United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.5/SR.6-10

Summary Records of the 6th to 10th 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))*

Convention of 1921 on the subject ; for the adoption of a new convention might well result in a considerable curtailment of the right as at present accorded to land-locked States, especially if the aim was uniformity and no account was taken of the special situation of each country.

31. The Swiss delegation wished to pay a tribute to the coastal States adjacent to Switzerland for all the transit facilities they had accorded, which might be said to have brought Switzerland as near the sea as the maritime States. It also wished to state that its co-operation with other land-locked countries in no way implied a renunciation of the rights accorded it in regard to free access to the sea, and in particular to freedom of navigation on the Rhine. In the latter case, Switzerland enjoyed a freedom deriving from a series of international instruments beginning with the Peace Treaty of 30 May 1814, which went beyond freedom of transit, and would become even wider when the works on the Upper Rhine were completed as far as Lake Constance. The International Statute of the Rhine guaranteed not only freedom of navigation, but also complete equality of treatment, freedom of chartering, exemption from taxes and tolls, and the prohibition of restrictions on the coasting trade, and contained no escape clause.

32. He pointed out that, where access to the sea was concerned, each land-locked State was in a special position for which there were historical, political, economic, geographical and technical reasons. It followed that a detailed and uniform convention could not entirely satisfy all land-locked States and all coastal States. That fact had been recognized in the final Act of the Congress of Vienna of 9 June 1815, and it had been wisely decided merely to include the fundamental principles and generally recognized freedoms, while States bordering on the Rhine undertook to settle questions concerning navigation on that river by mutual agreement, in accordance with those principles and freedoms. Instruments relating to navigation on the Rhine, the Danube, the Elbe, the Oder and other waterways, took into account the special features of each region. It would be advisable to follow those precedents and to do no more than codify the general principle of free access to the sea of land-locked countries, while urging adjacent coastal States to agree on procedure for implementing the freedoms recognized in any convention adopted by the Conference on the Law of the Sea. If the Conference was to be successful, it should not undertake too much.

33. Mr. KUSUMAATMADJA (Indonesia) said that Indonesia, a country which had sometimes been described as " an enclave in the sea ", might not appear to be directly concerned with the problems of land-locked countries. Nevertheless, his delegation felt that the problems referred to the various committees of the Conference formed an indissoluble whole and that recognition of the right of free access to the sea of land-locked countries would mark a stage in the history of international law.

34. He did not agree with the view expressed in the First Committee that the question of free acces to the sea should be excluded from the general legal principles, and should only be the subject of special agreements between the States concerned. He was, however, prepared to consider that opinion as a call for caution in stating the general principles.

35. The failure of The Hague Conference of 1930 for the Codification of International Law was partly to be explained by the fact that the principles considered to be recognized at that time were based on premises which were not universally accepted. That conference had had the unfortunate result of confirming the disagreements between the States on the questions discussed.

36. With regard to free access to the sea, however, the Indonesian delegation thought that there was general agreement associated with economic interests which were much more important than any differences arising in practice. There was therefore every reason to believe that the work of the Committee would be successful, thus contributing considerably to the success of the Conference as a whole. An international convention on the Law of the Sea would certainly be incomplete if it did not reaffirm the general principles governing the rights of countries without a sea coast.

The meeting rose at 4.35 p.m.

SIXTH MEETING

Friday, 14 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)

STATEMENTS BY MR. JOHNSON (UNITED KINGDOM), MR. THIERRY (FRANCE) AND FATHER DE RIEDMATTEN (HOLY SEE)

1. Mr. JOHNSON (United Kingdom) said that his country had a very great interest in the work of the Committee, and hoped that it would be successful.

2. The subject with which the Committee was dealing had not been so well prepared as the other matters confronting the Conference. But at the very outset, the United Kingdom had been quick to realize the importance of the subject, and had been glad that the special problems of the land-locked countries were being studied at the Conference at the level of a main committee.

3. When, in its resolution 1105 (XI), the General Assembly had decided that the Conference should " examine " the law of the sea and recommended that it should " study " the question of the free access to the sea of land-locked countries, the Assembly had been recognizing that the question required a great deal of study, which would fall to the Conference to initiate.

4. The lack of preparation had fortunately been made good to some extent by the secretariat memorandum (A/CONF.13/29), the memorandum submitted by the Preliminary Conference (A/CONF.13/C.5/L.1) and the Chairman's introductory statement at the third meeting of the Committee. Many governments had, however, still not had time to study those documents thoroughly. That fact should impose on the Committee

a certain caution in regard to its work, which did not mean that the work would not produce useful results. But, as the studies of the question before the Committee had lagged behind those of the other matters before the Conference, it might be desirable that the Committee's work should emerge in a different form, less elaborate than that of the other committees.

5. The United Kingdom delegation was happy to learn from a number of statements made in discussion that the question before the Committee gave rise at present to no practical problems or difficulties, that the relations between the land-locked countries and their neighbours were amicable, and that the chief requirement was to confirm the existing legal situation.

6. Although a country of the common-law tradition, the United Kingdom had no inherent objection to attempts to codify the existing law. It feared, however, that an attempt to put into a rigid, universal code principles which had been worked out perfectly satisfactorily by States over the years might prejudice existing arrangements which were working smoothly. That was a real danger which must be avoided.

7. The United Kingdom Government had a special interest in the problem before the Committee for reasons which were somewhat unusual and might not perhaps be very well known. It was responsible for the international relations of a number of land-locked territories. On that point, a correction was required in paragraph 82 of the secretariat memorandum (A/CONF. 13/29). The Convention of 17 June 1950 between the United Kingdom Government and the Government of the Republic of Portugal was intended, not to secure additional outlets to the sea for all the African territories under British administration mentioned in that paragraph of the secretariat memorandum, viz. Bechuanaland, Nyasaland, Southern Rhodesia, Northern Rhodesia, Basutoland and Swaziland, but — as stated in its preamble — to give effect to the desire of the parties " to co-operate fully with a view to the development of the resources of Mozambique on the one hand and of Southern Rhodesia, Northern Rhodesia and Nyasaland on the other ". Those three territories, which had since become the Federation of Rhodesia and Nyasaland, were the only ones affected. He would like to mention in passing that, in the United Kingdom's view, the purpose of an agreement between a land-locked country and its coastal neighbours should never be solely to benefit the former. The United Kingdom had similar responsibilities for the administration of territories that were coastal neighbours of land-locked territories, so had a special opportunity of seeing the problem in its wider aspects and of making a useful contribution to its solution. The United Kingdom delegation therefore regretted that it had not been invited to participate in the Preliminary Conference.

8. The problem under discussion concerned all countries, in so far as it had some bearing on the application of the universal and fundamental principle of the freedom of the seas. There was obviously some relation between the right of access to the sea and the right of innocent passage through the territorial sea and, in particular, through straits. Those two rights were the only rights through which members of the international community were enabled to enjoy legitimate access to the common domain, the high seas. It was in the interests of the international community as a whole, as well as of each of its individual members, that those rights should be exercised by all States. There would be little prospect of land-locked States securing a right of access to the high seas in a world which could not sufficiently protect the freedom of those same seas and which could not even give adequate guarantees of freedom of passage through territorial waters and, where necessary, through internal waters to maritime States. That was not to say that those rights were in all respects derived from the same principle. The right of innocent passage was a well-established customary rule of the law of the sea ; the right of access to the sea belonged rather to the sphere of transit law, in which an important part was played by the principle of reciprocal rights and duties. The former was an unqualified right in the sense that any ship on its lawful occasions might exercise it, while the latter could not be isolated from certain reciprocal or corresponding duties which a land-locked State might owe to its coastal neighbours. Therefore, although the right of access to the sea was an undoubted right, it was a right the exercise of which depended on the conclusion of agreements with the transit countries.

9. A reference was made in the preamble of the seven principles enunciated by the Preliminary Conference (A/CONF.13/C.5/L.1, annex 7) to the most-favoured-nation clause. That clause raised issues of economic and commercial policy which should not be considered by the present conference on the Law of the Sea. Similarly, some of the seven principles were concerned with questions of transit and the use of ports, which were already covered to a considerable extent by various international instruments.

10. In dealing with matters already dealt with in international agreements, the Committee should as far as possible limit itself to drawing the attention of States to the existing instruments and urging wider accession to them. It might well be that the Barcelona and Geneva agreements of 1921 and 1923 respectively, as well as various other international instruments at present in force, did not provide sufficient guarantees of the right of land-locked countries. But that was precisely the sort of question which required a good deal more study. The secretariat might prepare a list of the parties to those conventions. If it should turn out that the number of parties was relatively small in comparison with the number of countries participating in the Conference, consideration might be given to the question whether it would not be wise for the Conference to recommend a wider accession to them.

11. It was well known that the right of land-locked countries to a flag had been recognized in the Declaration of Barcelona of 20 April 1921. A list of the States which had ratified that declaration should also be available. In that connexion, paragraph 157 of the secretariat memorandum (A/CONF.13/29) gave a useful reminder that at Barcelona it had been thought desirable to put the right of land-locked countries to a flag in the form of a declaration rather than of a convention lest, if the convention were denounced, the status of ships flying the flags of such countries should be called in question. Care should be taken lest rights already enunciated be prejudiced through anxiety to reiterate the rights of land-locked countries.

12. It was true, of course, that the right of land-locked countries to a flag and many other rights (and duties) were expressed — or at any rate implied — in some of the draft articles prepared by the International Law Commission. The United Kingdom fully supported the reference in those articles to " all States ", as taking care of all interests. Even so, if a convention containing those articles or similar texts was drawn up at the end of the Conference, it had to be remembered that conventions were usually subject to denunciation, and were not necessarily the best form for recording the long-established rights of land-locked countries. That was a point he would urge all delegations to bear in mind.

13. Mr. THIERRY (France) deduced from the statements so far made that the difficulties which the Fifth Committee would have to solve were no easier than those of the other committees of the Conference. It might seem paradoxical that it should be difficult to codify the law on the hitherto always satisfactory relations between land-locked States and their maritime neighbours.

14. It was equitable, everyone agreed, that land-locked States should be able to use the domain of the sea on a completely equal footing with other States, to have access to the sea by every possible way, to use ports and to enjoy all the facilities that their economic development required. It was entirely just that international co-operation should compensate for disadvantages due to the geographical situation of land-locked States. But, from the statements made by representatives of land-locked States, it appeared that the present law completely satisfied those States. Switzerland, in spite of its geographical situation, was a maritime State enjoying facilities for access to the sea based on rules of European law which had worked perfectly since 1815 ; and Bolivia had concluded agreements with Argentina, Brazil and Chile that might be taken as models for a fair statute on the relations of land-locked States with their maritime neighbours. The treaty concluded on 13 January 1956 between Poland and Czechoslovakia was another example of an agreement satisfying the interests of the parties.

15. The difficulties which arose were of two sorts. Some were theoretical, being merely the difficulties of codification itself. The question was to determine which principles of positive law covered the particular rules applied in practice, and how those principles should be expressed. On this point there was a divergence of opinion amongst the members of the Fifth Committee. Czechoslovakia maintained that the principle of freedom of transit was a simple corollary of the freedom of the high seas, whereas the Swiss representative regarded freedom of transit as a principle deriving from conventional international law — from treaties relating to transit. For others, freedom of transit was an autonomous rule, distinct from that of freedom of the high seas, but nevertheless forming part of general international law. One could also consider what place there was in international law for the controversial notion of international servitude held by certain authorities. The difficulty which the Fifth Committee would have with these problems would be increased by its lack of preparatory studies.

16. The second category of difficulties referred to the attitude which the Committee might take towards the positive law when it had succeeded in systematizing this. Should a general convention be drawn up which, whilst relying on the data of positive law, would to some extent take the place of it and constitute for the future a charter of the relations between land-locked States and their neighbours? Should the Committee, on the other hand, restrict itself to stating certain principles of positive law, or principles intended to supplement and improve it? Should some other solution be adopted in order to improve the situation of land-locked States? It was important that, in order to solve these difficulties, the Committee should fix its aims and define the nature of its task.

17. The French delegation wished to state its position regarding these two types of difficulty. In regard to the former, which concerned the content of the law to be codified, although land-locked States had, under the principle of equality of States the same rights as all others regarding the use of the public domain of the sea, as was laid down in articles 27, 28 and 49 of the International Law Commission's draft, there was still great uncertainty about freedom of transit, which moreover was not really part of the law of the sea. Freedom of transit was essentially a system of obligations binding the States which granted transit and capable of limiting their sovereignty. One might ask whether this sovereignty was limited by a general rule independent of any definite engagement, or whether freedom of transit rested on the consent of the States of transit. The States party to the General Agreement on Tariffs and Trade and the States which took part in the Barcelona Conference of 1921 considered freedom of transit rather as a conventional right created by multilateral or bilateral treaties. That was, in his opinion, the positive law. States could not be obliged to negotiate or agree in matters of freedom of transit, for that would conflict with their sovereignty.

18. The French delegation was, however, prepared to endorse the affirmation by the Conference of the general principle of freedom of transit, provided that the freedom did not derogate from the sovereignty of the State granting it; for in the present state of international law the manner of exercise of that freedom could be determined only by agreements concluded between States.

19. That led him to explain his delegation's view of the difficulties of the second category and to consider the value of a general convention. The French delegation held that the preparation at the present time of a universal convention concerning land-locked States was inadvisable and premature, for three reasons. First, the necessary preliminary work had not been carried out and the interpretation of the positive law was too uncertain. Secondly, the Conference had before it a mass of conventional texts, the codification of which raised problems very different from those of the codification of customary law. Thirdly, it was unlikely that a convention drawn up by the Conference could be sufficiently detailed to allow for the different situations of all the land-locked States.

20. His delegation would utter a warning against the risks of a declaration of the rights of the land-locked States based on the seven principles formulated by the

Preliminary Conference, for vague principles might well be superimposed upon satisfactory conventional rules. Moreover, the seven principles were not the sole means of formulating the freedoms of land-locked States and the subsequent discussion might show that many maritime States regarded those principles as an expansion rather than as a codification of the existing law.

21. In conclusion, he hoped that the Conference would achieve solid, practical results ; the French delegation thought that in drawing attention to some shoal water that lay ahead it had made a useful contribution.

22. Father DE RIEDMATTEN (Holy See), recalling his reference at the Preliminary Conference to the agreements concluded by the Holy See with the Italian Government safeguarding freedom of transit through Italian territory, expressed the entire satisfaction of the Holy See at the application by Italy of those agreements. He had also pointed out at that conference that the Pontifical Commission for the Vatican City State had by decree of 15 September 1951 made rules governing navigation under the flag of the Holy See.[1]

23. The seven principles formulated by the Preliminary Conference in no way committed participating States and could not be regarded as an expression *ne varietur* of their position. Those States remained free to propose limitations or additions to those principles. As they stood, however, his delegation considered that they constituted a useful working basis.

24. It was to be regretted that the summary records of the Preliminary Conference (A/CONF.13/C.5/L.1/Add.1), particularly that of the seventh meeting, were too short, and failed to give an accurate idea of the debate. The discussion on principles III and IV, in particular, should have been reported in greater detail. In principle III, " coastal State " meant any State possessing a coastline; and in principle IV, the same term applied to the coastal State through whose territory the land-locked State had access to the sea. The summary record gave the impression that principle IV had been proposed by the Holy See, but it had not. His delegation had confined itself to submitting proposals concerning the form of the first paragraph of principle V simply in order to facilitate the unanimous agreement of the participants.

25. He was glad to note that, according to the statements made hitherto in the Fifth Committee, the land-locked States had met with the fullest understanding on the part of their neighbours and were satisfied with the bilateral agreements they had concluded with those States. It seemed that the Conference should not find it too difficult to adopt an instrument, whatever form that might take.

The meeting rose at 12 noon.

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[1] Acta Apostolicae Sedis — supplemento per le leggi e disposizioni dello Stato della Città del Vaticano. N.LXVII — Decreto della Pontificia Commissione per lo Stato della Città del Vaticano concernente la navigazione marittima sotto bandiera dello Stato della Città del Vaticano.

SEVENTH MEETING

Wednesday, 19 March 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

General debate (continued)

STATEMENTS BY MR. KING (UNITED STATES OF AMERICA), MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MR. OCIOSZYNSKI (POLAND), MR. STOYANOV (BULGARIA), MR. PERERA (CEYLON), MR. BACCHETTI (ITALY), MR. SCHEFFER (NETHERLANDS) AND MR. EL YAFI (UNITED ARAB REPUBLIC)

1. Mr. KING (United States of America) emphasized the interest of his government displayed in the problem of land-locked States. Although their free access to the sea concerned many other countries, including his own, it was of vital and immediate interest only to a limited number of States. Since the problem was different in each case, it would be difficult to solve by establishing general rules, and the usual approach was a bilateral agreement.

2. He thanked the Brazilian representative for drawing the Committee's attention to the resolutions adopted at the Economic Conference of the Organization of American States held at Buenos Aires in 1957. In those resolutions, the Conference had recommended States members of the organization to grant land-locked countries the greatest possible transit facilities, and had also recommended that the interested States should study the possibilities of reaching, to the extent permitted by their international commitments, reciprocal agreements that would grant land-locked countries the greatest possible trade advantages.

3. Unfortunately, the Fifth Committee, unlike the other committees, had not before it any draft articles prepared by the International Law Commission. In the absence of draft articles, the Committee had declarations made to the Sixth Committee of the United Nations, at the Eleventh Session of the General Assembly and to the Committee itself by representatives of land-locked countries, States of transit and other countries, and also the list of principles formulated by the Preliminary Conference of land-locked States (A/CONF.13/C.5/L.1, annex 7). It should not be forgotten, however, that those principles did not reflect the unanimous opinion of participating States, and that they did not represent claims or demands presented by a bloc, but were designed solely to advance the codification of international law.

4. On the question of what constitutes international law with respect to the question under discussion, he agreed with a number of the preceding speakers, and with the great American jurist Charles Cheny Hyde, that any duty which a State might have to grant a land-locked country access to the sea did not spring from general international law, but rather from treaty arrangements between the parties.

5. His delegation took the view that the Committee should distinguish between what the law of nations was

at the present time, and what its members thought that law ought to be.

6. His delegation believed that the principle of the freedom of the seas was one of the major equalizing influences within the community of nations, and had given smaller States an opportunity to offset their inferiority in size. It would therefore carefully consider all proposals made in the Committee for assuring land-locked States the equitable enjoyment of the benefits of the freedom of the seas. It reserved the right to make further comments on such proposals.

7. Mr. SHAHA (Nepal), to prevent any misunderstanding, observed that, contrary to the statement by the United States representative, the seven principles formulated by the Preliminary Conference did indeed represent the unanimous opinion of the participants, as was clear from document A/CONF.13/C.5/L.1, paragraph 14, first sentence.

8. Mr. PFEIFFER (Federal Republic of Germany) said that the discussions in the Fifth Committee had had the great merit of drawing attention to the importance of free access to the sea for all land-locked States. He too regretted that the Committee's difficult task had not been facilitated by the preparation of detailed documentary material. He regretted it all the more because the Committee's duty was to make a conscientious and detailed study of all aspects of the subject, in dealing with which it would be dangerous to improvise. There was no need for excessive haste, since nearly all speakers had declared that, since the existing situation was satisfactory, the question was not so urgent as many others before the Conference.

9. His delegation was glad that the present state of affairs was satisfactory, because his country had four land-locked neighbours. It was therefore well acquainted with the needs and desires of land-locked countries, and also understood the needs and desires of the coastal States.

10. His delegation had advocated in other committees the adoption of regional conventions, and wondered whether such conventions might not also provide satisfactory solutions, appropriate to the particular situation of the signatories, for the problem of access of land-locked countries to the sea.

11. With regard to the difficulties of codifying the existing international law governing access to the sea by land-locked countries, his delegation endorsed the arguments advanced by the representatives of the United Kingdom and France at the Commission's sixth meeting. It shared their misgivings regarding a dogmatic assertion of the right of free access to the sea such as that stated by the Preliminary Conference in principle I, and had the same objections as they had to the general application of a most-favoured-nation clause.

12. Mr. OCIOSZYNSKI (Poland) also regretted that for its study of the question referred to it by the Conference the Fifth Committee, unlike the other committees, had not before it a text prepared by eminent jurists. It therefore had a more complicated and difficult problem of codification procedure. Many questions might involve it in a very complicated procedure if it studied them from the point of view of the progressive development of international law.

13. However, the Committee was not wholly without material. To guide it in its task, it had the extremely useful documents prepared by the secretariat, and the additional information presented during the general debate. It also had the list of principles drawn up by the Preliminary Conference. Although some might regard that list of principles as a one-sided view of a group of directly interested States, it was admittedly the first attempt of the kind to formulate certain basic principles relating to the problem before the Committee. His delegation saw no reason why it should not serve as a basis for the Committee's work.

14. The Committee could also refer to instruments of incontestable value and fundamental significance regulating certain aspects of free access to the sea for land-locked countries: the Barcelona Declaration, in which the right of States without a seaboard to fly a maritime flag was recognized; the Barcelona Conventions of 1921; and other multilateral and bilateral agreements listed in the memorandum by the secretariat (A/CONF.13/29 and Add.1) and in the report of the Preliminary Conference (A/CONF.13/C.5/L.1). Those instruments, despite their diverse character and scope, would no doubt enable those taking part in the Conference to determine which of the rules they embodied could be codified as general rules of international law, and which, on the other hand, could be laid down only in bilateral agreements because special geographical, technical and economic conditions had to be taken into account.

15. The Committee certainly had a difficult task, but he hoped that all the participating countries would make every possible effort to reach a solution which would guarantee effective access to the sea for land-locked countries and promote international co-operation.

16. In his delegation's opinion, the high seas should be used by all States on a footing of equality, and it was therefore essential that countries whose geographical situation deprived them of a coast should have access to the high seas. To impose restrictions upon them in that respect would impair the equality between States in the use of the high seas. That rule was supported not only by all jurists but also by the fact that a steadily increasing number of merchant vessels now sailed the high seas under the flags of land-locked countries. It was also supported by article 27 of the International Law Commission's draft (A/3159), which meant that all land-locked States had the right to build, purchase, possess and operate ocean-going ships, to take part in international maritime trade, and to be parties to international agreements such as conventions on the safety of shipping and conventions governing the working conditions of seamen.

17. Naturally, in order to exercise their right to sail and use the high seas, land-locked countries must first have access to the coast. That meant that they had to be able to send and receive goods across the territory of a coastal State. It might be asked, with codification in view, whether the transit régime fell within the scope of the Conference. His delegation felt that it would be a mistake to pay much attention to that purely formal question, since, for many years, a practical solution to the transit problem had been provided in the form of numerous bilateral agreements. Among those were the

bilateral agreement concluded between Poland and Czechoslovakia in 1956, containing provisions concerning the recognition of ship's documents, customs exemption, and the granting of the most favoured terms for the use of inland waterways and railways, subject to reciprocity. He was glad to note that the Czechoslovak Republic found that agreement entirely satisfactory. Other speakers had said that their countries were satisfied with bilateral agreements concluded with coastal States. Such agreements had the great advantage that they could be adapted to the particular needs of States.

18. Replying to the objections of those who held that bilateral agreements did not always satisfy the needs of land-locked countries because the coastal State was in a stronger bargaining position, he said that, first, every coastal State liked to secure the greatest possible flow of transit goods through its ports. Furthermore, today maritime traffic required the construction and operation of costly facilities, in the construction of which the participation of land-locked States could be ensured only by bilateral agreements. Lastly, the transit facilities which a coastal State granted in its ports to another State could not derogate from its sovereignty, because that sovereignty was the basis on which it would consider the needs of a land-locked State when concluding bilateral agreements.

19. His delegation considered that if the Conference succeeded in codifying certain general principles embodied in existing agreements or applied in practice, which might be accepted by a large number of States and which would be applied to the benefit of all countries, its action would demonstrate the progressive nature of such a body of rules. Such a codification, added to the provisions of bilateral agreements laying down detailed rules governing the relations between the countries concerned, would provide an effective system for solving many problems, promoting co-operation among all countries and contributing to their economic development.

20. He hoped the Conference would be able to adopt a final text containing general principles or even to incorporate some appropriate general principles in the convention on the law of the sea.

21. Mr. STOYANOV (Bulgaria) said the Bulgarian delegation thought it fair that land-locked countries should have free access to the sea. It was therefore glad the Conference had that question on its agenda. The study of the question was difficult, especially because the International Law Commission had not dealt with it ; moreover, there would be difficulty in using, as a basis for the elaboration of rules acceptable to all countries, bilateral agreements concluded between countries whose situations were very different. To a certain extent, however, the Commitee's task was made easier by the list of principles enunciated by the Preliminary Conference and the draft submitted by Czechoslovakia during that conference (A/CONF.13/C.5/L.1, annex 6).

22. Although it was not easy to reconcile the interests of the coastal countries and those of the land-locked countries, the Committee should make every effort to prepare an international document recognizing the right of the land-locked countries to free access to the sea. The document would include the most general principles relating to the rights and indispensable facilities to be granted land-locked States and to the obligations which would rest upon those States in order to safeguard the principle of mutual advantage.

23. In practice, bilateral agreements would of course have to be concluded to prescribe the procedure of transit and the establishment of free zones in the ports. Furthermore, the document to be prepared by the Conference would be effective only if adopted by a large number of countries, and particularly by a large number of coastal countries, so that its provisions must be sufficiently flexible to be capable of being applied everywhere and accepted by all.

24. The Bulgarian delegation was prepared to examine attentively any proposal likely to contribute to the solution of the problem of freedom of access to the sea for land-locked countries.

25. Mr. PERERA (Ceylon) emphasized his country's very great interest in the task undertaken by the Committee's work and recalled General Assembly resolution 1028 (XI), which dealt with the need of land-locked countries for transit facilities and thus by implication with their access to the sea. Paragraph 3 of General Assembly resolution 1105 (XI) also called for study by the Conference of the question of the free access to the sea of land-locked countries. The debate at the eleventh session of the General Assembly of the United Nations had revealed the desirability of consolidating the existing laws and practices relating to the question and, if necessary, of formulating new laws in keeping with contemporary political, economic and social forces.

26. The Committee had before it valuable documents prepared by the secretariat and by the Preliminary Conference, and other documents submitted since the opening of the Conference. It could not therefore be argued there was insufficient material on the subject.

27. His delegation had noted that the Committee's discussion had been very objective, that there was a consensus of opinion among delegates, that the practical problems involved were not insuperable and, lastly, that the coastal States were extremely anxious that a convention should be drawn up and were prepared to do everything possible for the achievement of that end.

28. The seven principles enumerated by the Preliminary Conference provided a rational analysis of the problem. It should be noted that the land-locked countries were representative of three continents; that fact, both in theory and practice, endowed the problem with the necessary universality.

29. Although the International Law Commission had not proposed a code for the land-locked countries, some of its comments (A/3159, chap. II, para. 29) were relevant to the question under discussion.

30. The Preliminary Conference had achieved certain results which were not inconsistent with existing rules and conventions. The present problem was how to fill the gaps. In the opinion of his delegation the Committee's debates had merely confirmed what the International Law Commission had considered to be desirable (A/3159, chap. II, para. 31).

31. With respect to first principles, it must be admitted that there was a natural connexion between the right

of access to the sea of land-locked countries and the freedom of the sea. The desire of the land-locked countries to assure themselves of certain rights was therefore legitimate and warranted by practices which had been followed for centuries. The Committee should therefore determine whether existing agreements satisfied those countries. A system based on existing practice rather than a code of international conduct was obviously unsatisfactory; furthermore, the Conference should give effect to Article 13 of the Charter.

32. The conferences at Barcelona (1921) and Geneva (1923) had had limited objectives in view. Nevertheless, even before the Second World War, the need to unify regulations dealing with those subjects had led to the Geneva Conference of 1930, which had drafted three conventions on inland navigation. Since the end of the Second World War, several land-locked countries had begun to engage in maritime commerce. The preparation of a draft code on free access to the sea was therefore necessary owing to the inadequacies of previous conventions and the increasing participation of land-locked countries in maritime commerce.

33. The Committee had before it a number of proposals, including the draft submitted by the Czechoslovak delegation (A/CONF.13/C.5/L1, Annex 6). The Ceylonese delegation supported the first ten articles of that draft. It reserved its right to make detailed observations at a later date but felt that article 10 should allay the vague fears that some coastal States might entertain. That article did not abrogate existing laws and conventions. It was in conformity with the spirit and the letter of General Assembly resolution 1105 (XI). It met the reasonable claims of a group of States — namely, the land-locked countries — which were not so favourably placed as the coastal States. His delegation reserved its right to express its views on article 11 at a later stage, but hoped that in any universally accepted convention an article on the settlement of international disputes would prove to be unnecessary.

34. Mr. BACCHETTI (Italy) said that his country attached great importance to freedom of international trade. As a maritime country, it had concluded with neighbouring States, Switzerland and the Holy See, agreements which were most satisfactory to the parties.

35. The problem of free access to the sea for land-locked countries had never really been studied by eminent authorities in the past. The documents submitted by Czechoslovakia, Afghanistan (A/CONF.13/C.5/L.1, annex 4) and Bolivia (A/CONF.13/29/Add.1, additional information concerning paras. 77-81) were therefore valuable, whether their ideas were accepted or not. Their attitude was due to the present satisfactory state of affairs and the multiplicity of international agreements, whereas customary law was inadequate and vague. No important problem arose *de jure condito*.

36. The Italian Government felt that the question could not be examined from a new angle unless adequate preparatory studies were carried out, and reserved its position accordingly. One might well ask whether an attempt should be made to establish a body of rigid principles in a sphere in which both authors and decisions were far from being unanimous. Though the interest of the land-locked States in having access to the sea was beyond doubt, the same could not be said of the existence of a genuine subjective right of access to the sea. That being so, the discussions might well not prove very fruitful.

37. As the Swiss representative had remarked, the increase in the number of ratifications of the Barcelona and Geneva conventions constituted a remarkable step forward. In some cases, however, special rules were better suited to special situations. The Swiss representative had very aptly pointed out that it might be dangerous to disturb the present equilibrium. To obtain a real improvement in relations between the land-locked and the maritime countries, a compromise must be struck between their respective demands by adopting a liberal approach. The declaration and certain resolutions of the Economic Conference of American States held at Buenos Aires in 1957 might be studied to advantage and possibly adopted by the Conference, since they combined the precision and flexibility called for in so complex and thorny a question. Everything was capable of improvement, but " striving to do better oft we mar what's well ".

38. Mr. SCHEFFER (Netherlands) observed that for a variety of reasons, geographical, commercial and historical, the Netherlands had the greatest interest in the freedom of communications and transit. It was therefore prepared to recognize the right of land-locked States to free access to the sea, and to the full use of the rights enjoyed by maritime States.

39. The Netherlands delegation had read with great attention the valuable documents prepared by the secretariat (A/CONF.13/29 and Add.1) and that of the Preliminary Conference (A/CONF.13/C.5/L.1). It would comment on the principles enunciated by the land-locked States under the aspects of their legal foundation, their content, and the form to be given to the results of the Committee's deliberations.

40. His delegation did not agree that all seven principles enunciated by the Preliminary Conference formed part of existing international law. The right to fly a maritime flag and the right of navigation undoubtedly formed part of it and were included in the International Law Commission's draft (A/3159).

41. On the other hand, the draft codification submitted to the Conference dealt only with the régime of the high seas and that of the territorial sea; it did not explicitly deal either with the régime of internal waters or that of maritime ports. During the discussions in the Second Committee, the Netherlands delegation had stressed that, by its very nature, the right to use the high seas for navigation included in principle the right to carry goods and passengers between the different ports of the world. In its opinion the freedom of the seas included passage through internal waters and access from the sea to maritime ports. It was, however, not so clear whether the right of free access to such waters and ports from the land could be similarly based on the principle of the freedom of the seas. No premature decisions should be taken on those quite complex questions in the absence of any preparatory study by the International Law Commission.

42. It could not be denied that there was a fundamental difference between the sea, which was not subject to the sovereignty of any State, and the land, which was divided between a large number of sovereign States. It

seemed very doubtful whether the sovereignty of a State over its land territory was limited by the right of transit in the same way as the sovereignty of the coastal State was limited by the rights of innocent passage through the territorial sea. The right of transit was part of what was known as *jus communicationis,* which, though highly desirable, was not universally accepted as an undeniable and fundamental principle of international law.

43. It was for the Committee to see whether the time had come to declare that the right of transit formed part of existing international law. But, if such a declaration was made, it would have to specify that the right was enjoyed by all States subject to reciprocity.

44. The Netherlands delegation would like some elucidation of the considerandum contained in the preamble to the principles, to the effect that other States which are not placed in the same geographic situation should not be requested to apply the most-favoured-nation clause. It could, however, accept the first three principles and considered that there must be a genuine link between the vessel and the State whose flag it flew. It could also accept principle IV on condition that the same treatment was accorded to maritime States. Principle V should be broadened and the right made subject to reciprocity. His delegation saw no objection to principles VI and VII.

45. Since the Committee had not the benefit of any work by so authoritative a body as the International Law Commission, it would be better not to attempt to frame a detailed convention but to adopt a declaration stating a few general principles which should assist States in negotiating agreements with their neighbours. Accession to existing multilateral conventions, such as the Barcelona and Geneva conventions and the General Agreement on Tariffs and Trade, should also be recommended. The declaration should emphasize the vital importance of the freedom of the seas and of free access to the seas for the development of trade between all nations.

46. Mr. L. EL-YAFI (United Arab Republic) declared that the delegation of the United Arab Republic would spare no effort to establish with other States equitable bases for the law of the sea. The Conference could meet the legitimate hopes and claims of all members of the international community and especially of the land-locked States, which were entitled to access to the sea and to free navigation upon it and must enjoy complete equality with other States.

47. The sea was an international public domain, destined for the common use of organized communities. Its use must be governed by a body of rules fixing the rights and duties of all and excluding any monopoly either in peace or war. Such a written and constructive set of rules must leave every State free to take all necessary steps to police its shipping.

48. His delegation supported generally the Czechoslovak draft articles on access to the sea of land-locked countries, which could serve as a basis for the formulation of fundamental principles. It would in due course submit two amendments. The first related to the drafting of a universal declaration which would serve as a preamble to the Czechoslovak draft and enunciate the right of free access to the sea for all countries, the right to fly a flag, the right of transit by all means of communication, the principle of equality of rights and duties for all, and the right of all to use submarine resources. The second related to the principle of the settlement of disputes either by a permanent international organ under the United Nations or by the International Court of Justice.

The meeting rose at 4.55 p.m.

EIGHTH MEETING

Thursday, 20 March 1958, at 3.25 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

General debate (continued)

STATEMENTS BY MR. GUEVARA ARZE (BOLIVIA), MR. OHYE (JAPAN), MR. DRAGUSTIN (YUGOSLAVIA) AND MR. TABIBI (AFGHANISTAN)

1. Mr. GUEVARA ARZE (Bolivia) said that his delegation would support compromise solutions. He hoped that the Conference would bear in mind the lessons of The Hague Conference of 1930 for the codification of international law, which had been a failure although agreement had been reached on various important points, and would decide that at least the principles confirmed by custom, practice and treaties should be codified in the future convention on the law of the sea.

2. Bolivia was situated in the middle of South America ; its river system was connected with the basins of the Amazon and the River Plate and other routes of communication linked the country to the Pacific. It had therefore been interested at all times in the law relating to international rivers and lakes ; but its main concern had been access to the Pacific Ocean. Furthermore, the railways and roads of neighbouring States converged on Bolivian territory. Another question to be settled was that of the use of pipelines to convey Bolivian petroleum to the sea.

3. Bolivia imported from overseas more than 30% of the foodstuffs consumed in the country, and more than 90% of its foreign currency earnings were accounted for by its exports of minerals, which were likewise carried by sea. It was the third-largest producer of tin in the world, and any difficulty in the transport of tin ores would adversely affect industry in other countries.

4. It was only since the Pacific War of 1879 that Bolivia had been a land-locked State. The Treaty of Peace and Friendship concluded with Chile in 1904 had accorded to Bolivia in perpetuity the fullest and most unrestricted freedom of commercial transit through Chilean territory and had authorized Bolivia to establish customs offices in the Chilean Pacific ports. The clauses in question had been confirmed by the Treaty of Commerce of 1912.

5. In consequence of its experiences during the Chaco war, when it had had difficulty in importing arms and supplies for the army — the supplies not having been

recognized as " merchandise " — Bolivia had in 1937 entered into another convention with Chile, which recognized freedom of transit in respect of passengers and every kind of freight without exception.

6. After a judicial decision had been rendered in Chile authorizing private persons to seize goods consigned to the nationalized mines of Bolivia, the States concerned had signed in 1953 the Declaration of Arica, which stated that consignments in transit to Bolivia through Chile would not be subject to the jurisdiction of the Chilean authorities.

7. With regard to pipelines, the Treaty of Economic Co-ordination concluded by Bolivia and Chile in 1955 stipulated that the governments of the two States would grant each other every facility for the construction, maintenance and operation of the installations required for the conveyance of Bolivian petroleum to a Chilean port.

8. The system set up under the agreements he had mentioned was functioning normally. Nevertheless, the Bolivian people would continue to yearn to possess a part of the Pacific coast.

9. The excellent memorandum prepared by the secretariat (A/CONF.13/29 and Add.1) reproduced the essential terms of the agreements which Bolivia had concluded with its other neighbours for the purpose of establishing a system of free transit based on reciprocity.

10. The conclusions to be drawn from his remarks were that the regulation of Bolivia's right of access to the sea concerned all countries in South America ; that that right had been confirmed by numerous treaties ; that the system established under those instruments was comparable to that established by treaties concluded by other land-locked States (and hence it could be said that there was a body of common rules concerning the right of free access to the sea) ; and that the difficulties experienced by Bolivia proved how urgent it was to codify in an instrument applicable throughout the world the rules at present embodied in bilateral agreements.

11. The part of the law of the sea which concerned land-locked States should deal, first, with the universally accepted absolute equality of land-locked and coastal States for the purposes of freedom of navigation, innocent passage, fishing on the high seas and the laying of cables and pipelines. It had been said that articles 15, 27, 28, 49 and 61 of the International Law Commission's draft, which covered those questions, referred by implication to the position of land-locked States ; but the Commission had not apparently intended them to be interpreted in that way. It should therefore be explicitly stated in the convention or its commentaries that those articles in fact also related to land-locked States.

12. Secondly, the right of free access to the sea of land-locked countries should be studied, as recommended in General Assembly resolution 1105 (XI) ; the Assembly had recognized the need of land-locked countries for transit facilities and, in resolution 1028 (XI), it had invited Member States to accord them such facilities.

13. The right of free access to the sea of land-locked countries comprised the right of free transit through the territory of the coastal State for persons and goods, irrespective of the mode of transport used ; exemption from the coastal State's customs regulations and duties and from any payment other than payment for services rendered ; exemption from the coastal State's jurisdiction over goods in transit ; the use of port installations on the same footing as the coastal State itself ; and the right of innocent passage in the internal waters of that State.

14. Certain delegations maintained that the latter right of land-locked States was not inherent in the right of free access to the sea and that the Conference should therefore not deal with it. To accept that argument would be to deny land-locked countries that right of free access to the sea which was recognized in practice and under existing treaties.

15. The problem of transit was a special problem in the more general context of the right of access to the sea. The freedom of transit referred to in the conventions of Barcelona (1921) and Geneva (1923) was based on reciprocity. The same was not necessarily true of the freedom of transit as an element of the right of access to the sea. That was a special right which was the core of the right of free access to the sea of land-locked countries. As the latter right was a necessary part of the law of the sea, the Conference could not postpone its codification.

16. The existing agreements did not constitute universally valid international law. Besides, they could be denounced. Hence, access to the sea depended at the moment on the consent of the coastal State. Nor was it always easy to apply the agreements. The Conference should therefore embody in the law of the sea rules which would protect the right of free access to the sea of land-locked countries, in the interests of international peace and prosperity. It was true that the Conference did not have at its disposal any studies by the International Law Commission on the question ; but the problem was less complicated than others. The secretariat memorandum (A/CONF.13/29 and Add.1), the statement made by the Chairman of the Committee (A/CONF.13/C.5/L.2) at the third meeting and those made by delegates, together with the memorandum of the Preliminary Conference (A/CONF.13/C.5/L.1), provided an adequate basis.

17. The right of free access to the sea of land-locked countries should be embodied in the positive international law, of world-wide validity, for otherwise the principle of the legal equality of States, the right to independence and the principle of the freedom of the high seas would be disregarded.

18. Mr. OHYE (Japan) assured the Committee that his country appreciated the importance of the problem of free access to and use of the sea by non-coastal States.

19. The freedom of the high seas, the corner-stone of the régime of the sea, had been established for the purpose of promoting the interest and welfare of the entire international community. In other words, the high seas were open to all nations alike, whether land-locked or coastal. There was no doubt that the land-locked countries were entitled to enjoy to the fullest extent all rights inherent in the freedom of the high seas. In that connexion, free access to the sea by the land-locked countries could be recognized as a matter of principle. The Japanese delegation considered, however, that free access to the sea by such countries should be worked

out by agreement with their neighbouring coastal States, and it had been gratified to learn that the question had been satisfactorily resolved by agreement in so many cases. It hoped that all land-locked countries would be able to enjoy fully the benefits of the seas.

20. The Japanese delegation felt that the result of the efforts of the Committee should be embodied in a declaration.

21. Mr. DRAGUSTIN (Yugoslavia) said that, if the study of the problem of free access to the sea of land-locked States had been tackled earlier, the Committee would have much less difficulty in solving it. The preparatory work at the Committee's disposal was clearly inadequate. At the same time, it was true that certain aspects of the problem had been dealt with in past multilateral instruments, such as the Barcelona Convention on Freedom of Transit (1921) and the Barcelona Declaration recognizing the Right to a Flag of States having no Sea-coast. In addition, there were bilateral and multilateral agreements governing the right to a flag and the use of ports.

22. Yugoslavia, which was a party to a large number of conventions concerning the right of free access to the sea of land-locked States and which had recognized the right in practice, was ready to co-operate constructively in the Committee's quest for a solution. In order to develop friendly relations with its neighbours and to increase the volume of goods passing through its territory, his country granted its neighbours all the necessary facilities. Indeed, the volume of goods traffic through Yugoslavia was increasing year by year.

23. Commenting on the principles enunciated by the preliminary conference and on the manner in which they were interpreted, he said, first, that the application of the principles without reciprocity would impose on coastal States certain obligations from which they would be unable to obtain their release if, by reason of some malpractice, they should wish to discontinue the system.

24. He could not agree that the principle of free access to the sea of land-locked States was a necessary consequence of the fundamental principle of freedom of the high seas, for the sovereignty of the coastal State extended not only to the territorial sea but also to internal waters, which it could close to foreign vessels.

25. He quoted in support of his view the opinion expressed by the Institute of International Law at its Amsterdam session in 1957 that with the exception of rights of passage established by usage or by agreement, the coastal State could refuse foreign vessels access to its internal waters, unless such vessels were in danger. The right of free access to the sea granted in bilateral agreements or recognized in a collective declaration was a concession that the coastal States made to land-locked States. The right of free access to the sea of land-locked States, like the right of transit, did not pose the same problems as other rights in the sea, because it touched on the internal regulations of States. So far as that right was concerned, it would perhaps be better to amend the conventions in force or to ask States which had not yet done so, and in particular land-locked States, to accede to them, for it seemed to be impossible to work out a single instrument which would apply to all countries.

26. The land-locked States, misinterpreting the privilege granted to them when they were given free access to the sea, were apparently claiming more extensive general rights than those enjoyed by the coastal States. It should be borne in mind, however, that that access was subject to the consent of the coastal State ; the privileges granted should be based on reciprocity. But the land-locked States were asking for the benefit of a public law servitude, on the grounds that the country of transit gained an economic advantage from transit. That was not always the case. The exercise of the right of transit might, for example, necessitate investments on the part of the coastal State which the latter might not be disposed to make in the absence of long-term bilateral agreements ; furthermore, it was not inconceivable that the land-locked State might divert its traffic, in which event the economy of the coastal State might suffer. In additon, a whole series of administrative and economic measures had to be adopted to ensure the proper through-traffic of goods, and those measures had to be carefully studied and worked out by the States concerned.

27. For all these reasons, the Yugoslav delegation — which was in favour of granting land-locked States free access to the sea under reasonable conditions, because such access was based on economic necessity and was a means of ensuring international co-operation in the spirit of the United Nations Charter — was of the opinion that the principle of free access should be proclaimed and recommended in a resolution to be adopted by the Conference, it being understood that the conditions governing the exercise of the right would be the subject of bilateral agreements.

28. Mr. TABIBI (Afghanistan) stated his delegation's position on several of the questions raised in the Fifth Committee.

29. It had been said that the study of the right of free access to the sea of land-locked States had not been adequately prepared. Yet, it was surely correct to say that several of the draft articles submitted by the International Law Commission dealt with the right, articles 15 and 27 directly, and articles 28 and 49 indirectly. It was perhaps regrettable that the Commission had not specified the fundamental principles of free access to the sea of land-locked States which derived from the freedom of the high seas, and which the Conference would have to insert into whatever instrument it adopted. It had been possible to formulate the text of the seven principles much more quickly than that of the seventy-three draft articles of the International Law Commission because it had offered fewer technical difficulties. The working out of the principles had not required long preparation.

30. That had been well understood by the members of the Sixth Committee of the United Nations General Assembly when they had adopted unanimously paragraph 3 of resolution 1105 (XI), embodying a proposal of which his delegation had been one of the sponsors which recommended that the Conference on the Law of the Sea should study the right of free access to the Sea of land-locked countries. Nor had the General Assembly

itself believed that there was insufficient preparation, for it had implied that one of the committees of the Conference would be expected to prepare a legal instrument on the subject. The Conference had no power to reverse a decision of the General Assembly; on the contrary, it had a duty to implement the decision and, in so doing, it should in his delegation's view bear in mind the provisions of General Assembly resolution 1028 (XI) which invited " the governments of Member States to give full recognition to the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries ".

31. To assist the Conference, the secretariat had prepared a most useful memorandum (A/CONF.13/29 and Add.1) in conformity with the provisions of paragraph 3 of resolution 1105 (XI), in which the General Assembly recommended " that the Conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties ". In addition, the Conference had before it the memorandum submitted by the Preliminary Conference of land-locked States (A/CONF.13/C.5/L.1) setting forth principles of international law which, in the unanimous opinion of the twelve countries participating in that conference, governed the right of free access to the sea of land-locked countries. He observed that the International Law Commission had worked on its draft articles not, as had been said, at all its sessions, but only at its fifth and eighth sessions.

32. Some delegations had said that the codification of certain principles already recognized in international instruments would not perhaps be to the advantage of land-locked States. In that connexion, he pointed out that several of the international instruments in question — those signed at Barcelona, for instance — had been ratified by no more than a few States and that they did not adequately protect the interests of land-locked States. Furthermore, as the representative of Ceylon had said at the Committee's seventh meeting, those instruments were concerned with specific but narrow questions. Besides, many of them were very old and an historic conference such as the present should replace them by others which would contribute to the development of international law, particularly since the signatories of the instruments relating to the rights of land-locked countries were mainly European countries. Surely there was little danger in reaffirming in more explicit language the rules of law applying to land-locked countries? Such a reaffirmation would be one means of improving relations not only between land-locked States and their coastal neighbours, but also between all countries of the world, as had been pointed out by the United Kingdom and United States representatives. The former had noted that, while the claims of land-locked countries to free access to the sea came under a different branch of international law, there was an obvious connexion between the right of free access to the sea and that of innocent passage through the territorial sea. To deny that would signify that the freedom of the high seas was meaningless so far as the land-locked countries were concerned. Grotius had already, in his *Mare Liberum,* recognized the right of innocent passage.

33. The Conference was not concerned with codification pure and simple. From a careful study of the seventy-three draft articles prepared by the International Law Commission it was evident that they were not simply a codification of traditionally accepted principles of international law; they often extended those principles with a view to promoting the development of international law, in conformity with Article 13 of the Charter. Article 2 of the draft, for example, recognized the sovereignty of the coastal State in the air space over the territorial sea. Article 13 of the United Nations Charter attached equal weight to the codification and to the progressive development of international law. It would therefore be wrong to believe that the Conference and the International Law Commission should confine themselves to codifying international law, a limitation which would in fact be at variance with the purposes formulated in the United Nations Charter. Further, as Professor Brierly had said at the meeting of the Committee on the Progressive Development of International Law and its Codification, held from 12 May to 17 June 1947, codification could not be limited to declaring existing law, since the latter was often uncertain and there were gaps in it. Accordingly, if the codification of the right of free access to the sea of land-locked countries (and there was nothing against codification) demanded that the Conference should fill some of those gaps, its object in so doing should be that the final instrument to be adopted could have a wider and more effective application.

34. There had been some reference in the discussion to the possibility of referring back to the International Law Commission for more detailed study the whole question of free access to the sea of land-locked countries. His delegation believed that no such possibility existed, since the General Assembly had expressly recommended the Conference to reach a decision on the matter.

35. Finally, he thanked the representative of the Netherlands, a country which had steadfastly upheld the principles of law, particularly in regard to the freedom of the high seas and free access to the sea, for having displayed so great a comprehension of the problems of land-locked countries and for having proposed an extension of the seven principles formulated by the Preliminary Conference.

36. Mr. SHAHA (Nepal) asked to speak on a point of order. The Yugoslav representative had said that land-locked countries were in effect claiming more extensive general rights than those enjoyed by coastal States. His delegation could not accept that statement, which indeed the Yugoslav representative had made no effort to substantiate. He was still convinced that the seven principles formulated by the Preliminary Conference were indeed an expression of existing international law. If the opportunity arose, he would reply in greater detail to the Yugoslavian representative.

The meeting rose at 4.50 p.m.

NINTH MEETING

Monday, 24 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)

STATEMENTS BY MR. SAVELIEV (UNION OF SOVIET SOCIALIST REPUBLICS), MR. CARDONA (MEXICO), MR. BEN SALEM (TUNISIA), MR. KANDAN (TURKEY) AND MR. MARTINEZ MONTERO (URUGUAY)

1. Mr. SAVELIEV (Union of Soviet Socialist Republics), recalling his government's attachment to the policy of co-existence and collaboration among all States, irrespective of their economic and social systems, said that the Soviet Union was anxious to make a positive contribution to the solution of the main problems of the international law of the sea. In that spirit, the Government of the Soviet Union, a maritime Power whose coasts were washed by several seas, was ready to support the aspirations of the land-locked countries for free access to the sea. In 1815, when the Congress of Vienna was being prepared, the Russian delegation had put forward proposals to the effect that the principle of free access to the sea should be coupled with that of the freedom of the high seas and that in seaports free zones should be established for the benefit of land-locked countries. In modern times, the Soviet Union, in keeping with the same policy, had in June 1955 concluded an agreement with Afghanistan settling the question of transit in the best interests of both Governments. Under that agreement, goods exported or imported by Afghanistan whatever their origin or destination could use the ports and the extensive means of communication in the Soviet Union free of all duties and charges; goods in transit, moreover, enjoyed the lowest freight rates, and the formalities were reduced to a minimum. Similar agreements had been concluded with the Governments of Czechoslovakia and Hungary.

2. He noted that all land-locked countries had concluded with the adjacent coastal States agreements in order to ensure free access to the sea. Previous speakers had all recognized the principle of free access to the sea; that principle should now be confirmed and codified. After the General Assembly had been so sympathetic to the requests for a study by the Conference of the problem of access to the sea of land-locked countries, the Committee could surely not fail to bring those studies to fruition and to draft provisions regulating the right of access to the sea. It should not be difficult to prepare international rules governing free access to the sea, for the Committee had the necessary time and documents at its disposal.

3. The International Law Commission's draft (A/3159) laid down certain principles, including the principle of the freedom of the high seas. Since the right of access to the sea derived from that principle, a convention on the law of the sea would not be complete and sound unless it also confirmed the principle of freedom of access to the sea for land-locked States. In his opinion, there was no likelihood that an instrument stipulating access to the sea for such States would complicate the situation or impair existing international agreements. Some representatives had said that the question of the transit of goods to the sea should be linked with that of international transit. That view was not shared by the U.S.S.R. delegation, which considered rather that the study of the right of access to the sea should not be complicated by any attempt to link the right of access to the sea with a much more complex and much more controversial question. The Committee had before it a draft, comprising seven articles (A/CONF.13/C.5/L.1, annex 6), prepared by the Czechoslovak delegation at the Preliminary Conference of Land-locked States. Once in final form, that draft would, in his delegation's opinion, enable the Conference to bring its work to a successful conclusion.

4. Mr. CARDONA (Mexico) said that the right of access to the sea of land-locked States was recognized virtually unanimously, and that the treaty provisions governing relations between land-locked and adjacent coastal States in that respect were in many cases very satisfactory.

5. Several speakers had stated that the Committee's proceedings might give rise to legal, legislative and practical difficulties and dangers. He hoped that the spirit of co-operation which had been very much in evidence would produce agreement. Mexico was certainly anxious to assist in the quest for a solution in keeping with the aims of universal justice.

6. He pointed out that certain States represented at the Conference were not parties to the international conventions in force and hence the provisions of those conventions did not apply to them; he also referred to the many treaties concluded between coastal States and land-locked States on the subject of freedom of access to the sea for the latter. The systems provided under those treaties differed from country to country: while some were entirely satisfactory, others showed unintentional gaps that should be filled.

7. It was desirable that the Committee should standardize the rules concerning the right of access of land-locked countries to the sea. The bilateral treaties, which contained only particular provisions dealing with specific cases, could not constitute a source of universally applicable rules of international law. Furthermore, the situation created by the recognition of the principle of free access of the land-locked countries to the sea affected not only those States and their neighbours but all States, and for that reason general rules were needed.

8. The Committee should weigh carefully the objections to the idea of drafting a convention; at the same time it should not forget that the Conference's function was to codify, which meant, as indicated in General Assembly resolution 1105 (XI), that it was to adopt one or more international conventions. The Committee should therefore concentrate on preparing a draft convention. During the detailed consideration of such a draft it would have ample opportunity for exploring ways and means of overcoming the difficulties which had been pointed out.

9. The example of the American States in the matter of extradition would serve to illustrate his point. Although they had almost all concluded bilateral extradition treaties amongst themselves, they had nonetheless adopted a multilateral convention on the same question

enunciating the general principles to be followed. It was that sort of draft instrument that the Committee should, he thought, prepare for submission to the Conference.

10. His delegation also thought that the Committee might study measures to be recommended to ensure that newly established States had direct access to the sea.

11. Mr. BEN SALEM (Tunisia) said that Tunisia, appreciating the concern of the land-locked countries, took a keen interest in the Committee's work. His delegation regarded the right of land-locked countries to free access to the sea as an essential element in the harmonious relations which should be established within the international community in order to ensure the well-being of the peoples and co-operation between nations on terms of equality, more particularly in economic and commercial matters.

12. The right to a flag flowed logically from the principle of the freedom of the seas, under which all States enjoyed the right of free navigation and of free exploitation of the high seas. By virtue of that right of free navigation, ships flying the flag of a land-locked country should enjoy, in territorial and internal waters and in ports, the same advantages and privileges as were granted to the vessels of other countries.

13. The right of freedom of transit raised the most difficult problems. In the opinion of his delegation, that right was the logical consequence of the rights previously mentioned, the right which made the effective exercise of the others possible. Some speakers had said that the right in question was comparable to a servitude in civil law, a right *in rem* vested in the land-locked State and exercisable over the territory of the State of transit. Others thought in terms of a contractual obligation; yet others had said that the right was a rule of international law. There was something of all three elements in the right of transit, and that was no doubt why it was more difficult to reach agreement on the point. In its endeavours to secure agreement the Committee should separate the legal aspect from the practical aspect of the problem. From the legal standpoint, the enunciation of the principles involved did not seem likely to cause any difficulties. Tunisia fully subscribed to those principles and in general supported the draft articles submitted by Czechoslovakia. The difficulty was how to give tangible expression to the principles; whereas the land-locked countries wanted them to be embodied, as universal rules, in an international instrument, the coastal States took the view that their prior consent was required in each case.

14. The Tunisian delegation sincerely hoped that all sides would display the utmost good sense in order that a solution might be found.

15. Mr. KANDAN (Turkey) noted that the statements of all the speakers who had preceded him had borne testimony to the understanding of their governments for the situation of the land-locked countries and their anxiety to have access to the sea. The question being one of vital importance for the expansion of world trade, bilateral and multilateral treaties had been concluded with a view to solving the problem of access to the sea regionally and even on a world-wide scale. The problem of access to the sea was one of finding the most appropriate solution, since the position of the land-locked countries varied from case to case. While it was of course possible to prepare a general convention concerning access to the sea, it should be remembered that by its resolution 1105 (XI) of 21 February 1957 the General Assembly recommended the Conference to study the problem of free access to the sea as established by international practice of international treaties. The Conference was therefore competent to decide whether a general convention on the matter was both possible and desirable.

16. He thought, however, that a distinction should be drawn between the right of free transit and the other principles enunciated by the Preliminary Conference of Land-locked States. As some representatives had pointed out, the right of free transit was not a necessary corollary of the freedom of the high seas, and did not therefore come within the competence of the Conference on the Law of the Sea. In addition the question of the right of transit had been regulated by the countries concerned in bilateral agreements and treaties which were still in force ; the Government of Turkey, for instance, had ratified the Barcelona Convention on Freedom of Transit, and had concluded a transit agreement with Iran which was working in a manner satisfactory to both sides. Finally, the Committee had hardly enough time to draft a convention on the right of land-locked countries to access to the sea and, moreover, was not adequately briefed for the purpose.

17. In view of all those considerations, his delegation would prefer the Committee to confine itself to a reaffirmation of the principles enunciated earlier by the Preliminary Conference.

18. Mr. MARTINEZ MONTERO (Uruguay) said his country had a great interest in the questions of access to the sea for land-locked countries. He sincerely hoped that the Conference would adopt rules based on the principles formulated by the Preliminary Conference and satisfactory to all States, whether land-locked or maritime.

19. The preparatory documents submitted to the Committee should, in his opinion, provide a satisfactory basis for its work.

20. He recalled that in the 1860s Uruguay had enacted legislation granting transit facilities to land-locked countries and port facilities at Montevideo for the vessels of all countries. With the object of improving communications between land-locked countries and the outside world, Uruguay had placed its rivers under a special régime at a time when the Mississippi and the Danube, for instance, had still been regarded as internal waterways. Uruguay was proud to have been a pioneer in that respect.

21. Uruguay had long recognized the right of free transit ; a large part of the State of Rio Grande do Sul, in Southern Brazil, for example, had free access to the sea through Uruguay.

22. With reference to the free zones mentioned in the draft submitted by Czechoslovakia to the Preliminary Conference, he said that under an Act of 20 June 1923, Uruguay had set up in its ports free zones, whose operation gave general satisfaction.

23. He was convinced that remedies could be found for

the unfavourable geographical position of the land-locked States.

The meeting rose at 12.10 p.m.

TENTH MEETING

Tuesday, 25 March 1958, at 3 p.m.

Chairman: Mr. Jaroslav ZOUREK (Czechoslovakia)

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

General debate (continued)

STATEMENTS BY MR. PECHOTA (CZECHOLOVAKIA), MR. SRESHTHAPUTRA (THAILAND), MR. COMAY (ISRAEL), MR. DARA (IRAN), MR. MELO LECAROS (CHILE), MR. BHUTTO (PAKISTAN), MR. SEN (INDIA), MR. BUU-KINH (REPUBLIC OF VIET-NAM), MR. VELILLA (PARAGUAY), MR. RODRIGUES (PORTUGAL), MR. SHAHA (NEPAL) AND MR. BOURBONNIERE (CANADA)

1. Mr. PECHOTA (Czechoslovakia) said that he had been glad to note that all speakers had been in favour, sometimes with certain reservations, of seeking a solution to the question of access to the sea of land-locked States, in the interest not only of those States themselves but also of the international community at large. His own object was to clarify certain important points mentioned by various delegations.

2. One of the main points raised had been whether the right of access to the sea for land-locked States could or should be codified in connexion with the regulation of the régime of the sea. The Czechoslovak delegation was convinced that the Conference was fully entitled to conduct its proceedings in such a way as to provide a sound and lasting basis for relations between nations. Since the principle of the freedom of the high seas was admitted to be universally valid, no State could be deprived of the right to use the high seas, and accordingly of the particular rights inseparable from that general right. The practical as well as the theoretical validity of this assumption was obvious, thanks to the universality of the principle of the freedom of the high seas. Without such particular rights, the right to use the high seas would be devoid of reality for many countries. Those particular rights included the land-locked States' right of passage through the territorial waters of the adjacent coastal States, the right to use those States' ports, and the right of transit. The Czechoslovak delegation was therefore unable to share the view of those who considered such particular rights to be entirely without legal foundation.

3. The right of transit had given rise to a very large number of comments. It had even been held — and the view was of course one which the Czechoslovak delegation could not support — that transit to the sea was not an integral part of the right of access to the sea. Admittedly, the idea that transit conditions should be laid down in bilateral agreements was entirely correct. Bilateral agreements played a very important part in the regulation of the right of access to the sea of land-locked countries, and would continue to play such a part in the future even if the right were enunciated in a general instrument. It was likewise true that bilateral agreements were the best means of harmonizing the respective rights and obligations of the parties, and gave the necessary protection to the transit States' sovereignty. If the sovereignty and legitimate interests of the coastal or transit State were not duly protected, the regulation of the right of access to the sea of the land-locked States would have a unilateral flavour incompatible with the general principles governing relations between sovereign States.

4. However, the Czechoslovak delegation considered that the existence of bilateral agreements was no justification for assuming that land-locked States had no special right of transit to the sea, or that such right was part of the general right of transit which, as the Netherlands representative had pointed out, although highly desirable, was not universally accepted as a basic and irrefutable principle of international law. To deny land-locked States the right of transit to the sea was in fact to refuse to apply to them the principle of freedom of the high seas. Freedom of transit to the sea was granted to land-locked States in order to enable them to use the high seas on an equal footing with the maritime States. The right of transit of land-locked States was undoubtedly one of the series of questions which the Conference had to solve.

5. Another problem was the non-application of the most-favoured-nation clause to the provisions granting land-locked countries right of access to the sea. In the Czechoslovak delegation's view, such non-application was the logical consequence of the special character of the right of transit to the high seas, which was granted to a land-locked country for the sole purpose of offsetting the inequality due to its geographical situation. The automatic extension of the special rights comprising it to third States would not achieve the desired result: it would be unjust to the land-locked State, and still more unjust to the transit State. In the light of various doctrinal and historical precedents, he stated categorically his delegation's view that it was theoretically and practically legitimate and reasonable not to apply the most-favoured-nation clause to all the special rights of land-locked States, whether those were fundamental rights or granted under bilateral agreements. To disallow such an exception to the clause would imply a simultaneous refusal to recognize the special features of the right of transit to the high seas and, hence, the very right of access to the sea.

6. The Czechoslovak delegation was convinced that the Committee would not shelve any of the important problems which it was called upon to solve.

7. Mr. SRESHTHAPUTRA (Thailand) said that his country's interest in the question of freedom of access to the sea for land-locked countries was proved by its signature of many international agreements, including the Barcelona Conventions of 1921 and the Convention and Statute of 1923 on the International Régime of Maritime Ports. Thailand had also concluded an agreement with Laos to grant that State access to the sea in accordance with the principles laid down in the Barcelona Convention on freedom of transit. In addition, the Thailand delegation had supported General

Assembly resolutions 1028 (XI) and 1105 (XI), which were the reasons for the present conference.

8. Thailand had therefore abundantly proved its desire to co-operate with land-locked States. He wished nevertheless to stress that, while his government was at all times prepared to give every consideration to requests by land-locked States, it was also anxious to safeguard Thailand's own legitimate interests. Land-locked countries normally tended to interpret the principle of freedom of the high seas as authorizing them to claim right of access to the sea. While it had no objection to the principle of free access to the sea for land-locked countries, the Thailand Government held that that principle was not accepted by all countries and that the principle of freedom of the high seas could not be interpreted in all cases as a justification of the right of transit. Certain delegations had wished to put the right of transit on the same footing as the right of innocent passage. The Thailand delegation rejected that view, on the ground that there was a difference between the right of transit and innocent passage in that, whereas the right of innocent passage could be exercised without the express agreement of the coastal State, the exercise of the right of transit was subject to authorization by the coastal State, which alone could grant passage. He would not embark on a lengthy consideration of that question, which had already been dealt with by other delegations, but would merely state that in the opinion of his goverment a land-locked country possessed no inherent right of transit across a neighbouring country. That right could be granted only under an agreement between the parties. That was why, incidentally, international legislation was less advanced on that point than in relation to the others.

9. It did not seem that the time had come to codify the principle of the free access to the sea of all land-locked countries ; as they had all in practice been given access to the sea under bilateral or multilateral agreements, and as most of them seemed to be satisfied with present practice, there was no reason for undue haste in framing principles. In the meantime, the land-locked countries should endeavour to improve their positions by acceding to some of the existing conventions and agreements relating to the right of transit and the freedom of access to the sea, rather than try to frame new conventions. At the present juncture, the Conference should not attempt to achieve anything more than an agreement on the broad principles governing the rights of land-locked States.

10. Mr. COMAY (Israel) felt that it was not necessary to specify precisely the theoretical bases of certain rights before formulating them. It was sufficient to regard access to the sea as an aspect of the right to utilize the high seas, and to state rules in the light of the practice of States. That was what the Preliminary Conference of Land-locked States had wisely done in its report (A/CONF.13/C.5/L.1).

11. His delegation took the view that, while the principles had an independent place in international law, they could be implemented only through agreements. As the French representative had pointed out, no one but the parties themselves could take into account all the technical, financial and legal aspects of the situation in which one country used another country's ports and transport facilities. A draft code could not replace direct negotiation and the conclusion of agreements, but it would provide an international basis for the negotiation of such agreements and a framework of rules which would be incorporated in treaties and agreements. A problem might arise, however, if a coastal State or a State of transit refused to enter into a contractual agreement or to apply the essential principles which were submitted for consideration by the Conference. That might happen where a State attempted to exploit its geographical situation as a means of exerting pressure on a neigbouring State or of subjecting it to political blackmail. Such situations were not unknown at the present time, and might occur again in the future. It was therefore essential to lay down standards of conduct for States, even if it was necessary to postpone until a later stage the study of the legal machinery for the settlement of disputes.

12. There was a serious weakness in principle VI as enunciated by the Preliminary Conference, which entitled the State of transit to protect what it regarded as its " legitimate interests " but did not even include a provision against discriminatory measures. The principle as it stood afforded scope for political abuses. The delegations of Czechoslovakia and Afghanistan at the Preliminary Conference had also been concerned with that question. In his own delegation's view, provisions should be introduced into the instrument finally adopted by the Conference to fill the gap.

13. Although the right of innocent passage was within the purview of the First Committee, his delegation wished to speak on it because at least two aspects of the rights inherent in navigation were of especial interest to the land-locked States. To begin with, States whose ships were obliged to cross the territorial sea of another State in order to reach the high seas depended primarily on the rules governing the right of innocent passage. In that connexion, there were gaps in the text of article 17 of the International Law Commission's draft. The right of a coastal State to suspend the right of innocent passage was not precisely defined and was based on criteria that were not sufficiently objective ; moreover, the text failed to specify that the right of suspension could be exercised only on condition that measures were taken to avoid any discrimination. In general, the draft code failed to make sufficiently clear that the right of innocent passage was a right independent of the coastal State's sovereignty and in no way subordinate to it. Secondly, there was the question of land-locked countries' river ports situated on navigable waterways with access to the sea. In that case, freedom of access to the sea meant freedom of access to seaports : where the route to a port crossed the territorial sea of another State, that State should not be entitled to suspend the exercise of the right of innocent passage ; moreover, freedom of access to seaports should extend beyond the territorial sea and include international navigable waterways. In that connexion, the land-locked countries should, in his delegation's opinion, study closely the draft articles at present before the First Committee.

14. The Barcelona Convention of 1921 and the Convention signed at Geneva in 1923 had been concluded pursuant to the provisions of article 23 (*e*) of the Covenant of the League of Nations, and there

were no similar provisions in the Charter of the United Nations. It was therefore important to prepare, under the auspices of the United Nations, a set of general principles to which the provisions of the Barcelona Conventions and other conventions and agreements could be related. The text of the conventions signed at Barcelona and Geneva did not appear to provide for the free accession of all the States Members of the United Nations represented at the Conference on the Law of the Sea, particularly those which had recently achieved independence. The accession clauses should be brought into line with United Nations practice.

15. Mr. DARA (Iran) considered that the instructions given to the Conference by the General Assembly regarding the freedom of access of land-locked countries to the sea were naturally different from those regarding the action to be taken on the International Law Commission's draft. He further considered that the question of free access to the sea of land-locked countries should be studied just as thouroughly as the other parts of the conference programme, since it involved two intrinsically different and conflicting concepts, and an attempt should be made to reconcile them. One was the concept of state sovereignty, which presupposed the conclusion of bilateral agreements ; the other was the concept of the access of land-locked States to the sea, and it would not be possible in practice to reconcile those concepts by a universal declaration.

16. The Iranian delegation reserved all its rights, and could not commit itself before studying thoroughly all aspects — particularly the political, geographical and economic aspects — of the question.

17. Mr. MELO LECAROS (Chile) considered that the material presented for examination by the Committee had been well studied by the Preliminary Conference of Land-locked States, which had been able to deduce some clear and firm principles. The right of land-locked States to communication with the high seas had been recognized by all speakers in the Committee. It remained to give formal expression to that unanimity. The only divergence of opinion related to the origin of the right of land-locked States to free access to the sea. It was apparently moral imperatives which required recognition of the right in question, for that right was essential to the very existence of the land-locked States, besides being in accordance with the interests of the maritime States themselves.

18. Chile's interest in the question was explained by the presence on its frontiers of the land-locked State of Bolivia. Under agreements between Chile and Bolivia, Bolivia was given transit rights in respect of the movement of persons and goods in both directions through Chilean territory, and was permitted, among other things, to establish customs offices at Chilean ports. Bolivian transport operations through Chilean territory were efficiently handled by railway lines carrying essentially transit traffic. Pipelines would take Bolivian oil to the Chilean port of Arica. Such were the happy results of a policy conducted in a spirit of understanding and friendship.

19. Subject to certain reservations which it would formulate in due course, the Chilean delegation approved the principles enunciated by the Preliminary Conference in its report.

20. Mr. BHUTTO (Pakistan) said his delegation had examined with profit the report of the Preliminary Conference of Land-locked States and the statement made by the Chairman at the 3rd meeting. However, the question of the freedom of access of land-locked States to the sea had not been studied by the International Law Commission, and consequently governments had not had the opportunity to present their observations. Such questions must be dealt with cautiously and in stages ; it was unnecessary to emphasize the wisdom of a patient approach. His delegation therefore considered that it would be useful and in accordance with normal practice to refer to the International Law Commission not only the question of the freedom of access of land-locked countries to the sea, but also the wider question of transit rights as a whole. That procedure seemed the more advisable since the land-locked countries had stated quite frankly that they were not confronted with any practical problems requiring immediate solution.

21. His delegation had combed international law in vain for the right or series of rights which land-locked countries sought to arrogate to themselves. An eminent jurist had even expressed the opinion that a State owed no legal duty to another to yield to it privileges of transit across its territory. Consequently, it would be dangerous to submit to a concept of international law that sought the recognition of rights by analogy. On the one hand, there were the seven principles proclaimed by the land-locked countries, and on the other was the fundamental and universally recognized principle of national sovereignty, which transcended all ancillary considerations. Nevertheless, his delegation would refrain from making any premature suggestions for the solution of that conflict of principles. It fully sympathized with the position of land-locked countries and the difficulties arising from their geographical situation, but if the land-locked countries claimed the right of transit to the sea across the territory of a coastal State, they must also admit that that same right should be granted to countries which were geographically divided and whose parts were separated by alien territories. Thus any country placed in a difficult geographical situation, whether land-locked or not, would have the right of transit. The dictates of justice and equity would grant countries whose territories were split up a right of transit by means of a corridor running through the territory of another State or States.

22. The relations between land-locked countries and States of transit were satisfactorily regulated by bilateral and multilateral treaties. The obligations devolving from those treaties constituted the safest guarantee. The sanctity of a contract voluntarily arrived at was infinitely better than a contentious, nebulous right. It was paradoxical, and even tragic, that the land-locked countries considered that their interests would be better served by departing from such a favourable situation.

23. There seemed to be an impression that the issue was confined to land-locked countries, but that impression was wholly wrong. The question concerned all States, but especially maritime States, for it was they who were called upon to sacrifice a part of their sovereignty despite perfectly satisfactory existing arrangements. If the land-locked countries could demand recognition of a collective right by announcing a

common denominator of agreement, the maritime and transit States should also be given an opportunity to come together and pronounce their collective views.

24. In accordance with resolution 1105 (XI), by which the General Assembly had invited the Conference to study the question of free access to the sea of land-locked countries, his delegation was quite willing to study the problem in all its details, but there seemed to be an obsession on the part of certain delegations to stampede the Conference into accepting certain rules. It should be reiterated that the formulation of such rules was premature and exceeded the recommendations of the General Assembly. He had deliberately refrained from going into the merits of the seven principles enunciated by the Preliminary Conference because he considered that they had not been given sufficient study.

25. Mr. SEN (India) said that his government had always upheld the principle of the freedom of the high seas, which should be open to all States without any distinction. However, the question of the right of land-locked States involved a host of extremely complex problems, for there might be conflicts between the rights of those States and the sovereignty of the countries of transit. In view of that situation, the Commission should proceed with great caution. Reviewing the terms of General Assembly resolution 1105 (XI), he drew attention to a certain inconsistency between the provisions of paragraph 2 and those of paragraph 3. While paragraph 3 referred to the question of free access to the sea, as established by international practice or international treaties, paragraph 2 provided that the Conference might embody the result of its work in one or more international conventions or such instruments as it might deem appropriate. In his delegation's opinion, the Conference should consider only the question of free access to the sea by land-locked States and should refrain from codifying that principle in an international convention or other similar instrument. There was a wide difference between the freedom of the high seas and the right of access to the sea, which depended on transit. The former right was in fact an established principle of international law, whereas the latter was governed by the sovereignty of the coastal State.

26. Reviewing the principles formulated by the Preliminary Conference of Land-locked States, he pointed out that the first principle (Right of free access to the sea) contained in annex 7 of the Preliminary Conference's report was drafted in too general terms ; as a result the text lacked precision and its implications were difficult to grasp. If it implied recognition of the right of transit, it would hardly be acceptable to the Indian delegation.

27. On the other hand, his delegation fully accepted the principles concerning the right to fly a maritime flag and the right of navigation. The fourth principle (Régime to be applied in ports) introduced a new concept. It was true that the freedom of the high seas implied that land-locked countries enjoyed the same rights on the high seas as other States in respect of navigation, but there could be no question of granting them the most favoured treatment embodied in the fourth principle as drafted by the Preliminary Conference. His delegation was prepared to accept the Preliminary Conference's fifth principle (Right of free transit) ; and in that connexion he recalled that on 13 February 1950 the Indian Government had concluded a transit agreement with Nepal. The right of free transit, however, did not preclude the levying of certain taxes or charges, which were necessary in order to prevent unscrupulous traders from exploiting the situation for their own benefit. His delegation could accept the sixth and seventh principles dealing with the rights of transit States and existing and future agreements, but with certain reservations concerning the exercise of the right of transit.

28. His delegation held the view that all coastal States should conclude agreements with land-locked countries. The acceptance of the principle of free access to the sea by land-locked countries did not, however, seem to require its immediate inclusion in a general convention. The General Assembly should be asked to refer the question for consideration by the International Law Commission with a view to a solution that would reconcile the interests of all concerned.

29. Mr. BUU-KINH (Republic of Viet-Nam) thought that, in order to ensure their economic development, the right of access to the sea of land-locked countries should be recognized without question. That right should not be regarded exclusively from the standpoint of the land-locked countries, and its exercise should not prejudice the law and order, security and vital interests of the coastal State.

30. In the present legal situation, the methods of application of the principle of the freedom of transit should be governed by agreements concluded in a liberal spirit. Such a spirit governed the relations between Viet-Nam and Laos, which latter enjoyed the most liberal right of transit on entry and exit both for goods and persons. Viet-Nam intended to improve its means of communication in order to facilitate transit, and an agreement between his country and Laos would determine the methods of application of the principle of free access to the sea.

31. In the Committee, divergencies of view had been revealed on two points. The first, a theoretical one, was the basis of the principle of free access to the sea ; the second, a practical one, was the usefulness and wisdom of drafting a general convention. In order to settle that point, a number of questions arising out of it should be borne in mind : whether the subject was suitable for codification ; whether the existing international instruments provided sufficient safeguard for the interests of the land-locked countries ; whether, instead of concluding a general convention, it would not be better to increase the number of ratifications of the 1921 Barcelona Convention on freedom of transit ; whether the Preliminary Conference's report could offset the lack of any real preparatory work ; whether the most-favoured-nation clause should not be given prior study by a competent body ; whether it was possible to apply the provisions of a single instrument to the specific circumstances of each of the land-locked countries without diminishing the rights of some of them ; whether international relations would be improved or not by the preparation of a convention ; and whether a general declaration, stating principles in flexible forms of words

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.