullest measure possible, freedom of communications "by guaranteeing in the maritime ports... for purposes of international trade equality of treatment between the ships of all the Contracting States, their cargoes and passengers".

166. The signatories adopted the Statute annexed to and forming an integral part of the Convention. The provisions of the Convention are, *mutatis mutandis,* similar to those of the Convention on the International Régime of Railways.

167. Article 1 of the Statute defines "maritime ports" in these terms: "All ports which are normally frequented by sea-going vessels and used for foreign trade..." All vessels in these ports are guaranteed the fullest equality of treatment — subject to the principle of reciprocity — "... as regards freedom of access to the port, the use of the port and the full enjoyment of the benefits as regards navigation and commercial operations which it affords to vessels, their cargoes and passengers" (article 2). By article 8, paragraph 1, the signatories reserved the power of suspending the benefit of equality of treatment from any vessel of a State which does not apply the provisions of the Statute. Article 5 states that equal treatment shall be given to vessels of all flags in the assessment and application of customs duties. In addition, articles 4, 20, 21 and 22 of the Statute on the International Régime of Railways (*vide supra*) are declared to be applicable "in order that the principle of equal treatment in maritime ports laid down in article 2 may not be rendered ineffective..." (articles 5 and 6). Unless there are special reasons justifying an exception, the customs duties levied in the ports may not exceed those levied at customs frontiers (article 7).

The Statute applies to all vessels, whether publicly or privately owned, with the exception, however, of warships or vessels performing police or administrative functions (article 13). Article 21 contains the customary clause respecting arbitration and the compulsory jurisdiction of the Permanent Court of International Justice.

168. Some of the provisions of the Protocol of Signature should be mentioned. For example, paragraph 1 states that the Statute applies "to ports of refuge specially constructed for that purpose", and paragraph 4 is of direct interest to States not having a sea coast, for it states:

"(4) It is understood that the conditions of reciprocity laid down in article 2 of the Statute on the International Régime of Maritime Ports shall not exclude from the benefit of the said Statute Contracting States which have no maritime ports and do not enjoy in any zone of a maritime port of another State the rights mentioned in article 15 of the said Statute".[132]

(v) *Clauses relating to state of emergency and war*

169. All the instruments discussed above contain clauses in analogous terms relating to the right reserved to the Contracting States to suspend or restrict, in certain circumstances, the application of the liberal régime in question. For example, article 16 of the Statute on Maritime Ports provides:

"Measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may, in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of articles 2 to 7 inclusive; it being understood that the principles of the present Statute must be observed to the utmost possible extent."

and article 18 states:

"This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit."

Conclusion

170. This study has dealt with certain aspects of the problems of the access of land-locked countries to the sea, both from the theoretical and from the practical point of view. The subject is vast and touches on a large number of related questions — freedom of the sea, freedom of passage across the territorial sea, the use of maritime ports open to commerce, the equal treatment of the users of those ports, communication by road, rail and air across countries whose territories block the access of other countries to the sea.

171. The learned authorities have built up many theories to provide the access to the sea with a basis in doctrine. Some hold that access is a right conferred by nature on every country; others consider that the principle of the freedom of the sea is the foundation of access; and yet others take the view that a country without a sea coast is the beneficiary of a servitude of passage across a country having a sea coast.

172. In this connexion, the multilateral conventions concluded under the auspices of the League of Nations at Barcelona and Geneva testify to the progress of the idea that land-locked countries should be assured of free access to the sea and that such access should be provided

[131] League of Nations, Document C.29.M.15.1924.VIII, pp. 97 *et seq.*, and *League of Nations Treaty Series,* vol. LVIII, 1926-1927, No. 1379, pp. 287 *et seq.*

[132] Article 15, paragraph 1, provides:

"When in virtue of a treaty... or agreement, a Contracting State has granted certain rights to another State within a defined area in any of its maritime ports for the purpose of facilitating the transit... no other Contracting State can invoke the stipulations of this Statute in support of any claim for similar special rights."

for both in their interest and in the international community.

173. The practice of States has evolved a number of principles which find tangible expression in multilateral and bilateral treaties and of which the most important are:

(1) The principle of freedom of transit;

(2) The principle of non-discrimination, irrespective of the origin and destination of the goods and passengers in transit;

(3) The principle that persons and goods in transit should not be subjected to any vexatious formalities and that the charges payable by or in respect of them should be the same as those payable by other users.

In principle, these rules apply to traffic by whatever means of communication are chosen — rail, air or river. Ever since the Congress of Vienna, rivers have been governed by various regulations. International river commissions have been set up, composed of riparian and non-riparian States, which possess virtual administrative, police and regulatory powers and a very large measure of autonomy *vis-à-vis* the Governments which formed them. These bodies have proved their usefulness as instruments for carrying out the collective will of the States in a field which is of particular importance for the well-being of all.

174. Lastly, it should be noted that all the conventions referred to above contain general clauses providing for conciliation, arbitration and recognition of the compulsory jurisdiction of the Permanent Court of International Justice. These are useful provisions, for transit and access to the sea are capable of being divorced, in the interest of all States, from ephemeral political considerations and of forming the subject of arbitration — in the broard sense of the term — in the event of disputes between States.

175. Altogether, despite the imperfections discernible in it, the work accomplished under the auspices of the League of Nations is of undeniable value and the principles laid down in the instruments referred to can serve as a starting point for fresh advances in the field of freedom of transit, a freedom which is indispensable to the peaceful development of international relations.

176. From the numerous treaties and conventions considered, it would appear that there are a few, but sufficiently clear, rules which could no doubt serve as a basis for the framing of new provisions allowing to land-locked States an unquestioned right of access to ports and to the open sea — a right which those States need if they are to achieve full economic development.

ADDENDUM *

177. The following additional information was received from the delegations of Bolivia, Czechoslovakia and Luxembourg after the memorandum (A/CONF. 13/29) had been issued.

1. Additional information concerning paragraphs 77-81 [133]

(Paragraph 77) Treaties between Bolivia and Argentina

Under article 21 of the Convention on Economic, Financial and Cultural Co-operation of 26 March 1947, "the means of transport of each of the High Contracting Parties shall enjoy in the territory of the other the most favourable treatment permissible under their respective laws". Under article 23, the two countries agreed to grant each other for a period of fifty years freedom of transit for all kinds of products and goods imported through their territories from third countries. This privilege also applied to the products and goods of either country entering the other in transit when returning to their country of origin. Under article 24, each country granted the other the necessary permission and facilities to establish special zones and free warehouses in its river or inland ports, subject to local laws and regulations. Subsequent amendments to the above-mentioned Convention by the two Governments did not affect the provisions concerning transport and transit.

On 9 September 1954 an Economic Union Agreement was concluded, subsequently amended by the Argentine-Bolivian Commercial and Payments Agreement of 11 December 1956. Under article 1 of the latter, the two countries agreed to take the necessary steps to facilitate the import and export of their goods and products in which they normally trade. They also agreed to co-ordinate transport services in such a way as to promote such trade.

Lastly, it was agreed by an Exchange of Notes of 21 December 1957, signed on the occasion of President Aramburu's visit to Bolivia, to convene a meeting of

* Circulated as document A/CONF.13/29/Add.1, dated 3 March 1958.

[133] Supplied by the Bolivian delegation.

government representatives and railway, customs and immigration experts from Bolivia and Argentina to work out a system and propose a Rail Traffic and Rolling-Stock Agreement which, in keeping with the best international practices as regards combined railway services, would enable the railway lines of both countries to be more fully co-ordinated. Apart from these provisions, it should be noted that on various occasions the Argentine Government has offered to grant free warehouses and zones in the port of Rosario to facilitate Bolivian imports and exports through that port.

(Paragraph 78) Treaties between Bolivia and Brazil

The Treaty on the Export and Supply of Bolivian Petroleum, concluded at Rio de Janeiro on 25 February 1938, granted the fullest possible transit facilities, in accordance with international doctrine and existing treaties between Bolivia and Brazil, for the export of Bolivian petroleum and its derivatives through Brazilian territory. It was agreed that no national, State or municipal taxes should be levied on Bolivian liquid fuels in transit through Brazil and that Brazilian railway tariffs for their carriage should in no case be higher than those applied to petroleum and its derivatives from other sources consigned to Brazil.

By note of 28 June 1943, the Republic of Brazil informed Bolivia of its intention to establish in the port of Santos a free zone for the warehousing of goods consigned to or from Bolivia as soon as the Brazil-Bolivia railway came into public service.

At a meeting of the Bolivian and Brazilian economic delegations held at La Paz from 11 January to 23 February 1957, an instrument was signed (on 22 February) whereby the two Governments were recommended to conclude a Frontier Trade Agreement and an Agreement for the Establishment at Santos of Free Warehouses and Wharfs for Goods exported or imported by Bolivia. It was also recommended that an Exchange of Notes be signed laying down rules concerning freedom of transit between the two countries, additional to the provision then in force.

(Paragraph 79) Treaties between Bolivia and Chile

On 1 and 2 June 1950, Mr. Walter Larrain, the Chilean Chancellor, and Mr. Alberto Ostria Gutiérrez, Ambassador at Santiago, exchanged Notes in which —after referring to the orientation of Chile's international policy with respect to Bolivia's desire to obtain its own outlet to the Pacific Ocean, and recalling the terms of the Treaty of 18 May 1895 and the instrument of 10 January 1920, signed but not ratified by the legislatures; and the statements made by Mr Agustin Edwards, Chilean delegate to the League of Nations, in 1920, by President Arturo Alesandri in 1922, and by Mr. Luis Izquierdo, Minister for Foreign Affairs, in 1923; and also the reply by Mr. Jorge Matte to Mr. Secretary of State Kellogg's proposal of 15 April 1926 that Chile and Peru should cede Tacna and Arica to Bolivia—Mr. Walter Larrain stated that his Government, bearing this situation in mind, and imbued with fraternal sentiments towards Bolivia, "is prepared formally to enter into direct negotiations with a view to seeking a formula whereby Bolivia can be given its own sovereign outlet to the Pacific Ocean, and Chile can obtain compensation not of a territorial character but in a form which effectively meets its interests". In the above-mentioned Note, Chile offered to consult with Peru under the Protocol of 3 June 1929 to that end.

In January 1953, as the outcome of talks held at Arica, Mr. Guevara and Mr. Olavarria, the Chancellors of Bolivia and Chile respectively, signed an instrument stating that Bolivian goods in transit through Chilean territory should not be subject to the jurisdiction of the Chilean administrative and judicial authorities.

The Treaty on Bolivian-Chilean Economic Co-ordination, signed at Arica on 3 January 1955, provided that an agreement should be concluded, broadening and simplifying the present system of freedom of transit for goods exported from either country through the territory of the other to third countries. "The said system would likewise include the necessary facilities for the conveyance from either country through the territory of the other of goods coming from third countries". At the same time, in view of its importance for the economies of both countries, and in accordance with existing treaties on freedom of transit, both Governments agreed to grant each other facilities for the construction and operation by the *Yacimientos Petrolíferos Fiscales Bolivianos* of a pipeline between Oruro and Arica, to supply petroleum to consumers in Chile and provide an outlet to other markets.

Under the Additional Protocol signed at La Paz on 14 October 1955, the provision concerning the construction of the pipeline was amplified in the following terms: "Both Governments agree to provide all the necessary facilities for the construction, maintenance and operation, by the *Yacimientos Petrolíferos Fiscales Bolivianos* or by any private undertaking licensed by the Government of Bolivia, of pipelines linking Bolivian territory with the port of Arica or any other Chilean port". Under the same Protocol, Chile had first claim on Bolivian petroleum conveyed by the said pipelines. Methods of payment, in United States dollars, for Bolivian petroleum imported by Chile were laid down in an Exchange of Notes of 16 April 1956.

Referring to the above-mentioned documents, and announcing their approval by the Chilean National Congress, the Chilean Embassy at La Paz informed the Bolivian Chancellery, by Note of 22 March 1957, that the need for ratification by the Chilean Congress, an internal legal requirement in Chile, did not affect the Treaty and Additional Protocols or "the obligations concerning freedom of transit solemnly contracted by Chile with Bolivia in conformity with the existing Treaties between the two countries"; nor did it "affect the general facilities for pipelines constructed and operated by the *Yacimientos Petrolíferos Fiscales Bolivianos,* or by any private undertaking licensed by the Government of Bolivia, to terminate at Arica or any other Chilean port".

Lastly, by Notes of 23 April 1957 concerning details of the pipeline from Sicasica to Arica in the Chilean sector it was provided that the works should as far as possible be constructed on Chilean fiscal territory, the land being granted free of charge to the *Yacimientos*

Petrolíferos Fiscales Bolivianos in the form of a concession for the period during which the pipeline was in operation and that, should it become necessary to expropriate or to impose obligations, the Chilean Government would lease the land to the *Yacimientos Petrolíferos Fiscales Bolivanos,* which would pay any compensation involved.

(Paragraph 80) Treaties between Bolivia and Paraguay

On 20 October 1939, the Protocol on Economic Co-operation and Transit Facilities was signed, under which, for the purpose of promoting the development of natural resources, transit and trade between the two Republics, it was agreed to construct an overland means of communication between them.

The Joint Bolivian-Paraguayan Commission, which met on 10 November 1939, recommended a study of freedom of transit in accordance with the Peace Protocol of 12 June 1935 and the Final Treaty on Peace, Friendship and Boundaries of 21 July 1938.

An Agreement for the Construction of a Pipeline through the Paraguayan Chaco for the conveyance of Bolivian petroleum to a navigable port on the River Paraguay was signed on 16 November 1943. On the same date, Bolivia and Paraguay signed a Protocol on International Co-operation, under which the two Governments, bearing in mind the difficulties involved in the land-locked position in which their countries were situated " agreed on co-operation and mutual aid in their friendly negotiations, in accordance with existing international covenants and in harmony and solidarity with the other nations of the continent ". In addition, by an Exchange of Notes also signed on 16 November 1943, it was agreed to set up a Joint Bolivian-Paraguayan Commission for the implementation of article 7 of the Treaty on Peace, Friendship and Boundaries of 21 July 1938, which definitively proclaimed that " Paraguay guarantees the fullest freedom of transit through the Puerto Casado zone for products from and to Bolivia, with the right to establish customs offices and to construct depots and warehouses ".

The Agreement on Pipelines and Petroleum to Paraguay, concluded between the two countries on 21 December 1956, repeated the undertaking that the fullest freedom of transit would be afforded for Bolivian petroleum through Paraguayan territory.

(Paragraph 81) Treaties between Bolivia and Peru

Under the Declaration signed at Lima on 30 July 1955, in which the Governments of Bolivia and Peru reiterated their intention to develop and improve communications between the two countries, it was agreed to conclude a Treaty on Common Traffic which " in the light of the reciprocal facilities already available to both countries, will take due account of the future utilization of the proposed highways and railway and will explicitly provide full and unrestricted freedom of transit between the two countries, so that Bolivia will be able to use all ports and means of communication in Peru ".

2. Communications Agreement between the Polish People's Republic and the Czechoslovak Republic, signed at Prague on 13 January 1956

This Agreement abrogated and superseded the Agreement concluded between the two countries on 4 July 1947 (see paras. 92-102 of the memorandum).

Considering the general development of economic co-operation between Poland and Czechoslovakia, particularly in the fields of maritime and inland waterway navigation and railway transport, the State Council of the Polish People's Republic and the President of the Czechoslovak Republic have decided to replace the Polish-Czechoslovak Communications Agreement, signed at Prague on 4 July 1947, by a new communications agreement designed to meet the present economic requirements of the two States and have appointed for that purpose as their plenipotentiaries :

The State Council of the Polish People's Republic :

Mr. Mieczyslaw Popiel, Minister of Navigation ;

The President of the Czechoslovak Republic :

Mr. Antonin Pospisila, Minister of Communications,

Who, having exchanged their full powers, found in good and due form, have agreed on the following provisions :

SECTION I

Sea transport

Article 1

(1) The two Contracting Parties shall, in accordance with their economic requirements, create the conditions necessary for the proper utilization of Polish and Czechoslovak sea-going vessels.

(2) Poland shall, in accordance with its economic requirements, provide in Polish seaports the facilities necessary for Czechoslovakia to derive the greatest possible benefit from those ports.

Article 2

(1) Merchant vessels flying the Czechoslovak flag, hereinafter referred to as " Czechoslovak vessels ", shall be permitted to use Polish seaports as technical shipping bases.

(2) In particular, Poland shall make available to Czechoslovak vessels space for the storage of materials necessary for their operation and maintenance, and shall permit them to use the repair services in workshops and dockyards and all other technical and classification services and to take on the necessary supplies of fuel, food, water, etc.

Article 3

(1) Czechoslovak vessels, vessels chartered by Czechoslovak undertakings and the cargoes of such vessels shall be accorded in the Polish seaports and in Polish internal maritime waters and territorial waters the same treatment as Polish vessels and cargoes.

(2) The vessels mentioned in the preceding paragraph shall not be entitled to engage in coastal shipping, fishing or any

other maritime operation in Polish internal maritime waters and territorial waters, nor shall they perform in Polish ports and roadsteads and on beaches such functions as piloting, towing, salvage and subsidiary services.

Article 4

Without prejudice to the provisions of article 5, the vessels mentioned in article 3 (1) shall be subject in Polish seaports and in Polish internal maritime waters and territorial waters to the provisions of Polish law, especially the provisions concerning public order and security, customs, foreign exchange, public health, veterinary services, plant protection, etc.

Article 5

(1) The national character of Czechoslovak vessels shall be determined in conformity with the provisions of Czechoslovak law.

(2) In Polish seaports and in the internal maritime waters and territorial waters of the Polish People's Republic, Czechoslovak vessels shall be subject to the provisions of Czechoslovak law concerning the fitting-out, installation, rescue equipment, measurements and seaworthiness of vessels, provided that those provisions do not conflict with the generally accepted principles of international law.

(3) Czechoslovak vessels shall not be subject in Polish seaports to any new measurement requirements and the amounts of port charges shall be determined on the basis of the measurement certificate issued or recognized by the Czechoslovak authorities.

Article 6

(1) Each of the Contracting Parties shall be entitled, in accordance with the economic requirements of the two States, to establish and maintain in the territory of the other Contracting Party undertakings the activities of which are connected with sea transport, provided that such undertakings comply with the legal provisions in force in that territory.

(2) Undertakings of either Contracting Party which engage in activities connected with sea transport may, provided that they comply with the conditions mentioned in the preceding paragraph, establish and maintain in the territory of the other Contracting Party enterprises, agencies, branches and other places of business.

Article 7

As regards free access to ports, commercial facilities granted in connexion with vessels and their cargoes, the facilitation of loading and discharging and the like, Poland shall accord to the Czechoslovak undertakings and places of business specified in article 6 the same treatment as it accords to Polish undertakings and places of business.

Article 8

(1) In effecting shipments of merchandise, the undertakings of the two Contracting Parties specified in article 6 shall act in close economic co-operation. Such co-operation shall also extend to mutual assistance and collaboration in the purchase, construction and repair of vessels, in the storage of cargoes, in giving assistance in the case of accidents, in the replacement of crew shortage and in granting *pratique* to sea-going merchant vessels.

(2) The scope and conditions of the co-operation referred to in the preceding paragraph shall be agreed upon by the above-mentioned undertakings. Where necessary, such undertakings shall hold joint consultations.

SECTION II

Transport on Inland Waterways

Article 9

(1) Each of the Contracting Parties shall grant inland navigation undertakings of the other Contracting Party the right to use specified inland waterways in its territory for the conveyance of goods, passengers and baggage between the two States and for transit traffic.

(2) Transport routes shall be determined by special agreement.

Article 10

Navigation on the inland waterways of either Contracting Party shall be open to vessels which are registered at a port of one of the Contracting Parties and which conform to the technical shipping standards required on the waterway concerned.

Article 11

Inland navigation vessels of either Contracting Party may use the inland ports of the other Contracting Party as technical shipping bases.

Article 12

(1) Vessels of either Contracting Party shall be subject to the legal provisions in force in the territory which they are traversing.

(2) The shipping traffic organized in the territory of one of the Contracting Parties by an inland navigation undertaking of the other Contracting Party shall be subject only to the restrictions arising out of legal provisions regarding public order and security, customs, public health, veterinary services and plant protection.

Article 13

In the event of accident, collision or other like occurrence, the two Contracting Parties shall give each other all possible assistance, including assistance in workshops and shipyards. The amount of assistance thus given shall be sufficient to enable the vessel concerned to return safely to its own waterways system.

Article 14

Ships' documents and documents concerning crews issued by the competent authorities of one of the Contracting Parties shall be recognizing by the other Contracting Party.

Article 15

The inland navigation undertakings of either Contracting Party may establish and maintain in the territory of the other Contracting Party :

(*a*) Representatives' offices, agencies and branches ;

(*b*) Repair yards ; and

(*c*) Stores of technical supplies and materials,

provided that they comply with the legal provisions in force in that territory.

Article 16

As regards the use of river and sea ports, specific transport routes, repair possibilities, supplies and the like, each of the Contracting Parties shall accord to the vessels and cargoes of inland navigation undertakings of the other Contracting Party and to their places of business as specified in article 15 the same treatment as it accords to the vessels and cargoes of its national undertakings and to their places of business.

SECTION III

Railway transport

Article 17

With a view to the further improvement of railway communications and the proper utilization of rolling stock, each of the Contracting Parties shall :

(*a*) Endeavour to ensure convenient railway connexions for mutual and transit communications ;

(*b*) Ensure the speedy completion of all formalities connected with the conveyance of passengers, baggage and goods through frontier crossings and, by mutual agreement, endeavour to simplify those formalities in such a manner that trains shall pass through frontier stations with the minimum of delay ;

(*c*) Provide for the rapid, safe and regular railway transport of passengers, baggage, goods and express consignments ;

(*d*) Arrange for the speedy return of railway cars of the other Contracting Party which are present in its territory.

Article 18

The two Contracting Powers shall endeavour to fix the number of routes and frontier crossings, as well as the timetables, that shall ensure the most favourable conditions for railway transport.

SECTION IV

Joint provisions

Article 19

Each Contracting Party shall submit to the other Contracting Party all plans concerning the transit of goods through its territory. The volume of goods covered by such plans shall be determined by mutual agreement with due regard to the economic requirements of the country effecting transit and to the capacity of the means of transport and installations at the disposal of the country through which transit is effected.

Article 20

Undertakings and places of business of each of the Contracting Parties, as specified in articles 6 and 15, shall be entitled to employ in the territory of the other Contracting Party nationals of either Contracting Party and nationals of third countries, subject to the regulations concerning the crossing of the State frontier and residence in the territory of the other Contracting Party.

Article 21

Holders of Czechoslovak seamen's books and, in the case of navigation on inland waterways, holders of boatmen's books or persons whose names have been entered therein, shall be entitled to cross the State frontier at places designated for that purpose, in conformity with the provisions stipulated in a special agreement.

Article 22

(1) Undertakings and places of business of each Contracting Party, as specified in articles 6 and 15, shall be exempt in the territory of the other Contracting Party, on a basis of reciprocity, from taxes on income from and turnover of transport activities in the territory of the other Contracting Party and from taxes on their property in that territory.

(2) Save as provided by special agreements, the above-mentioned exemption shall not apply to any activity which is not directly connected with transport effected by the undertakings and places of business specified in the preceding paragraph or to any non-transit transport which they may effect between river ports of the other Contracting Party (cabotage).

Article 23

(1) Subject to compliance with the regulations concerning public order and security, health, and animal and plant protection, the two Contracting Parties shall grant each other mutual exemptions from customs duties and customs charges and from restrictions on imports and exports in respect of :

(*a*) Sea-going and non-sea-going vessels with standard equipment and fittings, spare parts, instruments, fuel, lubricants in quantities corresponding to normal requirements, food supplies for the crew and other necessary supplies for use on the vessel ;

(*b*) Cargoes imported by any means of transport belonging to one of the Contracting Parties and conveyed through the territory of the other Contracting Party ;

(*c*) Articles conveyed for the equipment, maintenance or repair of sea-going or non-sea-going vessels and articles imported for the equipment of shipping undertakings or their representatives' offices, agencies, branches or other places of business with a view to conducting shipping business.

(2) Detailed provisions concerning the customs exemptions referred to in the preceding paragraph shall be drawn up by agreement between the customs authorities of the two Contracting Parties.

(3) The customs authorities of the two Contracting Parties shall reach a mutually satisfactory agreement regarding customs concessions and exemptions to be granted to members of crews and the members of their families importing articles for personal use.

Article 24

(1) The exemption from customs duties and customs payments shall not apply to fees for services.

(2) Articles which have been exempted from customs duties and customs payments may not be resold to any other person in the territory into which they have been imported. The customs authorities may take measures to ascertain whether such articles have been used for the declared purpose.

(3) The customs offices of the country of transit may examine any transit cargo or order that it be accompanied by an official guard.

Article 25

In order to ensure that this Agreement is duly carried into effect and to create conditions conducive to the further development of co-operation, the interested authorities and the undertakings of the two Contracting Parties shall hold joint consultations ; such consultations shall be called at the request of either Party.

SECTION V

Final provisions

Article 26

If at any time during the term of this Agreement either of the Contracting Parties asks for a revision of all or any of the provisions thereof, the other Contracting Party shall be bound to open negotiations not later than three months from the date of submission of a proposal for revision.

Article 27

This Agreement is subject to ratification and shall enter into

force on the date of the exchange of the instruments of ratification, which shall take place at Warsaw.

Article 28

This Agreement is concluded for a period of five years from the day of its entry into force. It shall be automatically extended for successive periods of five years, unless one of the Contracting Parties denounces the Agreement not later than one year before the expiry of any given five-year period.

Article 29

This Communications Agreement shall supersede the Polish-Czechoslovak Communications Agreement signed at Prague on 4 July 1947.

On the entry into force of this Agreement, all Polish-Czechoslovak agreements concluded in connexion with the aforesaid Communications Agreement of 4 July 1947 shall cease to have effect.

This Agreement was drawn up at Prague on 13 January 1956, in duplicate, in the Polish and Czech languages, both texts being equally authentic.

IN FAITH WHEREOF the aforesaid plenipotentiaries have signed this Agreement and have affixed thereto their seals.

For the Polish People's Republic :

(*Signed*) M. POPIEL

For the Czechoslovak Republic :

(*Signed*) A. POSPISILA

Government declaration of 16 November 1956 concerning the exchange of the instruments of ratification of the Communications Agreement between the Polish People's Republic and the Czechoslovak Republic, signed at Prague on 13 January 1956.

Notice is hereby given that, pursuant to article 27 of the Communications Agreement between the Polish People's Republic and the Czechoslovak Republic, signed at Prague on 13 January 1956, the exchange of the instruments of ratification of the aforesaid Agreement took place at Warsaw on 14 September 1956.

For the Minister of Foreign Affairs :

(*Signed*) J. WINIEWICZ

3. List of Clauses having a bearing on the question of free access to the sea of land-locked countries, contained in the treaties establishing an economic union between Belgium and Luxembourg and between the Benelux Group of States

In the Convention of 25 July 1921 establishing an economic union between Belgium and Luxembourg, this question is governed by articles 3 and 9, which read as follows:

Article 3

Except as otherwise provided in the present Treaty, commerce between the countries of the Union shall be entirely free and unrestricted and subject to no import, transit or export limitations or prohibitions nor to duties or charges or any kind.

The subjects of one of the States of the Union, who are settled or reside temporarily in the territory of the other State, or make use of the territory of that State or its land, water or air transport installations, may not be subjected in the latter State, either in respect of the produce of their agriculture, trade, industry, capital or labour, or in respect of the agricultural, commercial, industrial or financial operations, or of the trades and professions which they practise in that State, or in respect of the transport of their merchandise, persons or property, to methods of taxation, traffic regulations, duties, charges, tariffs, taxes or licences, under whatever name they may be described, other than those which may be applied to nationals ; and the privileges, immunities or benefits of any description whatever enjoyed by the nationals of one of the Contracting Parties as regards trade or industry shall be shared by the nationals of the other.

Merchants, manufacturers and their representatives who are established in one of the contracting States may make purchases in the other State to meet their commercial and industrial requirements and may obtain orders, with or without samples, but without actually introducing the goods for sale, and they shall not be liable in that State to any trade licence or tax if they furnish satisfactory proof that they themselves, or the firm which they represent, have complied with all the obligations imposed in this connexion by the country in which they are established.

Article 9

Each of the High Contracting Parties reserves the right to issue such decrees prohibiting traffic and movement as it may deem necessary in the interests of law and order or for sanitary reasons, more particularly to prevent the spread of epidemics and epizootic diseases or to protect agriculture from the introduction or propagation of noxious insects, provided always that such prohibitions do not affect traffic between the Contracting States in any other way, or affect it more injuriously than they affect the internal traffic of the State which has resorted to them.

Licences or permits for the transport of dangerous goods, such as explosives, which have been issued by the competent authorities in Belgium shall be valid for the Grand-Duchy of Luxembourg and vice versa.

The movement of goods which are consigned to one of the States of the Union and are in transit through the territory of the other may under no condition be subjected to any hindrance or prohibition.

In the draft treaty establishing the Benelux Economic Union, the question of communications is governed by the articles reproduced below:

Article 2

1. The nationals of each of the High Contracting Parties shall be entitled to enter and leave the territory of the other Contracting Parties.

2. They shall enjoy, in that territory, the treatment accorded to nationals in regard to :

[134] This list was supplied by the delegation of Luxembourg.

(*a*) Movement, sojourn and establishment ;

(*b*) Economic and professional activities, including provision of services ;

(*c*) Transactions relating to capital ;

(*d*) Conditions of work ;

(*e*) Benefit of social security ;

(*f*) Taxes and dues of all kinds ;

(*g*) Eenjoyment of civil rights and legal and judicial protection of their person, rights and interests.

Article 3

1. The movement of goods, without distinction as to origin, place of consignment or destination, between the territories of the High Contracting Parties shall be exempt from all import and excise duties and from all other taxes, dues, fees or charges whatsoever.

2. Such movement shall also be exempt from all economic and financial prohibitions or limitations including quantitative, qualitative and exchange restrictions.

3. Goods originating in the territory of one of the High Contracting Parties shall enjoy, in the territory of the other Contracting Parties, the treatment accorded to national goods.

Article 4

The movement of capital between the territories of the High Contracting Parties shall be exempt from all prohibitions or limitations.

Article 5

1. The movement of services between the territories of the High Contracting Parties shall be exempt from all taxes, dues, fees or charges whatsoever.

2. Such movement shall also be exempt from all economic and financial prohibitions or limitations, including quantitative, qualitative and exchange restrictions.

Article 6

Without prejudice to the provisions of articles 2 to 5 inclusive of the present Treaty, the High Contracting Parties shall take joint action to ensure that freedom of movement is not unduly restricted by any legislative provision or regulation or any other provision of public law, including sanitary regulations.

Article 7

The High Contracting Parties shall take joint action to ensure that conditions of competition in their territory are not distorted by any legislative provision or regulation or any other provision of public law.

...

Article 85

The conditions under which nationals of the High Contracting Parties not settled in the territory in which they wish to offer their services may use national transport by road or inland waterway shall be determined by the Committee of Ministers.

Article 86

1. Transport of goods by road and occasional transport of passengers by road between the territories of the High Contracting Parties shall be subject to common rules for operation and supervision laid down by the Committee of Ministers. With a view to promoting the harmonious development of such transport of goods, the Committee of Ministers shall also adopt any necessary measures, including price-fixing measures.

2. The régime of regular transport of passengers by road between the High Contracting Parties shall be determined by the Committee of Ministers.

Article 87

1. In regard to international transport by road, except for occasional passenger transport, leaving the territory of a High Contracting Party for a country not a party, the Committee of Ministers shall lay down the conditions for admission of nationals of the High Contracting Parties not settled in the territory of that High Contracting Party.

2. The Committee of Ministers shall lay down rules for the operation and supervision of occasional transport of passengers by road leaving the territory of one of the High Contracting Parties for a country not a party.

Article 88

In regard to transport by road or inland waterway operated by nationals of the High Contracting Parties, each Party shall guarantee persons not settled in its territory treatment at least as favourable, compared with persons settled there, as the treatment accorded when the present Treaty enters into force.

Article 89

In regard to air transport, each of the High Contracting Parties shall pursue, without prejudice to the provisions of article 5 of the present Treaty, a liberal policy on the granting of commercial air rights to other Contracting Parties for the operation of regular international air services traversing its territory or within its territory.

Articles 34 and 35 of the Transitional Convention and article 9 of the Protocol giving effect to the Treaty of Union :

Article 34

Within a period not exceeding three years, the High Contracting Parties shall progressively abolish quantitative restrictions :

(*a*) Relating to transport of goods by road and occasional transport of passengers by road between their territories ;

(*b*) Relating to occasional transport of passengers by road from the territory of one of the High Contracting Parties to a country not a party.

Article 35

During a period of five years, the transport by water of river sand and gravel imported from the Netherlands into Belgium, may be carried on, as regards the utilization of river craft, in accordance with the procedure applicable to the import of sand and gravel at the time when the Treaty of Union entered into force.

Article 9

1. With a view to the implementation of articles 2, 5, 6, 7, 85 and 87 of the Treaty of Union, the High Contracting Parties shall endeavour to harmonize their legislative provisions and regulations and other provisions of public law relating to national transport by rail, road and inland waterway.

2. For the implementation of article 7 of the Treaty of Union, the High Contracting Parties shall abolish all measures of support or protection, operating through internal transport and favouring one or more undertakings or industries. This provision shall not apply to competitive rates.

3. When the Communications Commission, acting within its terms of reference, examines particular cases coming within the

scope of paragraph 2 above, it shall receive, confidentially, at the request of the delegates of one of the High Contracting Parties, any information required concerning the prices and conditions of transport applied.

4. For the purposes of article 68, paragraph (*a*), of the Treaty of Union, " charges " shall be understood to mean charges borne by transport undertakings which are in fact chargeable to the community, and taxes which are liable to distort conditions of competition between the different modes of transport. " Advantages " shall be understood to mean charges borne by the community which are in fact chargeable to transport undertakings.

5. No provision of the Treaty of Union shall prejudice :

(*a*) Measures taken or to be taken to implement principles adopted before the Treaty of Union entered into force by one of the High Contracting Parties, with a view to the financial reform of the national railways, provided that such measures are in conformity with the provisions of article 68 of the Treaty of Union ;

(*b*) Credit facilities or other measures to promote the development or modernization of a particular mode of transport, provided that such facilities or measures do not affect commercial relations between the High Contracting Parties in a manner incompatible with the aims of the Union.

6. In regard to air transport, the High Contracting Parties shall apply the provisions of article 9 of the Treaty of Union, in particular to technical questions under study or discussion by international civil aviation organizations. At the request of one of the High Contracting Parties they shall examine the possibility and advisability of extending the co-ordination of policies to other questions and in particular to their relations with countries not Parties to the present Treaty.

Luxembourg, 21 November 1957.