

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.5/L.6-L.21

Annexes

Extract from the *Official Records of the United Nations Conference on the Law of
The Sea, Volume VII (Fifth Committee
(Question of Free Access to the Sea of Land-locked Countries))*

*Principle IV**RÉGIME TO BE APPLIED IN PORTS*

Each land-locked State is entitled to the most favoured treatment and should under no circumstances receive a treatment less favourable than the one accorded to the vessels of the maritime State as regards access to the latter's maritime ports, use of these ports and facilities of any kind that are usually accorded.

*Principle V**RIGHT OF FREE TRANSIT*

The transit of persons and goods from a land-locked country towards the sea and vice versa by all means of transportation and communication must be freely accorded, subject to existing special agreements and conventions.

The transit shall not be subject to any customs duty or specific charges or taxes except for charges levied for specific services rendered.

Note. — The Austrian delegation presumes that principle V does not have a further scope than the obligations resulting from the statute of Barcelona of which Austria is a signatory.

*Principle VI**RIGHTS OF STATES OF TRANSIT*

The State of transit, while maintaining full jurisdiction over the means of communication and everything related to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the right of free access to the sea shall in no way infringe on its legitimate interests of any kind, especially with regard to security and public health.

*Principle VII**EXISTING AND FUTURE AGREEMENTS*

The provisions codifying the principles which govern the right of free access to the sea of the land-locked State shall in no way abrogate existing agreements between two or more contracting parties concerning the problems which will be the object of the codification envisaged, nor shall they raise an obstacle as regards the conclusion of such agreements in the future, provided that the latter do not establish a régime which is less favourable than or opposed to the above-mentioned provisions.

DOCUMENT A/CONF.13/C.5/L.6

Afghanistan, Albania, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxembourg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia and United Arab Republic: proposal

[Original text: French]
[26 March 1958]

I*Right of free access to the sea*

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

II*Right to a flag*

Every State without a coast possesses, on terms of complete equality of treatment with maritime States, the right to a flag in respect of such of its ships as are duly registered in a specific place in its territory; that place shall be the port of registry for such ships.

Commentary

Needless to say, equality of treatment implies equality of rights and obligations.

III*Right to sail in the territorial sea and in internal waters*

Every State without a coast has the right to claim that ships flying its flag shall enjoy in the territorial sea and the internal waters of any maritime State a régime identical to that accorded to the ships of other maritime States.

IV*Régime applicable in ports of the coastal State*

1. Every State without a coast shall be entitled to most favourable treatment, and in no event shall such treatment be less favourable than that accorded to ships of the coastal State, in maritime ports under the sovereignty or

authority of the coastal State, as regards freedom of access to the ports, the use of the ports and the full enjoyment of the facilities of all kinds generally granted.

2. The expression "coastal State" means, for the purposes of this article, any State whose territory can, in the light of the geographical and economic circumstances, be reasonably regarded as constituting the means of access to the sea for a specific State without a seacoast.

3. For the purposes of this article, the expression "maritime ports" means ports normally used by merchant ships and open to international trade.

V*Right of free transit to the sea*

1. Transit from a land-locked country towards the sea and vice versa by all means of transportation and communication shall be freely accorded, subject to existing special agreements and conventions.

2. The transit shall not be subject to any customs duty or special charges or taxes levied by the coastal State or by the State of transit, except for charges levied for specific services rendered.

Note. — The Austrian delegation is of the opinion that the principle expressed in article V has no wider implications than the obligation deriving from the Statute of Barcelona, of which Austria is a signatory.

VI*Form of the exercise of the right of access to the sea*

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

VII

Rights of protection of the State of transit

The coastal State or State of transit, maintaining full sovereignty over its territory and in particular over the means of communication and all matters relating to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the rights mentioned in articles IV and V shall in no way infringe any of its legitimate interests whatsoever, especially its interests in security and public health.

Commentary

It was pointed out that it might be desirable to provide for a system of peaceful settlement of disputes, so as to ensure the rapid settlement of any controversies which might arise in connexion with the interpretation of the expression "legitimate interests".

Note. — The delegation of Bolivia stated that its arrangements for transit through the territory of the coastal States towards the Pacific were broad and liberal and that they remained in force at all times and in all circumstances, and that consequently the clause included in article VII was not applicable to those arrangements.

VIII

Relation of the new regulations to previous agreements

Articles I to VII neither abrogate nor affect agreements which are in effect between two or more of the contracting parties concerning questions regulated under the said articles, nor do they preclude the conclusion of similar agreements in the future, provided that such future agreements do not institute a less favourable régime and do not conflict with the aforesaid articles.

IX

Exclusion of the application of the most-favoured-nation clause

The present provisions as well as those of multilateral and bilateral agreements concluded or to be concluded between land-locked States and countries of transit and coastal countries are excluded from the application of the most-favoured-nation clause.

Note. — The delegations of Austria, Luxembourg and Switzerland reserve their position as to the form and mode of codification of the rights of land-locked States.

DOCUMENT A/CONF.13/C.5/L.7

Italy, Netherlands and United Kingdom of Great Britain and Northern Ireland: proposal

[Original text: English]
[27 March 1958]

This proposal, which comprises parts I and II below, is submitted on the understanding that no major change will be suggested by other committees in the structure of the following provisions concerning the law of the sea adopted by the International Law Commission (A/3159):

- (a) The first paragraph of article 15;
- (b) The first phrase in article 27;
- (c) Article 28;
- (d) Article 49;
- (e) The first paragraph of article 61.

Should any amendments of substance be made to any of the above-mentioned provisions, the Fifth Committee reserves the right to make further proposals.

I

1. The Fifth Committee recommends to the Conference the insertion in the main Convention on the Law of the Sea of the following new article:

"Any reference in this convention to 'all States', 'each State' and 'every State' shall be understood to comprise land-locked States as well as States possessing a sea coast."

2. The Fifth Committee recommends to the Conference the addition to article 28 of the following sentence:

"Ships flying the flag of land-locked States enjoy on the high seas the same régime as that enjoyed by ships flying the flag of States that possess a sea coast."

II

The Fifth Committee recommends to the Conference the adoption of a resolution on "Free Access to the Sea of Land-locked Countries" in the following terms:

The United Nations Conference on the Law of the Sea,

Whereas the General Assembly of the United Nations, in resolution 1105 (XI) of 21 February 1957, recommended

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

Whereas the Economic Conference of the Organization of American States, held at Buenos Aires from 15 August to 4 September 1957, adopted a declaration and three resolutions pertaining to the question of free access to the sea of land-locked countries,

Whereas at the invitation of the Swiss Federal Government, a preliminary conference of States without direct territorial access to the sea was held in Geneva from 10 to 14 February 1958 and this conference enunciated certain principles on the question of access to the sea of land-locked countries,

Whereas the United Nations Conference on the Law of the Sea, which met in Geneva from 24 February to 24 April 1958, entrusted one of its main committees (the Fifth Committee) with the task of studying the question of free access to the sea of land-locked countries,

1. *Recognizes* the importance to land-locked countries of free access to the sea, if, having regard to their geographical situation, those countries are to enjoy the benefits of the freedom of the seas in an equal manner with countries possessing a sea coast;

2. *Considers* that such free access consists essentially in the ability to sail ships on the high seas, to transport persons and goods across the territory of States situated between land-locked countries and the sea coast, and to use the ports of coastal States;

3. *Considers further* that the question of free access to the sea of land-locked countries falls within, and is governed by, the same principles of international law (including reciprocity) as regulate transit and the use of ports between all countries, both those having and those not having a sea coast;

4. *Takes note* that, in article 28 of the Convention on the Law of the Sea (hereinafter referred to as "the Convention") of today's date, the principle embodied in the "Declaration recognizing the Right to a Flag of States having no Sea Coast" adopted at Barcelona on 20 April 1921, has been reaffirmed;

5. *Notes* that in the same convention the following rights and freedoms are also guaranteed to land-locked countries on the same basis as other countries:

- (a) The right of innocent passage (article 15);
- (b) The freedoms of the high seas (article 27);
- (c) The right for their nationals to engage in fishing on the high seas (article 49);
- (d) The rights to lay telegraph, telephone or high-voltage power cables and pipelines on the bed of the high seas (article 61);

6. *Considers* that it would be to the benefit both of land-locked countries and of countries situated between them

and the sea coast if all countries concerned, which are in a position to do so, were to become parties to the Convention and Statute on Freedom of Transit concluded at Barcelona on 20 April 1921, and the Convention and Statute on the International Régime of Maritime Ports concluded at Geneva on 9 December 1923, as well as the Protocol of Signature thereto:

7. *Recognizes* that the provisions of the Convention of today's date, as well as those of the international instruments referred to in paragraph 6, may be usefully supplemented in individual cases by local or regional agreements, and that many such agreements have been entered into;

8. *Expresses the hope* that, in concluding such agreements in the future, the parties concerned will be guided^a by a spirit of mutual co-operation, by the principles of the instruments referred to in paragraph 6 and by a desire to promote international trade and commerce generally, due regard being paid in particular to the difficulties created for land-locked countries by their geographical situation.

DOCUMENT A/CONF.13/C.5/L.8

Chile: amendment to document A/CONF.13/C.5/L.6

[Original text: Spanish]
[2 April 1958]

Replace section I by the following text:

I

Right of free access to the sea

Every land-locked State has the right to free access to the sea. This right consists essentially in the free transit of persons and goods through the territory of the States situated between the land-locked countries and the coast, and in the use of the ports of maritime States.

DOCUMENT A/CONF.13/C.5/L.9

Letter from the Chairman of the First Committee to the Chairman of the Fifth Committee

[Original text: English]
[9 April 1958]

At its 34th meeting, held on 2 April 1958, it was the sense of the First Committee that the following proposal, submitted by the representative of Bolivia, should, in accordance with the oral understanding reached between the Chairmen of the First and Fifth Committees, be referred to the Fifth Committee for its consideration:

"Ships of a land-locked State shall have a special right of passage through the territorial sea and internal waters of the coastal State contiguous to its territory, for the purpose of entering or leaving ports of the latter State."

I shall be obliged if you will kindly bring this matter to the attention of the Fifth Committee.

(Signed) K. H. BAILEY
Chairman of the First Committee

DOCUMENT A/CONF.13/C.5/L.10**United States of America: amendment to document A/CONF.13/C.5/L.7**

[Original text: English]
[9 April 1958]

Delete paragraph 3 of part II and substitute the following:

"3. *Having studied* the question of free access to the sea of land-locked countries, as established by international practice or treaties, in accordance with resolution 1105 (XI) adopted by the General Assembly of the United Nations on 21 February 1957:

"(a) *Considers* that States should grant the greatest possible facilities to land-locked countries for access to

the sea and that they should co-operate with each other to this end, and

"(b) *Recognizes* the need of land-locked countries for adequate transit facilities in promoting international trade and considers that governments should give full recognition to the needs of land-locked countries in the matter of transit trade and, therefore, accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries."

DOCUMENT A/CONF.13/C.5/L.11**Sweden: proposal**

[Original text: English]
[9 April 1958]

TERMS OF REFERENCE OF WORKING PARTY

That a working party be established with the following terms of reference:

To report to the Fifth Committee not later than 11 April its recommendations concerning the form or forms in which the results of the Committee's work should be expressed.

DOCUMENT A/CONF.13/C.5/L.12**Hungary: amendment to document A/CONF.13/C.5/L.11**

[Original text: English]
[9 April 1958]

Replace the words following "its recommendations concerning" by the words "the instrument or instruments in which the results of the Committee's work should be embodied."

DOCUMENT A/CONF.13/C.5/L.13**Bolivia: proposal**

[Original text: Spanish]
[10 April 1958]

To appoint a working party, composed of representatives of four land-locked States, four States of transit and four States other than those included in the two preceding categories, and to instruct it, after taking into account all the proposals submitted to the Fifth Committee, together with the relevant amendments and the statements which the Committee has heard,

(1) to draft and embody in a single text all the points on which agreement has been reached, irrespective of the final form which the Conference may give to them; and

(2) to embody in another single text the contents of the points on which agreement has not been reached and, as regards them, to suggest the form or forms which the Conference might give to them.

DOCUMENT A/CONF.13/C.5/L.14

Austria: amendment to document A/CONF.13/C.5/L.11

[Original text: French]
[10 April 1958]

Replace the words "the results of the Committee's work" by the words "sections II and III of document A/CONF.13/C.5/L.6".

DOCUMENT A/CONF.13/C.5/L.15

Switzerland: proposal

[Original text: French]
[11 April 1958]

I

The Swiss delegation proposes that article 15, paragraph 1, article 27, and article 28 in the International Law Commission's draft be worded as shown below. [Should articles 15, 27 and 28 of the draft be modified by the committees concerned, these amendments should be adapted to the final wording.]

Article 15

"1. Subject to the provisions of the present rules, ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the territorial sea."

Article 27

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia*, both for coastal and for land-locked States: [*The rest of the article is unchanged.*]"

Article 28

"Every State, whether coastal or land-locked, has the right to sail ships under its flag on the high seas."

II

In order to codify the right of free access to the sea for land-locked States, the Swiss delegation proposes an additional article, to be inserted in the International Law Commission's draft in the appropriate place, worded as follows:

"Access to the sea for land-locked States

"Article . . .

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, land-locked States shall have free access to the sea. To this end, States situated between the sea and a land-locked State shall

(a) Accord the land-locked State, on a basis of reciprocity, free transit through their territory, and

(b) Guarantee to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports.

"2. States situated between the sea and a land-locked State shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the land-locked State, all matters relating to equal treatment in ports and freedom of transit."

DOCUMENT A/CONF.13/C.5/L.16

Report of the Working Party to the Fifth Committee

[Original text: French and English]
[12 April 1958]

1. At its 17th and 18th meetings held on 10 and 11 April 1958 the Fifth Committee decided to appoint a working party consisting of the representatives of Bolivia, Czechoslovakia, Nepal and Switzerland (land-locked States), Chile, the Federal Republic of Germany, Italy and Thailand (States of transit), and Ceylon, Mexico, Tunisia and the United Kingdom of Great Britain and Northern Ireland (States not included in the two preceding categories), with the following terms of reference:

"To report to the Fifth Committee not later than 12 April its recommendations concerning the form or forms in which the results of the Committee's work should be expressed."

2. The Working Party held two meetings, on 11 and 12 April 1958, with Mr. Perera (Ceylon) in the chair.

3. The Working Party had before it draft recommendations submitted by the United Kingdom representative, the first two paragraphs of which are worded as follows:

"The Working Party makes the following recommendations to the Committee:

"1. That articles, suitable for inclusion in a convention, be prepared on the subject matter covered by:

"(a) Section II and III of the nineteen-power proposal (A/CONF.13/C.5/L.6);

"(b) Part I of the three-power proposal (A/CONF.13/C.5/L.7) and paragraph 4 of the three-power draft resolution (A/CONF.13/C.5/L.7, part II);

"(c) The Bolivian proposal transmitted by the Chairman of the First Committee (A/CONF.13/C.5/L.9);

"2. that a resolution be prepared on the subject matter covered by

- "(a) Sections I, IV, V, VI, VII, VIII and IX of the nineteen-power proposal,
- "(b) the whole (other than operative paragraph 4) of the three-power draft resolution (A/CONF.13/C.5/L.7, part II),
- "(c) the Chilean amendment to the nineteen-power proposal (A/CONF.13/C.5/L.8), and
- "(d) the amendment of the United States of America to the three-power proposal (A/CONF.13/C.5/L.10)."

4. The Working Party decide to base its work on this draft (hereinafter referred to as the basic document).

5. The Working Party first discussed which of the proposals and amendments before the Fifth Committee should be included in paragraph 1 of the basic document as matter which should be embodied in a convention. After an exchange of views, the Working Party decided by a majority that paragraph 1 of the basic document should include section I of the nineteen-power proposal (A/CONF.13/C.5/L.6), the Swiss proposal (A/CONF.13/C.5/L.15), and the Chilean amendment (A/CONF.13/C.5/L.8) to the nineteen-power proposal.

6. It was unanimously decided to retain in paragraph 1 of the basic document sections II and III of the nineteen-power proposal (A/CONF.13/C.5/L.6), the first part of the three-power proposal (A/CONF.13/C.5/L.7) and paragraph 4 of the three-power draft resolution (A/CONF.13/C.5/L.7, part II), and the Bolivian proposal transmitted by the First Committee to the Fifth Committee (A/CONF.13/C.5/L.9).

7. The Working Party then discussed whether the matters dealt with in the other documents before the Fifth Committee should be embodied in a resolution or a declaration. It was unanimously decided that the matters dealt with in the three-power draft resolution (A/CONF.13/C.5/L.7, part II) (except for operative paragraph 4), and the United States amendment (A/CONF.13/C.5/L.10) to the three-power proposal, should be embodied in a resolution. It was decided by a majority that the matters dealt with in sections IV to VIII of the nineteen-power proposal (A/CONF.13/C.5/L.6) should be embodied in a declaration. A proposal that the matter dealt with in section IX of the nineteen-power proposal should be embodied in a declaration was rejected by a majority.

8. All the decisions taken by the Working Party concern merely the form or forms in which the results of the Committee's work should be expressed, and therefore do not signify that the Working Party either approves or dis-

approves of the substance of the proposals or amendments to which it refers in its decisions.

9. The Swiss delegate maintained that there were five possible types of instruments. These in the ultimate analysis conformed to the views of the Group that the entire subject matter could be dealt with under (i) a convention, or (ii) a declaration or resolution, with a judicious combination of both these categories where applicable.

10. The Working Group was a representative group, and there is no doubt that on the lines indicated finality could be reached by the Committee. It will be seen that, within the term of reference, the Working Group was able to resolve many of the conflicts which raged in the Committee. At least one major achievement was that the Group could now focus the attention of the Committee on the nature of the instruments in which the subject matter would be finally embodied.

11. In consequence of the decisions taken by the Working Party, certain reservations were made as shown below.

12. The delegates of the Federal Republic of Germany, Italy, Thailand and the United Kingdom explained

(1) That they could not accept as suitable for inclusion in a convention the following matters, which in their view should be dealt with in a resolution:

- (a) Section I of the nineteen-power proposal, and
- (b) The Chilean amendment to the nineteen-power proposal;

(2) That they could not accept as suitable for inclusion in a declaration the matters covered by sections IV, V, VI, VII and VIII of the nineteen-power proposal, which in their view should be dealt with in a resolution;

(3) That their agreement that the subject matter covered by the Swiss proposal should be treated as suitable for inclusion in a convention was solely with regard to that particular proposal, on which they reserved the right to express their views in the full Committee and to which they reserved the right to propose amendments.

13. The delegations of Nepal and Czechoslovakia considered that section IX of the nineteen-power proposal had a close bearing on the sections that preceded it, that is on sections IV, V, VI, VII and VIII and should, therefore, in their opinion, be incorporated in a declaration. The principle contained in section IX of the nineteen-power proposal is both in the interests of the land-locked countries and States of transit, inasmuch as the latter will not be obliged by virtue of a most-favoured-nation clause to grant the same kind of facilities to other States which are not in the same geographical position as the land-locked countries. Furthermore, examples of the exclusion of the application of the most-favoured-nation clause are found in international law and practice.

DOCUMENT A/CONF.13/C.5/L.17

Federal Republic of Germany: amendment to document A/CONF.13/C.5/L.15

[Original text: French]
[14 April 1958]

Replace the text of part II, paragraph 1, by the following:

"To enable land-locked States to enjoy the freedoms of the sea on equal terms with coastal States, the latter shall

- (a) Accord the land-locked State free transit through

their territory on the basis of reciprocity and of the other principles enunciated in the Statute of Barcelona, and

(b) Accord to ships flying the flag of that State treatment equal to that accorded to the ships of any other State as regards access to sea ports and the use of such ports."

DOCUMENT A/CONF.13/C.5/L.18**France: amendment to document A/CONF.13/C.5/L.15**

[Original text: French]
[14 April 1958]

At the end of part II, paragraph 2, replace the full stop by a comma and add the following words:

“...if the States concerned are not already signatories to the Convention and Statute on Freedom of Transit of Barcelona of 20 April 1921 and to the Convention and Statute on the International Régime of Maritime Ports of Geneva of 9 December 1923.”

DOCUMENT A/CONF.13/C.5/L.19**Ghana: proposal**

[Original text: English]
[14 April 1958]

The Fifth Committee takes note of the report of the Working Party (A/CONF.13/C.5/L.16) and accepts its finding that the recommendations of the Fifth Committee to the Conference should be in the form partly of a convention and partly of a resolution and declaration.

DOCUMENT A/CONF.13/C.5/L.20**United States of America: amendment to document A/CONF.13/C.5/L.15**

[Original text: English]
[14 April 1958]

In part II, paragraph 7, substitute the word “should” for the word “shall” in the first sentence. In the second sentence, delete the word “shall” and substitute the words “should co-operate to”.

This paragraph will then read as follows:

“1. In order to enjoy the freedom of the seas on equal terms with coastal States, land-locked States should have

free access to the sea. To this end, States situated between the sea and a land-locked State should co-operate to

(a) Accord the land-locked State, on a basis of reciprocity, free transit through their territory, and

(b) Guarantee to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports.”

DOCUMENT A/CONF.13/C.5/L.21**Netherlands: amendment to document A/CONF.13/C.5/L.15**

[Original text: English]
[15 April 1958]

The text of part II to read as follows:

“1. In order to enjoy the freedom of the seas on equal terms with States having a sea coast, land-locked States shall have free access to the sea. To this end, States situated between the sea and a land-locked State shall

(a) Accord the land-locked State, on a basis of reciprocity, free transit through their territory in conformity with the rules of law embodied in existing international conventions, and

(b) Accord to ships flying the flag of a land-locked

State treatment equal to that accorded to their own ships or to the ships of any other State, as regards access to sea ports and the use of such ports, in conformity with the rules of law embodied in existing international conventions.

“2. A land-locked State shall settle by bilateral or regional agreement with the State or States situated between the land-locked State and the sea all additional matters relating to freedom of transit and equal treatment in ports taking into account the special conditions of the States concerned.”