United Nations Conference on the Law of the Sea

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Documents:
A/CONF.13/C.5/SR.11-15

Summary Records of the 11th to 15th Meetings of the Fifth Committee

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))*

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

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

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

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

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

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

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

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

The meeting rose at 6 p.m.

ELEVENTH MEETING

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

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

General debate (continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[3] Italy, Netherlands and United Kingdom.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It was so agreed.

The meeting rose at 1.25 p.m.

TWELFTH MEETING

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

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

Procedural questions (concluded)

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

The procedure proposed by the Chairman was adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 5.55 p.m.

THIRTEENTH MEETING

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

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It was so agreed.

The meeting rose at 5.15 p.m.

FOURTEENTH MEETING

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

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN accepted the Swiss representative's suggestion.

The meeting rose at 12.15 p.m.

FIFTEENTH MEETING

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

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 11 p.m.

SIXTEENTH MEETING

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

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

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