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COMMITTEE ON THE PEACEFUL USES
OF THE SEA-BED AND THE OCEAN
FLOOR BEYOND THE LIMITS OF
NATIONAL JURISDICTION

STUDY OF THE QUESTION OF FREE ACCESS TO THE SEA OF LAND-LOCKED COUNTRIES AND OF THE SPECIAL PROBLEMS OF LAND-LOCKED COUNTRIES RELATING TO THE EXPLORATION AND EXPLOITATION OF THE RESOURCES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

Report of the Secretary-General

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INTRODUCTION

1. The present report has been prepared in accordance with the request made by the General Assembly in resolution 2750 B (XXV) of 17 December 1970. In the preamble to that resolution the General Assembly recalled resolutions 1028 (XI) of 20 February 1957 and 1105 (XI) of 21 February 1957 concerning the problems of land-locked countries; bore in mind the replies to the Secretary-General's inquiry under resolution 2574 A (XXIV) of 15 December 1969, which indicated wide support for the idea of convening a conference on all questions relating to the law of the sea at which the interests and needs of all States, whether land-locked or coastal, could be reconciled; noted that many of the present land-locked Member States of the United Nations had not participated in the previous United Nations Conferences on the Law of the Sea; reaffirmed that the area of the sea-bed and the ocean floor, and their subsoil, lying beyond the limits of national jurisdiction, together with the resources thereof, were the common heritage of mankind; and stated its conviction that the exploration of that area and of its resources must be carried out for the benefit of all mankind, taking into account the special interests and needs of the developing countries, including the particular needs and problems of those which are land-locked.

2. In the operative part of the resolution, the Assembly requested the Secretary-General to prepare, in collaboration with the United Nations Conference on Trade and Development (UNCTAD) and other competent bodies,

> "an up-to-date study of the matters referred to in the memorandum dated 14 January 1958, prepared by the Secretariat, on the question of free access to the sea of land-locked countries 1/ and to supplement that document, in the light of the events which have occurred in the meantime, with a report on the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction."

3. The Secretary-General was requested to submit this study to the enlarged Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration at one of its 1971 sessions.

1/ United Nations Conference on the Law of the Sea, 1958, Official Records, Vol. I (United Nations publication, Sales No.: 58.V.4, Vol. I), document A/CONF.13/29 and Add.1, p.306-335.

"so that appropriate measures might be evolved within the general framework of the law of the sea, to resolve the problems of land-locked countries."

The Committee was requested to report on this question to the General Assembly at its twenty-sixth session.

4. Having regard to the request that the present report include "an up-to-date study of the matters referred to in the memorandum dated 14 January 1958", it may be useful to recall here the context in which that memorandum (hereinafter referred to as the "1958 study") was prepared and the range of the matters it covered. During the eleventh session (1957) of the General Assembly, when the draft articles on the law of the sea prepared by the International Law Commission were examined by the Sixth Committee, attention was called to the fact, that those articles contained no provisions regarding land-locked countries.2/ Following the submission of a proposal by a group of land-locked States,3/ the General Assembly recommended in operative paragraph 3 of resolution 1105 (XI) of 21 February, 1957 that the international conference of plenipotentiaries to be convoked "to examine the law of the sea"

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

5. The 1958 study was one of the reports prepared in response to operative paragraph 7 (c) of resolution 1105 (XI), whereby the Secretary-General was requested to prepare working documents in order to facilitate the work of the forthcoming conference. As regards its contents, chapter I contained a summary of the discussions held during the eleventh session of the General Assembly, both in the Sixth Committee leading up to the adoption of resolution 1105 (XI), and in the Second Committee, which had considered the question of transit facilities and trade. It was recalled that, in resolution 1028 (XI) of 20 February 1957, adopted following the Second Committee's debates, the General Assembly recognized:

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

2/ For a summary of the discussions in the Sixth Committee on this matter, see the 1958 study, ibid., paras. 5-11.

3/ Afghanistan, Austria, Bolivia, Czechoslovakia, Nepal and Paraguay, ibid., para. 8.

and invited the Governments of Member States

> "... to give full recognition to the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries."

6. As was pointed out in chapter I of the 1958 study, the question of free access to the sea had also been discussed in other United Nations bodies, either in the context of transit questions in general or as a specific problem confronting land-locked countries. Some of the relevant documents, such as the pertinent provisions of the General Agreement on Tariffs and Trade and the Havana Charter, were accordingly summarized, and an account given of the steps taken by the Economic Commission for Asia and the Far East (ECAFE) with regard to the question of land-locked countries.

7. Chapter II contained a review of the theoretical foundations on which various writers had proposed solutions to the problem of the right of free access. The theories were classified under three headings: theories based on natural law; on the principle of the freedom of the sea; and the theory of public law servitude.

8. The remaining two chapters dealt with the solutions to the problems of transit and access to the sea offered by bilateral and multilateral agreements respectively. Chapter III, relating to bilateral treaties, gave an account of certain older agreements and of the instruments concluded between various European countries in consequence of the Treaty of Versailles and the Conferences of Barcelona and Geneva, held in 1921 and 1923. The pertinent clauses of the agreements entered into by Bolivia were reproduced as examples of Latin-American treaties, and examples were given of treaties effective in Africa and Asia. Lastly, chapter III referred to certain treaties relating to transit and access to the sea which had been concluded since 1945. Chapter IV, dealing with multilateral agreements, gave particular attention to the efforts made under the auspices of the League of Nations to encourage the conclusion of general instruments relating to transit rights. After referring to the régime of the Rhine and the relevant provisions of the Covenant of the League of Nations, the General Conferences on

communications and transit, held at Barcelona in 1921 and at Geneva in 1923, and the agreements adopted by them, were accordingly described at length[4].

9. In the conclusion of the 1958 study, it was pointed out, inter alia, that the subject dealt with

> "is vast and touches on a large number of related questions - freedom of the sea, freedom of passage across the territorial sea, the use of maritime ports open to commerce, the equal treatment of the users of those ports, communication by road, rail and air across countries whose territories block the access of other countries to the sea." [5]

From the treaties and conventions examined it appeared that "there are a few, but sufficiently clear, rules" which could serve as a basis for the framing of provisions allowing to land-locked States "an unquestioned right of access to ports and to the open sea - a right which those States need if they are to achieve full economic development".[6]

10. The "matters referred to" in the 1958 study may thus be summarized as being those matters relating to free access to the sea of land-locked countries which had, up to that time, been discussed by United Nations bodies or otherwise been the subject of international concern, either on a bilateral or multilateral basis. As was stated in the 1958 study, furthermore, whilst the available evidence indicated that there were a few but sufficiently clear, rules which could provide the basis for formulations of the right of free access, consideration of the subject involved, reference to a large number of related questions concerning transit communications and facilities. Having regard to the changes which have taken place during the subsequent years, including most notably the adoption of the Geneva Conventions on the Law of the Sea in 1958, which may be said to have given specific form to the agreed "few, but sufficiently clear, rules", of a fundamental nature, relating to the right of free access to the sea, and the conclusion of the Convention on Transit Trade of Land-locked States in 1965, it has not been thought necessary in the present

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4/ A list of these agreements, and the number of States parties, are contained in annex I.

5/ Ibid., para. 170.

6/ Ibid., para. 176.

report to follow the exact pattern of the 1958 study and to examine once more, for example, the various approaches, from a theoretical standpoint, to the question of free access, or to analyse the general international agreements concluded prior to 1945. In describing the developments which have taken place since January 1958, particular emphasis has accordingly been placed on multilateral action, either as regards the conclusion of treaty instruments or as regards discussion in United Nations bodies which have considered questions relating to land-locked countries. Attention has also been given, however, to the large number of bilateral agreements entered into by land-locked States since 1958.

11. The study is divided into three parts. Part one gives an account of the adoption of resolution 2750 B (XXV) and a summary of the views expressed by Member States during the twenty-fifth session of the General Assembly and at the session of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction held in March 1971. Part two of the study deals with the adoption of the Convention on the High Seas, the Convention on the Territorial Sea and the Contiguous Zone, and the Convention on Transit Trade of Land-locked States, and summarizes many of the bilateral treaties concluded since 1958 relating to the transit trade and facilities of land-locked countries. An account is then given of the consideration since 1958 of the problems of land-locked States by various United Nations bodies, in particular by UNCTAD, the Economic Commission for Africa (ECA) and ECAFE.

12. Whereas part two is intended to provide a revised study of the "matters referred to" in the 1958 study, part three deals, in accordance with the terms of resolution 2750 B (XXV), with the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and ocean floor, beyond the limits of national jurisdiction. Lastly, the study contains two annexes: I, a list of the multilateral treaties concluded prior to 1958; and II, a selected bibliography.

PART ONE. ADOPTION OF RESOLUTION 2750 B (XXV) AND VIEWS EXPRESSED BY MEMBER STATES DURING THE TWENTY-FIFTH SESSION OF THE GENERAL ASSEMBLY AND DURING THE SESSION OF THE COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION HELD IN MARCH 1971

I. ADOPTION OF RESOLUTION 2750 B (XXV) AND VIEWS EXPRESSED BY MEMBER STATES DURING THE TWENTY-FIFTH SESSION OF THE GENERAL ASSEMBLY

13. Resolution 2750 B (XXV) of 17 December 1970 was adopted by the General Assembly on the proposal of the First Committee, following discussion of agenda item 25.[7/] During the First Committee's consideration of the item, the right of land-locked States to equality with other States as regards the use of the high seas and the development of the resources of the sea-bed beyond national jurisdiction was generally recognized. Many delegations emphasized that the benefits to be derived from the exploitation of the wealth of the sea-bed and ocean floor beyond the limits of national jurisdiction should be shared by all States, whether land-locked or coastal, and primarily the developing countries. It was also stated that all

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7/ Agenda item 25 of the twenty-fifth session of the General Assembly was entitled as follows:

"(a) Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind: report of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction;

(b) Marine pollution and other hazardous and harmful effects which might arise from the exploration and exploitation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction: report of the Secretary-General;

(c) Views of Member States on the desirability of convening at an early date a conference on the law of the sea: report of the Secretary-General;

(d) Question of the breadth of the territorial sea and related matters."

States, including land-locked States, should be able to participate in the administration of the régime to be set up for the area. The right of land-locked countries to free access to the area was also widely acknowledged. The difficulty, as pointed out by representatives of the land-locked countries, was to give practical effect to this theoretical equality. The right of participation meant, in their view, that land-locked countries must be represented in all decisions regarding the development of rules and institutions for the oceans. No group of States, either maritime or coastal, could effect changes in the law of the sea without their participation: unilateral changes violated this right of participation. The implementation of the right of access to the sea, it was stated, must involve local and regional understanding. A general conference on the law of the sea should decide not only what rules should be, but also establish the international machinery to ensure the effective and immediate implementation of the rules.

14. In the past, it was stated, there had been fragmentary and insufficient concern over relationships between the sea and land-locked countries. The problems of land-locked countries had been overlooked by the International Law Commission in its preparations for the United Nations Conference on the Law of the Sea, held in 1958 (and had only been considered in a preliminary conference of land-locked States held shortly before the United Nations Conference); only two out of forty-two members of the Sea-Bed Committee had been land-locked States, although about one-third of the United Nations were either land-locked or shelf-locked; and very little attention had been given to the problems of land-locked countries in United Nations documents. However, it was recognized that some work had been done on these problems in United Nations organs, and particularly in UNCTAD. Reference was made, in particular, to the adoption in 1965 of the Convention on Transit Trade of Land-locked States and to the report on special problems of the land-locked countries[8/] prepared in 1970 by a group of experts appointed by UNCTAD.

8/ "Special problems of the land-locked countries: report of the Group of Experts on the Special Problems involved in the Trade and Economic Development of the Land-locked Developing Countries", document TD/B/308. On the consideration by UNCTAD of questions relating to land-locked countries see paras. 187-196 below.

15. Speakers in the First Committee pointed out that the right of free access of land-locked countries to the sea comprised rights exercised on land as well as those exercised at sea. The problems raised in each respect varied according to the particular circumstances of the land-locked country. For some, problems connected with rights exercised at sea, such as the right to operate ships under their flag, freedom of navigation on the high seas, enjoyment of innocent passage through the territorial sea of coastal States and the use of ports, were of the first importance. For others, problems regarding transit rights exercised on land were a greater preoccupation. The concept of reciprocity did not fit the situation since exercise by land-locked countries of their right of access to the sea (including land transit rights) was dependent on coastal States, whilst the reverse was not the case. Thus questions of improvements to pipelines and pumping stations, railways, airports and port installations, which might have a considerable effect on the income of the land-locked country, should not be left, it was said, as now, solely to the discretion of the coastal State. For the land-locked countries to be assured of equality with coastal States in relation to their access to the sea-bed and ocean floor, it was, according to one view, necessary to give them special treatment. There was, it was stated, an urgent need to hold a preliminary and preparatory conference of land-locked countries to study the possibilities of codification of the right of free access to the sea.

16. The particular interest of land-locked countries in the delimitation of the area beyond national jurisdiction was also stressed; the larger the area under the jurisdiction of the coastal State, the smaller the area remaining where land-locked countries might expect to share on equal terms in the "common heritage of mankind". They were excluded, it was said, from participation in the exploitation of the living resources of the sea, not only in territorial waters but also in adjacent waters and fishing zones, and had no access to the riches of the continental shelf; they were therefore particularly interested in the possibility of exploiting the riches of the sea-bed and ocean floor beyond the limits of national jurisdiction. The width of the territorial sea must be settled internationally, and this should be dealt with at the forthcoming Conference on the Law of the Sea. On the question of coastal jurisdiction, it was necessary, many held, to have a multilateral agreement.

17. On the other hand, many representatives laid strong emphasis on the right of coastal States to establish jurisdiction over their coastal areas so as to protect the security of their coasts and the resources of those areas which were, it was stated, an extension of the coastal State. It was maintained that in certain cases bilateral agreements served to give land-locked countries greater facilities for access to the sea than multilateral agreements.

18. In introducing in its original form (A/C.1/L.551) the draft resolution which, as later revised, became resolution 2750 B (XXV), the representative of Bolivia explained that it was a purely procedural resolution, intended to avoid burying the question in a welter of important and complex problems, and calling attention to the special problems of land-locked countries. It merely requested a report made necessary by the events which had taken place since previous studies were made, in the light of the problems which had arisen. The wording of the draft resolution did not prejudge anything.

19. While a number of delegations expressed support for the draft resolution, it was suggested that a reference in the preamble to the special interests and needs of the developing countries "particularly those which are land-locked" gave a certain imbalance to the resolution. In a revision of the draft resolution (A/C.1/L.551/Rev.1), jointly sponsored by Afghanistan, Austria, Bolivia, Burundi, Lesotho, Mali, Paraguay, Upper Volta and Zambia, later joined as co-sponsors by Chad, Niger and Swaziland, this phrase was replaced by the words "including the particular needs and problems of those which are land-locked".

20. The representatives of some coastal States, however, were of the view that no distinction should be drawn among the developing countries between those who were coastal and those who were land-locked States. On the one hand, as these representatives wished to emphasize, all developing countries, including those who were land-locked, should share in the benefits to be derived from exploitation of the international area, in accordance with the concept that this area constitutes the "common heritage of mankind". On the other hand, it was stated, all developing countries, both coastal and land-locked, had problems relating to the exploration and exploitation of the sea-bed, and attention should accordingly be paid to the problems of the developing countries as a whole, and not merely those of one sector or group of States, in this case the land-locked countries. Pursuant to

this view it was said that the resolution should not be interpreted so as to discriminate among various developing countries; the purpose of the resolution should not be to seek a privileged status for the land-locked countries, but to have a study prepared which would relate to the specific characteristics of the land-locked countries.

21. In a separate vote taken on the phrase "including the particular needs and problems of those which are land-locked" contained in the preamble to the draft resolution, this wording was retained by 74 votes to 2, with 27 abstentions. A separate vote was also taken on the words in operative paragraph 1 from "and to supplement" to the end of the paragraph; these words were retained by 77 votes to 2, with 27 abstentions. The draft resolution as a whole was adopted by the First Committee by 89 votes to none, with 16 abstentions, and, at the 1933rd plenary meeting of the General Assembly, held on 17 December 1970, by 111 votes to none, with 11 abstentions.

II. VIEWS EXPRESSED BY MEMBER STATES DURING THE SESSION OF THE COMMITTEE ON THE PEACEFUL USES OF THE SEA-BED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION HELD IN MARCH 1971

22. During the session of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction held in March 1971, further references were made, chiefly by the representatives of land-locked countries, to the problems of those countries. As regards their general approach with respect to exploration and exploitation of the resources of the sea-bed beyond national jurisdiction, the representatives of land-locked States declared that, under the concept of the "common heritage of mankind", land-locked countries were entitled to participate in the determination of how those resources should be exploited and how the benefits obtained should be used. In so far as it was agreed that a large proportion of mineral resources of greatest value lay near the coast, and either did not exist in, or were not economically obtainable from the deep ocean bed, the extension of the jurisdiction of coastal States reduced a critical part of the area of "common heritage". Furthermore, it was stated, whereas land-locked countries, like shelf-locked countries and others bordering internal or marginal seas, had no option in the matter and were

dependent on the creation of an effective régime and what was described as "meaningful" machinery if they were to share the benefits of sea-bed exploitation, coastal States facing open seas had a choice: either they too could enjoy the benefits of the establishment of that régime and machinery or they could extend the limits of their national jurisdiction and benefit in that way. Several representatives of land-locked States stressed the importance of the determination of a precise and agreed limit of the international area and declared that, in their view, this issue was one which needed to be considered in connexion with the work of Sub-Committee I, concurrently with its consideration elsewhere.9/

23. As regards more particular issues, the representative of one land-locked country referred to the need for coastal facilities if land-locked countries were to take part in sea-bed activities and suggested that this should be amongst the matters examined in the present report. He also drew attention to operative paragraph 2 of resolution 2750 (XXV), which requested that the Committee consider the report "so that appropriate measures may be evolved within the general framework of the law of the sea, to resolve the problems of land-locked countries"; the problems of land-locked countries should, he considered, therefore be studied by both Sub-Committee I and Sub-Committee II. In this connexion it may be noted that the delegate of another land-locked State declared that it was important for land-locked countries to ensure freedom of navigation through straits used for international navigation in instances where such straits became part of the territorial sea following an extension of national jurisdiction.

24. As during the debates in the First Committee, there was widespread agreement that the international area should be open to all States, both coastal and land-locked, and its benefits shared on a similar basis, with particular consideration being given to developing countries. Apart from this statement of principle,

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9/ As regards the organization of work of the Committee and of its Sub-Committees, see the agreed statement read out by the Chairman of the Committee at the forty-fifth meeting, held on 12 March 1971.

relatively few representatives, other than those of land-locked countries, made comments relating specifically to the problems of land-locked countries. Several delegates drew attention, however, as the representatives of land-locked countries had done, to the similarity of interests, as regards the establishment of an international régime and machinery, between shelf-locked countries or others which did not face on to ocean expanses, and land-locked States. The representatives of some coastal States emphasized on the other hand, the right of a coastal State to determine jurisdiction over marine areas off its coasts. The delegates of these States stressed the importance of the resources in question to their economies and drew attention to regional practices and customs which, in their view, made the action of coastal States fully justifiable. As previously noted, however, discussion of the problems of land-locked countries during the March session was largely confined to the speeches of delegates of land-locked countries.

PART TWO. MULTILATERAL AND BILATERAL TREATIES WHICH HAVE BEEN CONCLUDED RELATING TO THE QUESTION OF FREE ACCESS TO THE SEA AND CONSIDERATION OF THE QUESTION BY UNITED NATIONS BODIES, SINCE THE SUBMISSION OF THE 1958 STUDY

I. MULTILATERAL TREATIES

25. The principal instances of the conclusion, since January 1958, of general multilateral instruments relating to the access to the sea of the land-locked countries are the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone, which were both adopted in 1958, and the Convention on the Transit Trade of Land-locked Countries, which was concluded in 1965. These treaties are considered below.

A. The Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone

26. Preparatory steps for the 1958 United Nations Conference on the Law of the Sea included, besides the issue of the 1958 study, the convening of a preliminary conference of land-locked States between 10 and 14 February 1958.[10/] This preliminary conference enunciated seven principles[11/] which, it was stated, were part of existing international law, governing the access to the sea of land-locked countries. When the United Nations Conference on the Law of the Sea was held, between 24 February and 27 April, the question of free access to the sea of land-locked countries was referred to the Fifth Committee established by the Conference.[12/] This Committee adopted recommendations relating to four

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10/ For the memorandum submitted by the preliminary conference see document A/CONF.13/C.5/L.1, Official Records of the United Nations Conference on the Law of the Sea, vol. VII (United Nations publication, sales No.: 58.V.4, vol. VII), p. 67.

Invitations to the preliminary conference were issued by Switzerland to Afghanistan, Austria, Bolivia, Byelorussian SSR, Czechoslovakia, Holy See, Hungary, Laos, Luxembourg, Nepal, Paraguay and San Marino.

11/ For the text, ibid., annex 7.

12/ The others being First Committee (Territorial Sea and Contiguous Zone), Second Committee (High Seas: General Régime), Third Committee (High Seas: Fishing: the Conservation of Living Resources) and Fourth Committee (Continental Shelf). Summary records of meetings of the Fifth Committee, ibid.

articles for inclusion in the instruments to be adopted by the Conference. These recommendations dealt with the right of ships of all States to enjoy innocent passage through the territorial sea, the enjoyment by all States of the freedom of the high seas, the right of every State to sail ships under its flag, and the question of free access to the sea of land-locked States.

27. In the form adopted by the Conference these recommendations were included in articles 2, 3 and 4 of the Convention on the High Seas and in article 14 of the Convention on the Territorial Sea and the Contiguous Zone. The two Conventions, along with the other Conventions drawn up by the Conference, were adopted on 29 April 1958.

28. Articles 2, 3 and 4 of the Convention on the High Seas[13/] read as follows:

Article 2

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

(1) Freedom of navigation;

(2) Freedom of fishing;

(3) Freedom to lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

13/ United Nations, Treaty Series, vol. 450, No. 6456. The Convention entered into force on 30 September 1962. As of 1 May 1971 the following forty-eight States were parties: Afghanistan, Albania, Australia, Bulgaria, Byelorussian SSR, Cambodia, Central African Republic, Czechoslovakia, Denmark, Dominican Republic, Fiji, Finland, Guatemala, Haiti, Hungary, Indonesia, Israel, Italy, Jamaica, Japan, Kenya, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Nepal, Netherlands, Nigeria, Poland, Portugal, Romania, Senegal, Sierra Leone, South Africa, Spain, Swaziland, Switzerland, Thailand, Trinidad and Tobago, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United States of America, Upper Volta, Venezuela and Yugoslavia.

Article 3

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter, and in conformity with existing international conventions, accord:

(a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and

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

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the right of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions."

Article 4

"Every State, whether coastal or not, has the right to sail ships under its flag on the high seas."

29. Article 14 of the Convention on the Territorial Sea and the Contiguous Zone[14/] concerns the right of innocent passage of the ships of all States through the territorial sea of coastal States. Article 14, together with article 15, which also relates to innocent passage, is quoted below.

Article 14

"1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

14/ Ibid., vol. 516, No. 7477. The Convention entered into force on 22 November 1964. As of 1 May 1971, the following forty-one States were parties: Australia, Bulgaria, Byelorussian SSR, Cambodia, Czechoslovakia, Denmark, Dominican Republic, Fiji, Finland, Haiti, Hungary, Israel, Italy, Jamaica, Japan, Kenya, Madagascar, Malawi, Malaysia, Malta, Mauritius, Mexico, Netherlands, Nigeria, Portugal, Romania, Senegal, Sierra Leone, South Africa, Spain, Swaziland, Switzerland, Thailand, Trinidad and Tobago, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United States of America, Venezuela and Yugoslavia.

2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

5. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

6. Submarines are required to navigate on the surface and to show their flag.

Article 15

1. The coastal State must not hamper innocent passage through the territorial sea.

2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

B. The Convention on Transit Trade of Land-locked States

30. The United Nations Conference on Transit Trade of Land-locked Countries,[15/] which was held between 7 June and 8 July 1965, adopted the Convention on Transit Trade of Land-locked States, together with two resolutions which were annexed to the Final Act of the Conference.

15/ The Conference was convened following a decision taken by the General Assembly at its 1328th plenary meeting, on 10 February 1965, to convene a conference to consider the question of transit trade of land-locked countries and embody the results of its work in an international convention and such other instruments as it might deem appropriate.

The decision of the General Assembly was taken pursuant to a recommendation made by the First United Nations Conference on Trade and Development on 15 June 1964 (annex A.VI.1 of the Final Act of the United Nations Conference on Trade and

(Foot-note continued on following page)

31. In resolution 2086 (XX) of 20 December 1965, the General Assembly noted with satisfaction that the Convention had been successfully concluded as a step towards the normalization of transit trade of all land-locked countries, and requested that the Convention be signed by 31 December 1965, and ratified or acceded to as soon as possible, in order to promote the economic and social development of the land-locked countries through international trade. Requests that States not yet parties should ratify or accede to the Convention have also been made by other United Nations bodies.

32. The Convention entered into force on 9 June 1967.[16/] The provisions of the Convention are cited or summarized below.

33. Preamble of the Convention. The preamble to the Convention recalls articles 2 and 3 of the Convention on the High Seas and sets out and reaffirms the eight principles, relating to transit trade of land-locked countries, which were adopted by the first United Nations Conference on Trade and Development on 15 June 1964.

34. The relevant provisions read as follows:

> "The States Parties to the present Convention,
>
> ....
>
> Reaffirming the following principles adopted by the United Nations Conference on Trade and Development with the understanding that these principles are interrelated and each principle should be construed in the context of the other principles:

15/ (continued)

Development, I). The Conference on Trade and Development, I, also adopted on 15 June 1964 a resolution on principles relating to transit trade of land-locked countries (annex A.I.2 of the Final Act of the United Nations Conference on Trade and Development, I). The principles set out in the resolution were incorporated in the preamble to the Convention on Transit Trade of Land-locked States.

The Conference had before it the report of the United Nations Committee on the Preparation of a Draft Convention relating to Transit Trade of Land-locked Countries (document A/5906), which met in New York from 26 October to 20 November 1964.

16/ United Nations, Treaty Series, vol. 597, No. 8641. As of 1 May 1971, the following twenty-three States were parties: Belgium, Burundi, Chad, Czechoslovakia, Denmark, Finland, Hungary, Laos, Lesotho, Malawi, Mali, Mongolia, Nepal, Niger, Nigeria, Norway, Rwanda, San Marino, Swaziland, Turkey, United States of America, Yugoslavia and Zambia.

Principle I

The recognition of the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development.

Principle II

In territorial and on internal waters, vessels flying the flag of land-locked countries should have identical rights and enjoy treatment identical to that enjoyed by vessels flying the flag of coastal States other than the territorial State.

Principle III

In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State as regards access to seaports and the use of such ports.

Principle IV

In order to promote fully the economic development of the land-locked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit, in such a manner that they have free access to regional and international trade in all circumstances and for every type of goods.

Goods in transit should not be subject to any customs duty.

Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country.

Principle V

The State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind.

Principle VI

In order to accelerate the evolution of a universal approach to the solution of the special and particular problems of trade and development of land-locked countries in the different geographical areas, the conclusion of regional and other international agreements in this regard should be encouraged by all States.

Principle VII

The facilities and special rights accorded to land-locked countries in view of their special geographical position are excluded from the operation of the most-favoured-nation clause.

Principle VIII

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

35. Articles 1 and 2. Article 1 of the Convention contains definitions of terms used in the Convention.[17/] Article 2 states that freedom of transit shall be granted under the terms of the Convention for traffic in transit and means of transport. Article 2 also provides, among other matters, that

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17/ "Traffic in transit" is defined in article 1 to mean the passage of goods, including unaccompanied baggage, across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage.

"Means of transport" is defined to include (i) any railway stock, seagoing and river vessels and road vehicles; (ii) where the location situation so requires, porters and pack animals; and (iii) if agreed upon by the Contracting States concerned, other means of transport and pipelines and gas lines, where these are used for traffic in transit within the meaning of article 1.

(a) subject to the other provisions of the Convention, the measures taken by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned;

(b) no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used;

(c) the Contracting States shall permit the passage of traffic in transit across their territorial waters, in accordance with the principles of customary international law or applicable international conventions and with their internal regulations.

36. Articles 3, 4 and 5. Article 3 deals with customs and special transit dues; article 4, with means of transport and tariffs; and article 5, with methods and documentation in regard to customs, transport and certain other matters.

37. Article 3 exempts traffic in transit from customs duties or taxes, chargeable on importation or exportation, and from any special dues with respect to transit. Charges to defray expenses of supervision and administration are, however, permissible.

38. Article 4 requires the provision, subject to availability, at points of entry and exit, and as required at points of transshipment, of adequate means of transport and handling equipment for the movement of traffic in transit without delay. Article 4 also requires that charges for the use of facilities, such as means of transport and port installations, within the transit State be reasonable.

39. Article 5 provides for the application of administrative and customs measures permitting free, uninterrupted and continuous traffic in transit. There is also provision for the use of simplified documentation and expeditious methods with respect to customs, transport and other administrative procedures.

40. Article 6. Article 6 states that the conditions for storage of goods in transit at the points of entry and exit, and at intermediate stages in the transit State, may be established by agreement between the States concerned. The transit States shall grant conditions of storage at least as favourable as those granted

to goods coming from or going to their own countries. Tariffs and charges are to be established in accordance with article 4 of the Convention.

41. Article 7. Article 7 provides that, except in cases of force majeure, all measures shall be taken by Contracting States to avoid delays in or restrictions on traffic in transit. The competent authorities of the transit State and the land-locked State are to co-operate towards the expeditious elimination of delays or difficulties.

42. Article 8. For convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in transit States, by agreement between those States and the land-locked States. Facilities of such a nature may also be provided for in other transit States which have no sea-coast or sea-port.

43. Articles 9 and 10. Article 9 permits the grant of greater transit facilities than those provided for in the Convention. Article 10 excludes the facilities and special rights accorded by the Convention to land-locked States from the operation of the most-favoured-nation clause.

44. Articles 11, 12 and 13. Article 11 provides for exceptions to the requirements of the Convention for reasons of public health, security and protection of intellectual property. Article 12 concerns exceptions in case of emergency. Article 13 deals with the application of the Convention in time of war.

45. Article 14. Article 14 states that the Convention does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the United Nations.

46. Article 15. Article 15 states that the provisions of the Convention shall be applied on a basis of reciprocity.

47. Articles 16-23. Article 16 provides for the settlement of disputes. Articles 17 to 23 contain the final clauses of the Convention.

48. Resolutions annexed to Final Act of Conference. The two resolutions adopted by the Conference and annexed to its Final Act were as follows:

"Resolution on facilitation of maritime trade of land-locked countries, adopted by the Conference at its 34th plenary meeting held on 6 July 1965

The United Nations Conference on Transit Trade of Land-locked Countries, 1965,

Recognizing that the Convention on Facilitation of International Maritime Traffic, 1965, and its Annex, adopted at the International Conference on Facilitation of Maritime Travel and Transport, held in London in 1965, is applicable to the maritime trade of land-locked countries through the operation of paragraph two of article Two of that Convention,

Considering that the application of that Convention and its Annex may greatly benefit maritime travel and transport, including the flow of transit trade of land-locked countries,

Invites the attention of the States representated at this Conference to the Final Act of the International Conference on Facilitation of Maritime Travel and Transport, 1965, which includes the Convention on Facilitation of International Maritime Traffic adopted by that Conference, and

Expresses the hope that the Inter-Governmental Maritime Consultative Organization will take appropriate measures within the scope of the above-mentioned Convention and its Annex and Resolutions Four and Five of the Conference on Facilitation of Maritime Travel and Transport, to facilitate the transit trade of land-locked countries."

"Resolution adopted by the Conference at its 36th plenary meeting held on 8 July 1965

The Conference on Transit Trade of Land-locked Countries,

Noting the joint effort made by the participating States to adopt a Convention for recognizing the need of land-locked countries for adequate transit facilities in promoting international trade,

Recognizing that as the transit trade of land-locked countries, comprising one fifth of the nations of the world, is of the utmost importance to economic co-operation and expansion of international trade,

Recommends that all States which have been invited to the Conference examine, as soon as possible and in a sympathetic spirit, the possibility of becoming Parties to the Convention,

Further recommends that the Trade and Development Conference and its organs should give close and serious attention to the importance of the provisions of the Convention on Transit Trade of Land-locked States adopted at United Nations Headquarters on 8 July 1965,

Recommends that the Secretary-General through the technical co-operation organs of the United Nations and through the regional economic commissions should extend assistance in furthering transit trade to the members of the United Nations land-locked or transit States alike upon their request, within the framework of the established procedures of the United Nations and its related agencies."

II. BILATERAL TREATIES

49. In addition to the conclusion, since the 1958 study, of several general multilateral treaties containing provisions relating to the question of free access, a number of bilateral treaties have been entered into by land-locked States during the period under review, designed to regulate in specific terms the conditions of transit through neighbouring States. Examples of treaties of this character which had been concluded up to 1958 were reviewed in chapter III of the 1958 study. Since the completion of that document a further series of treaties have been adopted, intended to meet the particular circumstances of the States in question. It may be recalled that, in article 3 of the Convention on the High Seas, reference is made to the conclusion of special agreements between land-locked and coastal or transit States. The Convention on Transit Trade of Land-locked States recognizes, in article 9, the provision of greater facilities than those provided for in the Convention by the agreement of the States concerned. The article provides:

"This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in the Convention and which under conditions consistent with its principles, are agreed between Contracting States or granted by a Contracting State. The Convention also does not preclude such grant of greater facilities in the future."

50. From the materials available to the Secretariat, it appears that a considerable number of bilateral treaties relating to the question of access and transit have in fact been concluded by land-locked States during the years since 1958. Indeed, it is probable that very nearly as many treaties of this

kind were entered into during these years as during the entire earlier period covered by the 1958 study, a fact no doubt in part attributable to the increase in the number of land-locked countries themselves during this period.[18/] Whilst necessarily varying in their details, the treaties deal with such matters as

- freedom of transit in general;
- transit of goods and products;
- transport of passengers and luggage;
- road and railway transport;
- river navigation;
- use of port facilities and establishment of free zones;
- payment of transit expenses;
- customs procedures and local or tax regulations; and
- jurisdiction over traffic in transit.

51. The review which is made below of examples of these treaties has been based in part on a background study prepared by the Secretariat in order to assist the Group of Experts which met in 1970, under the auspices of UNCTAD, to consider the problems of land-locked countries.[19/] The texts of these agreements were obtained from several sources; in some instances texts were made available either to UNCTAD or to ECAFE by States parties, others were forwarded to the Secretary-General in response to a note verbale. Others were registered with the United Nations and are available in the United Nations Treaty Series; in one case reference has been made to an authoritative learned collection of the treaties of the State concerned. Although the agreements which are summarized below are not exhaustive of all the pertinent bilateral treaties concluded by land-locked States since 1958, it is believed that they are representative of much of practice followed by States with respect to the wide range of matters which relate to the question of free access.

52. It should, however, be noted that, in addition to the bilateral agreements referred to below, a number of arrangements, intergovernmental or other - have been

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18/ Invitations to the preliminary conference held in 1958 were sent to thirteen land-locked States (para. 26 above). The following fourteen land-locked States have since become Members of the United Nations: Botswana, Burundi, Central African Republic, Chad, Lesotho, Malawi, Mali, Mongolia, Niger, Rwanda, Swaziland, Uganda, Upper Volta and Zambia. Bhutan has also applied for membership.

19/ For the work of the Group, see paras. 191-194 below.

entered into, usually on a regional or subregional basis, for co-ordinating the transport policies of developing land-locked and transit countries, and providing for the joint financing of the transport infrastructure and the establishment of joint transport undertakings. A full account of these developments would extend beyond the scope of this paper. Information regarding the arrangements in question was set out in annex IV of the report of the Group of Experts, from which the following brief summary is taken.20/

Amongst the most important examples of intergovernmental arrangements for co-operation in this field which were listed in the report were: the consultations between the Governments of Ghana and Upper Volta regarding the development of the Volta region, including navigation on Lake Volta; the appointment by the Government of Niger of a member of the executive council of the Port Administrations at Abidjan and Cotonou; the representation of Zambia on the Port Authority of Dar-es-Salaam and the membership of Zambia and Malawi in the Beira Port Traffic Advisory Committee; the appointment of Nepalese customs liaison officers at the Port of Calcutta and at Barauni railway station to collaborate with the appropriate Indian authorities; the Cameroon-Central African Republic and Cameroon-Chad mixed committee existing within the Office of the Trans-Cameroon Railway to study the development of rail transport between Cameroon and its two land-locked neighbours; the consultations between the Federal Government of Nigeria and the Government of Niger for the construction of a pipeline; the arrangements within the "Agence Transequatoriale des Communications" (ATEC) regarding transport development and the pricing of transport services used by member countries; the Latin American Free Trade Association (LAFTA) Convention on Waterborne Transportation; the joint commissions set up in Latin America to study, among other things, measures to improve the transport links and facilitate the transit trade of Bolivia and Paraguay with their transit neighbours; the bodies set up in order to co-ordinate and promote transport development, such as the Co-ordinating Committee of the Treaty of the Plate River Basin; and the Organization of the Riparian States of the River Senegal, the River Niger Commission, the Chad Basin Commission, the Committee for Co-ordination of Investigations of the Lower Mekong Basin, and the Asian Highway Co-ordinating Committee.

20/ Document TD/B/308.

53. As regards non-governmental organizations, reference was made to the associations of transport enterprises formed in Latin America under the auspices of the Latin American Free Trade Association. These include the Latin American Association of Road Transport undertakings, the Latin American Association of Railways, and the Latin American Shipowners Association.[21/] While direct joint financing of the transport infrastructure by the Governments of the land-locked developing countries and their transit neighbours is, so far, rather limited, the UNCTAD Group of Experts referred[22/] to the contributions of Zambia and the United Republic of Tanzania to the construction of the Tanzam railway, and participation by various countries in the cost of feasibility studies sponsored by United Nations bodies. Special mention was made of the cases of Chad, which bears the costs of maintenance of the part of the road from Fort Foureau to Maiduguri (Nigeria) running through Cameroon territory, and of the Eastern Bolivian Railway network which is partially financed by the Governments of Argentina and Brazil. Lastly, the UNCTAD Group of Experts described briefly[23/] the Abidjan-Niger Railways, the Common Railway and Transport Services Dahomey-Niger, "Air Afrique", the "Agence Transéquatoriale des Communications" and the common services of the East African Community. Other examples of joint transport undertakings include the East Africa Shipping Line Ltd., which is partly owned by the Governments of Kenya, Uganda, the United Republic of Tanzania and Zambia.

54. As regards the bilateral treaties relating to access and transit which are listed below, the presentation is arranged by regions (Africa, Asia, Europe, Latin America). Within each region, the land-locked States referred to appear in alphabetical order. The pertinent treaties are listed, under the name of the land-locked State in question, in the order in which they were concluded; where reference is made to more than one treaty with a particular State, however, the treaties have been grouped under subheadings according to the name of the other State party. In order to show the range of practice, examples have been given of treaties between land-locked countries, as well as of treaties with coastal States.

21/ Ibid., annex IV, paras. 20-27.

22/ Ibid., annex IV, para. 28.

23/ Ibid., annex IV, paras. 29-45.

A. Examples of treaties concluded by land-locked States in Africa

1. Mali

Agreement of 8 June 1963 between Mali and Senegal concerning the use of Senegal port facilities designated for transit traffic to and from Mali 24/

55. Customs-free zones. The port facilities at Dakar and Kaolack designated for use in connexion with goods in transit to or from Mali are to form separate customs-free zones within the customs areas of those ports (article 1). Transit operations within the zones are to be conducted in accordance with conditions governing international transit (article 2). In the zones the national laws of Mali pertaining to economic protection are to be applicable, within the framework of the customs privileges granted with respect to the zones (article 3). Mali may establish such agencies and services within the zones as may be necessary for the implementation of these provisions (article 4).

56. Customs procedures. Senegal may take such measures as it deems necessary to ensure customs supervision outside the zones (article 5). The entrances and exits of the zones, however, are to be guarded by the customs authorities of the two States (article 6). The customs regulations of Mali are to be applied in cases of customs infringements within the zones (article 9).

57. Non-diversion of goods. Goods passing through the zones in transit to or from Mali are not to be diverted to markets in Senegal, except with the consent of both States (article 7). That consent is also required as regards the entry into the zones of goods originating in Senegal, or being imported into or exported from Senegal (article 8).

58. Jurisdiction of courts. An agreement to be concluded between the two States shall define the jurisdiction of the courts of Mali and Senegal with respect to the matters referred to in articles 7, 8 and 9 (article 10).

24/ The text of this Agreement, and that with Upper Volta, were supplied to UNCTAD.

Agreement of 26 July 1968 between Mali and Upper Volta on public road transportation

59. The agreement applies to the carriage of goods and passengers in road vehicles between the two States; certain forms of private transport are excluded (article 1).

60. Transport authorization. Article 6 authorizes a vehicle, registered in either State, to engage in transport in the other State provided no break in the load is made during such transport, and subject to the other conditions of the agreement. A vehicle with less than a full load is permitted, however, to complete its load when passing through the capital of the other State.

61. Cabotage (i.e. transport between points within the same State) is reserved to vehicles registered in the State in question (article 6).

62. Allocation of traffic between carriers of the two States. Article 3 provides that goods traffic between Mali and Upper Volta (and vice versa) passing through road stations in Upper Volta made available to carriers of the two States, shall be allocated equally between such carriers, provided transport operation arrangements are observed by carriers. There is provision for similar allocation between the carriers of the two States of passenger traffic between Mali and Upper Volta, provided passengers are not inconvenienced.

63. Facilities for handling and warehousing goods. Upper Volta undertakes in article 4 to provide at the various transit points, the facilities necessary for the handling and storage of goods carried to or from Mali.

64. Customs procedure. Measures are to be taken to facilitate and simplify customs and administrative formalities at frontiers, with a view to facilitating trade and traffic between the two States (article 5). Customs duties are not to be levied by Upper Volta on goods in transit through its territory or from Mali (article 5). The customs requirements of each State must be satisfied when frontiers are crossed. Customs authorities may issue appropriate certificates for the purpose of ensuring that the reservation, contained in the agreement, in favour of cabotage is observed (article 6).

65. Visas and papers to be carried on vehicles. Entry visas are to be obtained from the competent authorities of the State concerned and are to be stamped on the vehicle's national licence. Documents to be carried, in addition to the vehicle's national licence, are the driver's national licence and a policy of insurance against third party liability.

66. Vehicles in transit to a third State. Article 7 deals specifically with the carriage of goods and passengers to a third State by a vehicle registered in one contracting State through the territory of the other contracting State.

67. No special authorization is required for such transit, but a vehicle may not load or unload in the State of transit. The customs requirements of each State are to be observed when crossing customs barriers. The documents to be carried on such a vehicle are to include a document showing that the goods and passengers are being conveyed in transit, and a customs certificate issued by the customs authorities of the transit State to ensure that the vehicle does not engage in transport between points within the transit State.

68. Traffic and fiscal regulations. A vehicle must comply with the traffic and fiscal regulations of the contracting State in which it is registered. The vehicle, however, is exempt from payment of taxes in the other contracting State (article 8). Violations of traffic regulations are to be governed by the national law of the State in which the violation occurred (article 12).

69. Infringement of provisions of Agreement. Article 13 provides for the suspension and eventually for the withdrawal of an interstate transport authorization, for violations of the provisions of the agreement by a transport operator.

2. Niger

Agreement of 10 October 1966 between Niger and Upper Volta on public road transportation 25/

70. The provisions of this agreement are closely similar to those of the agreement between Mali and Upper Volta referred to above.

25/ The text of this agreement was made available to UNCTAD.

3. Upper Volta

Agreement between Upper Volta and Ghana on public road transportation[26/]

71. Purpose. The purpose of the agreement is to regulate and harmonize public road transport between the two States. Under article 1, "public road transport" includes the carriage of passengers and/or goods with a commercial aim, as scheduled services or otherwise.

72. Conditions of transport. Authorized vehicles, registered in one State, may engage in transport to any point in the other State, provided (a) there is no "break or modification" in the load and (b) that loading and unloading are effected only at towns along the six transit routes in Ghana and along the six transit routes in Upper Volta which are prescribed for this purpose in the agreement.

73. Joint Commission. Article 10 establishes an interstate road transport commission ("The Ghana-Upper Volta Road Transport Commission") composed of six representatives, three from each State. The Commission is to meet at least every six months and is to ensure implementation of the agreement. For this purpose it is empowered to hear complaints, examine measures for improvement of the road transportation systems of the two States and enact regulations in implementation of the agreement.

74. Article 12 provides for the exchange between the transport authorities of the two States of information and material which may promote implementation of the agreement.

B. Examples of treaties concluded by land-locked States in Asia

1. Afghanistan

(a) Treaties between Afghanistan and Iran

Transit Agreement of 1 February 1962 and related Protocols[27/]

75. Freedom of transit. The agreement states that the parties grant each other freedom of transit in accordance with the terms of the instrument. No distinction

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26/ The date of the Agreement (the text of which was supplied to UNCTAD) was not indicated. For agreements between Upper Volta and Mali and Niger respectively concerning public road transportation, see above.

27/ The text of these instruments, and of the further agreement of the same date with Iran, were supplied to UNCTAD.

is to be made on the basis of flag, country of origin, transportation route, points of entry, exit or destination, or the ownership of the goods (article 1). The freedom of transit so granted shall not apply to the transit of arms and munitions, nor to any goods whose import into Afghanistan or Iran is prohibited on grounds of health (including animal and plant health).

76. Traffic in transit. Goods are regarded as in transit through the territory of a party if their passage is part of a complete journey whose origin and destination lie outside that territory (article 2). In the course of passage, transshipment, storage and repacking of goods may be effected or a change in the means of transport made, without affecting the transit nature of the passage.

77. Storage facilities. The agreement states, in article 9, that Iran is to allocate the necessary warehouses and storage yards at Meshed, Khorramshahr and Bandar Shahpur for goods in transit to Afghanistan. Separate arrangements are to be made for the storage of dangerous goods, and for articles that cannot be stored in a normal manner.

78. Duties, taxes or charges. No customs duty or state, provincial or municipal tax or charge is to be levied on goods in transit. The only charges which may be imposed are charges for expenses involved in the transport of the goods; or in the administrative or other services provided with respect to their transit.

79. Establishment of a mixed committee. The agreement provides for the appointment of a mixed committee composed of representatives of the two countries, to supervise the implementation of the agreement. The meetings of the committee are to be held alternately, on the proposal of either side, in Kabul and Teheran.

Related Protocols to the Transit Agreement of 1 February 1962

80. Of the three protocols, the first enumerates five transit routes and the second regulates customs procedures with respect to goods carried in transit on the agreed transit routes. The third protocol deals in turn with the extension of the motorized services of one party into the territory of the other; with vehicles entering one State for transit purposes; with tariffs or rates applicable to Afghanistan transit goods on Iranian railways; and with the rates applicable to transportation by road. The third protocol contains a prohibition against the sale in Iran of goods in transit to or from Afghanistan; and a prohibition against sale in Afghanistan of Iranian transit goods.

Agreement of 1 February 1962 concerning payment of transit expenses

81. The agreement is designed to facilitate the payment of transit expenses incurred by one State in relation to goods in transit to or from the territory of the other State. The agreement provides for the opening of "transit accounts" in designated banks in the territory of each State. Each State is to debit the "transit account" of the other State for services the former State has rendered. There is to be a regular settlement of the balance outstanding on a comparison of the accounts.

(b) Treaties between Afghanistan and Pakistan

Agreement and Protocol of 2 March 1965 concerning transit[28/]

82. Freedom of transit. The agreement states that the parties grant each other freedom of transit to and from their territories, in accordance with the provisions of the agreement. No distinction is to be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or any other circumstance relating to the ownership of goods, of vessels, or of other means of transport (article 1).

83. Traffic in transit. Goods, including baggage, and vessels and other means of transport, are regarded as in transit across the territory of a party when passage across its territory, with or without transshipment, is part of a complete journey beginning and terminating beyond the frontiers of its territory (article II).

84. Transport facilities. Adequate transport and other facilities are to be provided by each party at the customs post prescribed in relation to each transit route (article III). Pakistan agrees, in article VII, to meet the requirements of wagons for transit traffic on both the Karachi-Spin-Boldak and Karachi-Peshawar routes.

85. Duties, taxes or charges. Traffic in transit is to be exempt from customs duties and other charges. The only charges which may be imposed are expenses incurred in the transport of the goods or in the administrative or other services provided with respect to the traffic in transit (article IV).

28/ Contained in document TD/TRANSIT/R.2.

86. Storage facilities. The agreement states that Pakistan is to designate sheds and open spaces in the Karachi Port Area, to be known as the Afghan Transit Area, for goods in transit to and from Afghanistan. Separate storage arrangements are to be made, in accordance with provisions set out in the annex to the agreement, for hazardous goods (article V).

87. Railway, freight, port and other dues. Railway freight, port and other dues payable on transit traffic are to be subject to sympathetic consideration and to be no less favourable than those applied in the case of goods owned by nationals (article IX).

88. Consultations between the parties. The parties are to meet each year to review the implementation of the agreement.

Annex and Protocol to the Agreement

89. The annex to the agreement contains detailed regulations as regards customs procedures with respect to goods entering Pakistan for transit to Afghanistan and with respect to goods entering Pakistan from Afghanistan in transit to other countries.

90. In the protocol to the agreement the two States make regulations for the transport of goods by lorries between Peshawar and Kabul, and between Chaman and Kandahar, until railway extensions are completed. The parties agree that all transporters shall be entitled to compete for the carriage of all goods to and from Afghanistan and shall be accorded national treatment. Freight rates are to be determined by market conditions (articles I, II and III).

91. Taxes are not to be levied by either party on transport vehicles registered in the other party, except after prior consultation and on the basis of equality (article IV). The parties agree on a number of specific matters relating to the entry of vehicles and crew from one country to another; route permits are to be issued (articles V, VI and VII).

(c) Treaties between Afghanistan and Turkey

Agreement and Protocols of 18 May 1969 on transport of goods and passengers in transit through and between Afghanistan and Turkey 29/

92. Freedom of transit. The parties recognize the right of free transit in respect of passengers, their personal effects, goods and road vehicles of each of the parties through the territory of the other, provided the points of departure and destination are located outside of the territory of that party (articles 1 and 2).

93. Transshipment, unloading, maintenance, temporary storage, manipulation and packing of the transit goods do not alter their transit nature (article 2).

94. Duties, taxes or charges. Traffic in transit is to be exempt from any import or export duty or tax, including customs duties. The agreement permits charges to meet administrative, maintenance and protection expenses, as well as fees collected in return for services rendered (article 6). Reduced passenger fares and freight rates, as well as reduced charges for port and railroad services, are to be accorded to the greatest extent possible (article 10).

95. Storage facilities. To the extent possible, and commensurate with the quantity and volume of transport, the parties agree to provide in their territories storage buildings and loading and unloading facilities on the roads used by traffic in transit. They will also endeavour to furnish wagons and other means of transport to avoid delays for transit traffic (article 8).

96. Transit routes and customs facilities. The roads to be used for transit purposes are indicated in protocol I to the agreement. Protocol II deals with simplification of customs formalities.

97. Establishment of a Mixed Commission. The effective implementation of the agreement and the settlement of difficulties arising therefrom are to be entrusted to a mixed commission composed of representatives of the two countries. The meetings of the commission are to be held alternatively in Ankara and Kabul (article 14).

29/ The text of these instruments was supplied to the Secretariat for consideration in this report.

2. Laos

Convention on transit of 11 June 1959 betweee Laos and the Republic of Viet-Nam 30/

Agreement and Protocol of 22 July 1959 between Laos and Thailand on transit of goods 31/

Transit Agreement of 10 October 1959 and Interpretative Note between Laos and Khmer Republic 32/

98. Freedom of transit. These agreements contain similar provisions on freedom of transit. Traffic in transit through the territory of either party is to be accorded, pursuant to these agreements, the rights and advantages set out in the Statute on Freedom of Transit annexed to the Barcelona Convention of 20 April 1921.

99. Conditions of traffic in transit. The agreements also contain similar provisions regarding such matters as the classification of goods subject to import restrictions or prohibition in the transit State; customs procedures; storage facilities; and duties, taxes and charges. The right of transit does not operate or is limited with regard to goods subject to import restrictions or prohibition in the transit State. Except in cases where fraud is suspected, goods in transit covered by the appropriate clearance documents are not to be subject to customs inspection at frontier offices. Each party agrees to reserve in its territory storage facilities for traffic in transit. The transit State is not to apply customs duties and other taxes or charges to traffic in transit. Charges and fees relating to services rendered are, however, permissible provided there is no discrimination in their application.

100. Use of maritime ports. The agreement between Laos and Khmer Republic provides for the use by Laos of port facilities at Kompong Som (formerly Sihanoukville). Private warehouses may be operated by Laotian nationals. The parties also agree to transmit to each other information as regards road, river or air accidents which may interfere with transit traffic (article 2 and Interpretative Note).

30/ Document E/Conf.46/AC.2/5, Annex 10.

31/ United Nations, Treaty Series, vols. 200 and 216, No. 2698; and document A/CONF.46/AC.2/5, Annex 8.

32/ Document E/Conf.46/AC.2/5, Annex 9.

101. The protocol to the agreement between Laos and Thailand provides that warehouses at the port of Bangkok are to be made available, under the management of the Port Authority of Thailand, for the storage of goods in transit to or from Laos. A joint supervisory commission, comprising representatives of the two States, is to be responsible for supervising the organization of storage arrangements in the warehouses, and the loading of transit goods onto trucks and trains. The authorities of Laos are to accord similar treatment to Thai users of transit warehouses located in Laotian territory.

3. Nepal

Treaty of 11 September 1960 on trade and transit between Nepal and India, and related Protocol and Memorandum 33/

102. Freedom of transit. Goods intended for import into or export from the territory of either State, from or to a third country, shall be accorded freedom of transit through the territory of the other. No distinction is to be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or the ownership of goods (article VII).

103. Traffic in transit. Goods, including baggage, are regarded as in transit through the territory of a party when passage through the territory (with or without transshipment, warehousing, breaking bulk or change in mode of transport) is part of a complete journey beginning and terminating beyond the frontiers of its territory (article VIII).

104. Customs procedure. The protocol to the treaty sets out specific procedures to be followed in the handling of traffic in transit in each country. Further specifications on the nature of customs examination of goods in transit are contained in the memorandum pursuant to the protocol to the treaty.

105. Article X of the treaty requires that traffic in transit shall not be subject to unnecessary delays or restrictions, except in case of failure to comply with the prescribed procedures.

33/ Document E/Conf.46/AC.2/5, annex 6. Information also provided to UNCTAD.

106. Storage facilities. India agrees to arrange for the provision of a separate shed in the Calcutta Port area for the storage of all goods in transit to or from Nepal (other than hazardous goods). The warehousing of all consignments is to be subject to the relevant laws and regulations of the party in whose territory such warehousing occurs (Protocol, paragraphs 3 and 4).

107. Duties, taxes or charges. Traffic in transit is to be exempt from customs duty and all transit duties or charges, with the exception of reasonable charges for transportation and such other charges as are commensurate with the costs of services rendered for the supervision of such transit (article IX).

108. Consultation between parties. The parties agree to take measures to ensure the implementation of the treaty and to consult periodically on difficulties which may arise (article XIII).

Agreement of 28 January 1963 between Nepal and Pakistan for the regulation of traffic in transit 34/

109. Freedom of transit. The agreement provides that goods for import into the territory of either State from a third country, and goods for export from the territory of either State to a third country, are to be accorded freedom of transit through the territory of the other. No distinction is to be made on the basis of the flag of vessels, place of origin, points of entry or exits, destination or ownership of the goods.

110. Traffic in transit. Goods (including baggage) are regarded as in transit through the territory of a party when passage through the territory, with or without transshipment, is part of a complete journey beginning and terminating beyond the frontiers of its territory.

111. Customs procedure. The parties agree in article V that documentation for traffic in transit should be kept to the minimum. They also agree to prescribe, in consultation with each other, routes over which goods may be conveyed in sealed railway wagons or sealed vehicles without execution of bonds. The annex to the agreement also deals with procedures for traffic in transit. As regards goods in transit by air, no bond is required where the goods are carried by established

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34/ Document E/Conf.46/AC.2/5, Annex 7.

airlines and are directly routed across the country of transit, or can be forwarded by air without their leaving the customs areas of the transit State.

112. Duties, taxes or charges. Traffic in transit is exempt from customs duty and all transit duties or charges, except reasonable charges for transportation and such other charges as are commensurate with the cost of services rendered (article III).

113. Transport facilities. Each party undertakes to provide an adequate number of railway wagons, or other means of transport, for goods in transit.

114. Consultation between the parties. The parties are to meet and consult on the implementation of the agreement when this is considered necessary by either party (article IX).

C. Examples of treaties concluded by land-locked States in Europe

1. Austria

(a) Treaties between Austria and Belgium

Agreement of 20 June 1958 concerning the international transport of goods by road 35/

115. The Agreement applies to the transport of goods by motor vehicles registered in one State to or from, or in transit through, the others. Prior authorization must be obtained for such transport (article 2). There are two forms of authorization: a transport licence, valid for a year, or a permit for a single journey (articles 3, 4 and 5).

Agreement of 20 January 1964 concerning certain categories of international passenger transport by road 36/

116. A carrier registered in one State may operate tourist or occasional passenger transport services in, or in transit through, the territory of the other. No authorization is required provided the vehicle carries the same passengers on circular tours which begin and end in the same State, or, if the journey begins in one State and ends in the other, on condition that the vehicle returns empty to its point of departure (article 1).

35/ United Nations, Treaty Series, vol. 312, no. 4513.

36/ Ibid., vol. 509, no. 7406.

(b) Treaties between Austria and Czechoslovakia

Agreement of 22 September 1962 concerning the regulation of railway traffic[37/]

117. In order to facilitate railway traffic between the two States the agreement: (a) specified which lines are to be open to such traffic; (b) provides where "further clearance" or services are to be performed; and (c) regulates the performance of "connecting and transit operations".

Agreement of 19 October 1967 concerning non-scheduled international passenger transport by motor coach and international transport of goods by road 38/

118. Non-scheduled international passenger transport by motor coach. The purposes and provisions of this part of the agreement are similar to those of the agreement of 20 January 1964 between Austria and Belgium (paragraph 108 above).

119. International transport of goods by road. The road transport of goods between the two States, or in transit through their territories, is permitted subject to authorization. Such authorization is to be issued by the authorities of the State in which the vehicle is registered, within annual authorization quotas agreed upon by the two States. Authorizations may be granted for an unlimited period or for single journeys.

(c) Treaties between Austria and the Netherlands

Agreement of 6 May 1959 concerning commercial transport and transport on own account by road 39/

120. Non-scheduled bus services. Carriers who have their principal place of business in one or the two States and who are authorized by that State to operate

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37/ Ibid., vol. 495, no. 7244. The Convention of 11 December 1962 between Austria and Yugoslavia and the Agreement of 22 October 1963 between Czechoslovakia and Hungary, concerning the regulation of railway traffic between the States parties in question, contains similar provisions. Ibid., vol. 546, no. 7938 and vol. 514, no. 7444.

38/ Ibid., vol. 634, no. 9048. A somewhat similar agreement as regards the international transport of goods by road was concluded between Austria and Romania. Ibid., vol. 588, no. 8517.

39/ Ibid., vol. 485, no. 7054.

non-scheduled international bus services require no further approval from the other State for non-scheduled bus services to or through its territory. Passengers are not to be taken on in the other State. The necessary authorization from the home State of the carrier must be available on the vehicle for inspection, together with a list containing information as to the carrier, the itinerary and frontier crossing points (article 1).

121. Transport of Goods. Carriers who have their principal place of business in one of the two States and who are authorized by that State to transport goods, require a permit for the transport of goods between their own State and the other State, and for transit traffic through the other State (article 3). Permits (valid either for twelve months or for one or more journeys within a specified period) are issued by the competent authority of the home State of the carrier (article 7).

Agreement of 6 May 1959 concerning bus services[40/]

122. A licence is required for the operation of a bus service between the two States and will be issued only if both States agree on the need for the service and if the States to be crossed en route consent.

2. Czechoslovakia[41/]

(a) Treaties between Czechoslovakia and Hungary[42/]

Agreement and Protocol of 8 May 1958 concerning co-operation and mutual assistance in customs matters [43/]

123. Customs routes. The passage of goods, currency and persons across the common frontier of the two States is to be permitted only on agreed customs routes (article 3).

40/ Ibid., vol. 485, no. 7055.

41/ For agreements between Czechoslovakia and Austria, see paras. 117-119 above.

42/ For the Agreement of 22 October 1963 between the two States concerning rail traffic, see the reference in note 37 above.

43/ United Nations, Treaty Series, vol. 407, no. 5862.

124. Necessary documents. The prescribed international documents and the papers necessary for customs clearance must be available when goods subject to customs control pass across the frontier (article 4).

125. Customs seals. The customs authorities of each State are to recognize the customs seals of the other State, unless their own control measures require the removal of the seals. On crossing the frontier, articles subject to customs control are not to be cleared by the authorities of the State of entry unless they have received outward clearance from the authorities of the other State (articles 6 and 7).

126. Goods in transit. Goods crossing the common state frontier in transit are ordinarily to be subject only to external customs inspection unless internal examination is required for reasons of security, health, animal or plant protection or for other serious reason (article 5).

127. Joint customs facilities. The customs administrations of the two States may establish joint customs facilities where traffic conditions so require and the establishment of such facilities is feasible.

128. Measures to expedite traffic. The customs administrations of the two States are to agree on appropriate measures to expedite international road traffic between their territories. They are, among other matters, to agree on the use of uniform bilingual customs forms.

Agreement of 17 October 1964 concerning international road transport[44/]

129. Transport of passengers by motor coach. An authorization is required for the transport of passengers by a motor coach registered in the territory of one of the contracting States to or from, or in transit through, the territory of the other contracting State. An authorization is not required for occasional tourist transport where the same passengers are carried (a) in the same vehicle on circular tours which begin and end in the State in which the vehicle is registered; or (b) on journeys commencing in the State of registry of the vehicle and ending in the territory of the other contracting State, provided the vehicle returns empty to the territory of its State of registry.

44/ Ibid., vol. 545, no. 7924.

130. Form and issue of authorization. Regular services between the two States, or regular transit services, are to be authorized on a basis of reciprocity by agreement between the competent authorities of the two contracting States.

131. Transport of goods. An authorization is required for the transport of goods, by a vehicle registered in one of the contracting States, to or from or in transit through the territory of the other contracting State. An authorization is not required for the transport of household goods on removal; or for the transport of certain types of articles specified in article 9 of the agreement such as articles for fairs and exhibitions, or stage or musical equipment.

132. Form and issue of authorization. Authorizations are to be issued by the competent authority of the State in whose territory the vehicle is registered, within annual quotas determined, on a basis of reciprocity, by the competent authorities of the two States. A separate authorization is required for each journey and for each vehicle. An authorization is to be valid for one outward and one return journey.

133. Customs provisions. Vehicles registered in one contracting State and temporarily imported into the other contracting State while transporting goods, and motor coaches registered in one contracting State and temporarily imported into the other contracting State, are exempt from import duties and taxes and from import probibitions and restrictions. They are to be admitted into the other State under temporary importation papers. Similar exemptions are granted with respect to neceesary personal effects of vehicle crews, a specified quantity of fuel, and component parts for the repair of a vehicle already temporarily imported.

134. Frontier customs office. If the necessary conditions are satisfied, loads carried in vehicles or containers which are sealed with a customs seal shall (a) be exempt from payment of customs duties, or the deposit of customs bonds, at frontier customs offices; (b) be exempt, as a general rule, from customs examination at frontier customs offices. Where, however, irregularity is suspected, examination of the load is permitted.

135. Road transport duties. Transport carried out in the territory of the other contracting State under authorizations issued under the terms of the agreement, and the authorizations themselves, are to be exempt, on a basis of reciprocity, from duties and taxes levied on road transport.

Treaty of 20 December 1963 on trade and navigation[45/]

(i) Trade

136. Freedom of transit. Article 9 deals specifically with freedom of transit and provides that each party shall grant the right of free transit through its territory to goods of the other.

137. Customs duties and procedures. The parties agree to accord each other most-favoured-nation treatment with respect to, among other matters, customs regulations and formalities and the warehousing of goods under custom control. Manufactured and agricultural products of one party in transit through the territory of the other are not to be subject to duties, taxes or charges (article 9). Article 7 lists particular types of articles which are to be exempt from duties, taxes and charges and from the requirement of a bond, an importation into the territory of either party, provided they are re-exported within the time-limits prescribed under regulations of the importing country. The articles include goods sent for processing and finishing, and containers of imported goods.

138. Most-favoured-nation treatment. Each party agrees to grant the other most-favoured-nation treatment in all matters relating to trade, and other economic relations between the two States (article 2).

(ii) Navigation

139. Navigation on the Danube. As regards navigation on the Danube, the Convention of 18 August 1948 is to apply (article 14).

140. Most-favoured-nation treatment. The parties are to grant each other most-favoured-nation treatment with respect to their vessels, and with respect to navigation on inland waterways on which international treaties permit free navigation by all States (articles 2 and 3).

141. Reservation of cabotage. The provisions of the treaty are not to apply to traffic between ports of the same contracting party.

45/ Ibid., vol. 538, no. 7812.

(b) Treaties between Czechoslovakia and Romania

Treaty of 16 December 1963 on trade and navigation[46/]

142. The provisions of the treaty are broadly similar to those of the Treaty of 20 December 1963 between Czechoslovakia and Hungary. Goods exempt from duties and other charges, subject to their being re-exported within a specified time-limit, include natural and manufactured products imported for processing (article 8). As regards navigation, the merchant vessels of each party, and the cargoes of such vessels, are to be accorded most-favoured-nation treatment on entering and leaving, and while lying in, the ports and anchorages of the other party. This provision does not, however, entitle either party to perform port services in the ports and waters of the other or to engage in coastal shipping (article 9).

(c) Treaties between Czechoslovakia and Yugoslavia

Agreement of 22 October 1962 concerning international road transport[47/]

(i) Transport of passengers

143. Requirement of authorization. An authorization is required for the transport of passengers by a vehicle registered in one of the contracting States to and from, or in transit through, the territory of the other contracting State. An authorization is not required for occasional tourist transport where the same persons are conveyed in the same vehicle (a) on a circular tour which commences and ends in the State in which the vehicle is registered; or (b) on a journey which commences in the State in which the vehicle is registered and terminates in the other State, provided the vehicle returns empty to the State in which it is registered.

144. Form and issue of authorization. Regular lines between the two States and regular transit lines through their territory are to be agreed on between the competent authorities of the two States. The competent authority of each State is to issue a special authorization in the form of a licence, on the basis of reciprocity, for the section of the line within its territory.

46/ Ibid., vol. 527, no. 7630.

47/ Ibid., vol. 480, no. 6974.

(ii) Transport of goods

145. Requirement of authorization. An authorization is required for the transport of goods by a vehicle registered in one of the contracting States to or from, or in transit through, the territory of the other contracting State.

146. Form and issue of authorization. Authorizations are to be issued by the competent authorities of the State in which the vehicle is registered, subject to annual quotas to be determined by the competent authorities of the two States, on a basis of reciprocity. Copies of authorizations issued are to be exchanged every three months by the competent authorities. A separate authorization shall be issued for each journey and for each vehicle.

(iii) Customs provisions

147. Duties and taxes. Vehicles registered in the territory of one of the contracting States, and temporarily imported into the territory of the other contracting State, under temporary importation papers, are to be temporarily exempt from customs duties and import taxes and from import prohibitions and restrictions. Similar exemptions are granted with respect to necessary personal effects of vehicle crews, a specified quantity of fuel, and component parts for the repair of a vehicle already temporarily imposted.

148. Road transport duties. Transport carried out in the territory of the other State under authorization issued under the agreement, and the authorizations themselves, are to be exempt on a basis of reciprocity from transport duties and taxes.

3. Hungary[48/]

(a) Treaty between Hungary and Belgium

Agreement of 20 March 1967 concerning road transport of passengers and goods by commercial vehicles [49/]

149. The provisions of the agreement relating to the transport of passengers and goods are broadly similar to those of the Agreement of 17 October 1964 between

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48/ For the agreements between Hungary and Czechoslovakia, see paras. 123-141.

49/ United Nations, Treaty Series, vol. 601, no. 8686.

Czechoslovakia and Hungary.[50] Special arrangements are made, however, as regards the payment of vehicle or transport taxes when operating in the territory of the other contracting party. The competent authorities of the two States are to agree on a procedure for exchanging information. When required, representatives of the two States are to meet in a mixed commission, to ensure the proper application of the agreement.

(b) Treaties between Hungary and Yugoslavia

Agreement of 9 February 1962 establishing regulations for the transport of goods by lorry or similar motor vehicle and related customs procedures [51]

150. Transport of goods. A carrier, having its head office in the territory of one party, is permitted, subject to obtaining an authorization, to transport goods to or from, or in transit through, the territory of the other party.

151. Form and issue of authorization. Authorizations are to be issued to the carriers of one party by the competent authority of the other. Article 3 provides, however, that authorizations are to be issued by the competent authorities of the contracting parties on the basis of a mutual delegation of authority. The number of authorizations to be issued each year is to be determined annually by the competent authorities of the two States on a basis of reciprocity. Copies of authorizations issued are to be exchanged between the competent authorities of the two States every three months (articles 3, 4 and 12).

152. An authorization is to be valid for one outward and one return journey, and must conform to the model set out in a document of the United Nations Economic Commission for Europe (document TRANS/213/Add.1/Annex 3).

153. Transport duties and taxes. Transport operations authorized pursuant to the Agreement are to be exempt from transport duties and taxes (article 12).

154. Customs provisions. The Customs Convention of 18 May 1956 on the temporary importation of commerical road vehicles is to govern the customs procedure applicable to commercial road vehicles (article 13).

50/ Paras. 129-135 above.

51/ United Nations, Treaty Series, vol. 577, no. 8370. An agreement of 18 July 1965 between Hungary and Poland concerning international motor transport contains some similar provisions as regards the transport of goods. Ibid., vol. 577, no. 8376.

155. Procedure with respect to sealed road vehicles or sealed containers at frontier customs office. If the necessary conditions are satisfied, goods carried in sealed road vehicles or in sealed containers are: (a) not to be subject to the payment of customs duties or import taxes, or the deposit of customs bonds at frontier customs offices; (b) not, as a general rule, to be subject to customs examination at frontier customs offices. Where irregularity is suspected, however, the customs authorities may by way of exception conduct an examination (article 17).

Agreement of 25 May 1965 concerning co-operation and mutual assistance in customs matters 52/

156. Transport of passengers. Where buses registered by one party carry groups of tourists to the territory of the other the production of international customs documents or the deposit of customs security for a temporary stay in, or transit through, its territory are not required (article 4). A customs inspection carried out in respect of a tourist group leaving the territory of one contracting party is to be recognized by the frontier customs authorities of the other party, but where necessary a further customs inspection may be conducted. This requirement is to be recognized as regards all tourist groups, irrespective of the mode of transport (railway, road vehicles, aircraft or river craft operating on the Danube).
157. Transport of goods. Vehicles used for the transport of goods by road and registered in the territory of one contracting party do not require international customs documents for the carriage of goods to or through the territory of the other party, provided the requirements of the Customs Convention of 18 May 1956 on the temporary importation of commercial road vehicles are complied with.
158. Consultation. The agreement provides in articles 8 to 11 for co-operation between the customs administrations of the two States. A joint customs commission composed of persons nominated by the two customs administrations is to meet when necessary to examine questions relating to customs co-operation.

52/ Ibid., vol. 576, no. 8367.

D. Examples of treaties concluded by land-locked States in Latin America

1. Bolivia[53/]

(a) Treaties between Bolivia and Argentina

Act of La Paz of 19 September 1964[54/]

159. The ministers of external relations of the two States agreed that their respective under-secretaries might consider and make recommendations concerning measures to facilitate free commercial navigation of Bolivian ships through waters within Argentinian jurisdiction.

Treaty of 19 September 1964 providing for a free zone for Bolivia in the port of Barranqueras 55/

160. Free zone at Barranqueras and its use. The treaty records Argentina's agreement to establish a free zone for Bolivia in the port of Barranqueras, through which goods produced in Bolivia may be exported and goods destined for Bolivia may be imported. The zone is to be located in a manner to facilitate access to port and railway facilities (articles 1 and 7). Storage of goods (without limitation as to period of storage), loading, unloading and repacking are permissible within the zone. The utilization and consumption of goods, the exhibition of goods, and the installation of manufacturing facilities within the zone are permissible subject to such regulations as may be formulated by the parties.

161. Customs duties and procedures. Goods passing through the zone in transit to or from Bolivia are not to be subject to Argentine customs duties or to Argentine customs control (article 2). However, goods passing from the zone to Argentine markets and Argentine goods entering the zone remain subject to Argentine regulations and customs duties. Argentine authorities may exercise the necessary controls with

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53/ The agreements concluded by Bolivia with Chile and Peru prior to 1958 were described in the 1958 study (paras. 79 and 81, and Add.1); no information was supplied regarding the conclusion of any subsequent agreements with those countries.

54/ Camacho Omiste, Edgar: "Bolivia, Convenios y Declaraciones Internacionales". La Paz, Bolivia (subsequently referred to as "Camacho"), p. 76.

55/ Camacho, p. 67.

respect to such goods within the zone (article 9). Bolivia may station customs and tax officials within the zone for the purpose of exercising control over goods passing into and from the zone (article 5).

162. Juridsiction and applicable law. The zone remains within the jurisdiction of Argentina, which is responsible for police services and for the enforcement of laws. Activities within the zone are to be subject to the applicable provisions of Argentine law relating to security, and the necessary controls are to be established by Bolivia in that connexion. Argentine authorities retain their right to conduct inspections (article 3). Argentina reserves the right to establish the controls it deems appropriate with respect to goods entering or leaving the zone, and Bolivia is to facilitate the exercise of such controls (article 4). Argentine regulations are to govern the construction of installations within the zone (article 8).

Exchange of notes of 22 April 1966 providing for a free zone for Bolivia in the port of San Nicolas 56/

163. Free zone at San Nicolas and its use. The notes express Argentina's agreement to provide a free zone for Bolivia in the vicinity of the port of San Nicolas, or at any other suitable point on the Parana River near the port. The zone is to be used exclusively for the receipt, storage and despatch of minerals obtained in the exploitation of the Mutun deposits, and destined for Argentina or ports overseas. Provision is made for passage through the zone of materials and equipment to be utilized in the exploitation of the mineral deposits.

164. Regulations for implementation. The two States are to adopt regulations for the establishment and operation of the zone, after the termination of the work of a mixed technical commission, set up to delineate the zone.

165. Application of Argentine regulations. Provision is made for the construction of installations by Bolivia within the zone, subject to observance of applicable Argentine regulations, and for the application of Argentine regulations with respect to the loading, unloading, storage and shipment of products.

56/ Camacho, p. 101.

Exchange of notes of 26 October 1967[57/]

166. The parties express their approval of the agreements made between the administration of national railroads of Bolivia and the administration of Argentine railroads (as authorized by the mixed Argentine-Bolivia railroad commission), concerning the delivery of cars and engines by Argentina for the Yacuiba-Santa Cruz railroad. The value of the cars and engines so delivered is to be added to the amount payable by Bolivia to Argentina with respect to the construction of the railroad.

Exchange of notes of 11 December 1968 concerning the provision of a free zone for Bolivia in the port of Rosario 58/

167. Notes were exchanged pursuant to a joint declaration, of 19 December 1966, in which Argentina granted to Bolivia a free zone in the port of Rosario. The correspondence provides the establishment of a mixed commission, consisting of diplomatic, technical and administrative representatives, to examine the purposes for which the zone might be used and the régime and law which would be applicable, with a view to making recommendations to the two Governments on an agreement for the establishment of a free zone.

(b) Treaties between Bolivia and Brazil

Convention of 29 March 1958 on free transit[59/]

168. The preamble to the Convention reaffirms the principle of the broadest freedom of transit by land and water for each State in the territory of the other, as established in the Treaty of Petropolis of 17 November 1903 and in the Treaty of commerce and river navigation of 12 August 1910.[60/] Article 1 provides for free transit through the territory of each State (in permanent and unrestricted form at any time or under any circumstances) for every kind of cargo (without exception whether originating in the other State or in third States). Transit traffic may

57/ United Nations, Treaty Series, vol. 671, no. 9550 (in the press).

58/ Ibid., vol. 671, no. 9554.

59/ Camacho, p. 128.

60/ The relevant provisions of these two treaties were referred to in the 1958 study, para. 78.

pass through ports and on routes already in use for such traffic and on such routes as may be provided in the future (article 1).

169. Customs agencies in each other's territory. To implement the convention each State is authorized to maintain customs agencies at the ports, free zones and other areas, used for transit traffic in the other State. The customs agencies are, among other matters, to adopt appropriate measures to facilitate the movement of transit goods. The customs and other authorities of the transit State are to co-operate with such customs agencies. Goods in transit are to be forwarded by commercial despatchers (Bolivian or Brazilian as the case may be) designated by the consignees. This is to be done under the control of the customs agencies, and under the supervision of national customs personnel. Government goods in transit may be forwarded under documents issued by the customs agency of such government (articles 2 and 3).

170. Rates of transit transport. The products of each State in transit through the territory of the other State are to be accorded the same transport rates as those enjoyed by similar products within the State of transit (article 10).

171. Goods in transit originating in third countries. Goods in transit originating in third countries are to be unloaded at ports, free zones or areas in use for transit traffic. The parties undertake to adopt necessary measures to despatch the goods to their destination without delay. The goods are to be exempt from taxes, duties and formalities of any kind. Similar facilities are to be granted where goods from either of the two contracting States pass through the other contracting State in transit to a third State from which they originated (article 4).

172. Goods in transit by road and rail. The facilities provided for in the convention shall apply to goods in transit by road as well as by railroad (article 16).

173. Goods in transit by river. Article 12 confirms that goods in transit by river, either in Bolivian or in Brazilian vessels, shall remain subject to the provisions of the Treaty of 12 August 1910 on commerce and navigation. The treaty provides for preferential treatment to be accorded livestock in transit (article 9). The customs authorities of the two parties are to facilitate the despatch of goods by air (article 13).

174. Consultation. Article 18 provides for annual meetings of the customs authorities of the two States, at La Paz and at Rio de Janeiro alternately or any other agreed place, with a view to the better application of the Convention. The customs authorities, at such meetings, are to formulate recommendations to be submitted to their governments.

Agreement of 29 March 1958 providing for a free zone for Bolivia in the port of Belem 61/

175. Free zone in port of Belem and its use. Article 1 records the grant by Brazil of a free zone in the port of Belem for the use of Bolivia in connexion with the arrival, storage and despatching of goods in transit to or from Bolivia. Article 2 requires Bolivia's observance of Brazilian regulations in the construction of installations within the zone.

176. Customs duties and procedures. After their delivery to the zone, within the zone, and until their despatch from the zone, goods are subject to the control of Bolivian customs agents (who may be stationed within the zone) and are not subject to Brazilian customs requirements. The customs authorities of Brazil, however, may supervise the arrival of goods at, and their despatch from, the zone.

177. Liaison officers. Article 3 states that Bolivia may station officials, in addition to its customs agents, within the zone. The officials are to deal with the Brazilian customs authorities, the port of Belem administration, the carriers, and Brazilian merchants, on such matters as the division, reconditioning, sale or reshipment of goods originating in Bolivia or to be forwarded to Bolivia, including those originating in Brazil.

Agreements of 29 March 1958 providing for a free zone for Bolivia in Corumba, Porto Velho and Santos 62/

178. The agreements provide for free zones to be established at the ports of Corumba, Velho and Santos, for goods in transit to or from Bolivia. The terms of the agreements relating to the establishment of the free zones are similar to those of the agreement of 29 March 1958 relating to the free zone in the port of Belem (see above).

61/ Camacho, p. 137.

62/ Camacho, pp. 140, 143, 146.

Exchange of notes of 29 March 1958 relating to the provision of a free zone for Bolivia in the Free port Of Manaos 63/

179. The notes refer to the principles relating to Bolivian overseas trade contained in the Treaty of 12 August 1910 on commerce and river navigation and state that, to facilitate the overseas trade of Bolivia, Brazil extends to Bolivia facilities for the use of the free port of Manaos. Bolivia is granted the free exercise of all privileges provided for in the regulations of the free port of Manaos, including the privilege to operate a customs agency, to construct and maintain warehouses, to ship, receive and store goods, and to treat goods.

(c) Treaties between Bolivia and Paraguay

Convention of 18 June on road union 64/

180. The two States agreed to construct a road that would connect Asuncion and La Paz, and become part of the Pan-American highway system. Each country was to arrange for the construction of the section in its territory. A joint commission would prepare a plan for the construction, would seek financing and be responsible for the completion of the project.

Convention of 18 June 1962 on co-operation in river navigation 65/

181. Article 3 expresses the agreement of the parties to promote the convening of a multilateral conference on administrative and safety measures for navigation in the Plata basin for the purpose of examining: (a) the formulation of uniform regulations on navigation and port operations; (b) the simplification of shipping documents and procedures for the transport of passengers and cargo; and (c) the adoption of standards for buoying and dredging.

182. The parties agree in article 5 to obtain the co-operation of international organizations in the study of the present difficulties involved in river navigation within the basin.

183. In article 6 the parties agree to invite the riparian States to the Plata basin to examine the question of the creation of a merchant fleet to operate on the

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63/ Camacho, p. 176.

64/ Camacho, p. 358.

65/ Camacho, p. 365.

Plata river, with a view to co-ordinating in that way the economic interests of all the riparian States in the matter of river transport.

2. Paraguay[66]

(a) Treaties between Paraguay and Argentina

Treaty of 23 January 1967 on navigation[67]

184. Article 1 provides that navigation on the Paraguay and Parana rivers and on the Rio de la Plata shall be free to all Argentinian and Paraguayan vessels on a basis of equality. Each contracting party is to grant vessels of the other party the same treatment as it accords its own vessels in all matters relating to navigation.

Exchange of notes of 23 January 1967, on improvement of trade relations[68]

185. The notes provide for the establishment of a joint commission which may make recommendations as to: (a) the development of bilateral and regional trade, transport and communications; (b) water transport; (c) joint efforts to obtain the co-operation of international agencies to assist in financing projects for the improvement of navigation on the Paraguay and Parana rivers; (d) facilitating customs control in the two countries; and (e) operational procedures with respect to assistance and salvage with a view to reducing costs and ensuring safety and speed of navigation on the Paraguay and Parana rivers.

III. CONSIDERATION BY UNITED NATIONS BODIES OF THE PROBLEMS OF TRANSIT AND ACCESS TO THE SEA OF LAND-LOCKED COUNTRIES

186. The 1958 study referred to the discussions held within the framework of ECAFE regarding the question of land-locked countries. Since 1958 a number of United Nations bodies - most notably UNCTAD, ECA and ECAFE - have given active consideration

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66/ For the treaties between Paraguay and Bolivia, see above.

67/ United Nations, Treaty Series, vol. 634, no. 9060.

68/ Ibid., vol. 634, no. 9061.

to the special problems of land-locked countries. The recommendation of the first United Nations Conference of Trade and Development which led to the oonvening of the United Nations Conference on Transit Trade of Land-locked Countries, was noted above.[69/] For the most part, however, UNCTAD, ECA and ECAFE have been concerned with the problems of land-locked countries as a part, or special instance, of the problems of economic development confronting developing countries. Since the present report is intended to cover, not the entire range of problems which land-locked countries may face, but only those aspects which relate to their transit and access to and from the sea, the following account of the relevant activities of UNCTAD, ECA and ECAFE seeks to give particular attention to those aspects, so far as this is possible. The two matters - namely, the economic situation of land-locked developing countries and the question of free access to the sea - are, however, closely linked and it is not always possible to distinguish between them.

A. United Nations Conference on Trade and Development[70/]

1. Second session of the United Nations Conference on Trade and Development, 1968.

187. The second session of the United Nations Conference on Trade and Development, held in 1968, included on its agenda as item 9 (g) the question of the "special problems of the land-locked countries". Resolution 11 (II), which was adopted unanimously by the Conference, urged in part A States which had not already done so to become parties to the Convention on Transit Trade of Land-locked States. The operative provisions of part B of the resolution, among other matters, recommended that, in view of the special problems of land-locked developing countries, the land-locked situation should be considered as a factor in determining the criteria for the identification of the least developed among the developing countries (operative paragraph 1); that appropriate attention be accorded to the special needs of land-locked developing countries with respect to projects for the development of the transport and communications infrastructure (including joint projects with transit countries) (operative paragraph 4); and called on transit

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69/ See foot-note 15.

70/ General Assembly resolution 2569 (XXIV), connected with the work of UNCTAD, is also referred to under this heading.

countries to extend their co-operation to the formulation and execution of such projects (operative paragraph 4). The Conference also recommended that land-locked developing countries and transit countries should enter into consultations, whether bilaterally or on a regional or sub-regional basis, with a view to examining the special difficulties of land-locked countries, in particular as regards facilities for transit trade (operative paragraph 5). Developed countries and the international organizations concerned were asked to consider the granting of loans on favourable terms to assist the development of the transport and communications facilities referred to (operative paragraph 6). It was also suggested that liner conferences and insurance companies should be asked to bear in mind the special problems of land-locked countries in forming their tariff policies (operative paragraph 7). The economic commissions concerned with the developing regions were asked to pay special attention to the problems of land-locked countries in the field of trade expansion and economic development, particular reference being made in this connexion to regional and sub-regional groupings and to the need for greater participation by land-locked developing countries in regional and international trade (operative paragraph 9).

188. Part B of the resolution also requested the Secretary-General of UNCTAD

> "... to establish a group of experts to carry out a comprehensive examination of, and to report upon, the special problems involved in the promotion of the trade and economic development of the land-locked countries, a special study to be made in this examination of the transport problems, outlining possible ways by which the adverse effects of higher transportation costs on the trade position, production costs and execution of economic development programmes of the land-locked developing countries might be minimized".

2. Eighth session of the Trade and Development Board, 1969

189. During its eighth session the UNCTAD Trade and Development Board adopted, on 17 May 1969, a statement on the contribution of UNCTAD to the Second United Nations Development Decade. The statement made provision for the elaboration of special measures in favour of land-locked developing countries, within the context of UNCTAD's contribution to the international strategy for development. Section C of the appendix to the statement provided, inter alia, that, in the light of the general recommendations made in Conference resolution 11 (II), specific measures in favour of these countries would be elaborated by the Board after its consideration

of the report of the Group of Experts. It was also stated that, when any agreement was discussed and elaborated in the field of trade and development, it was desirable that any special problems of the land-locked developing countries receive due attention.71/

3. General Assembly resolution 2569 (XXIV) of 13 December 1969 on special measures in favour of the land-locked developing countries 72/

190. Following its consideration of the report of the eighth session of the Trade and Development Board, the General Assembly adopted resolution 2569 (XXIV) of 13 December 1969, on "special measures in favour of the land-locked developing countries". The General Assembly welcomed the agreement reached in the Board whereby specific measures in favour of these countries would be elaborated in the context of UNCTAD's contribution to the international development strategy, requested the Board to consider, on the basis, inter alia, of the report to be submitted by the Group of Experts, the adoption of practical measures for the implementation of resolution 11 (II) of the second session of the Conference; and further urged all States which had not done so to become parties to the Convention on the Transit Trade of Land-locked States.

4. Report of the Group of Experts on special problems of the land-locked countries

191. The Group of Experts which was convened by the Secretary-General of UNCTAD pursuant to resolution 11 (II) met in Geneva from 11 May to 4 June 1970. Their

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71/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 16 (A/7616), pp. 120-121.

72/ It may be noted that, during its twenty-fourth session the General Assembly also adopted resolution 2502 (XXIV) of 12 November 1969, on the report of the United Nations Commission on International Trade Law. Operative paragraph 10 (d) of the resolution requested that the Commission "give special consideration, in promoting the harmonization and unification of international trade law, to the interests of developing and land-locked countries". A similar provision is contained in operative paragraph 5 (e) of resolution 2635 (XXV) of 12 November 1970.

report[73] contained three chapters. The first, entitled "The nature and significance of the problems confronting land-locked countries" described in turn the geographical characteristics and the economic environment of the land-locked developing countries; problems in the fields of transport, trade and payments, and development; legal, administrative and political issues; and the over-all significance of the land-locked position. Chapter II, "Policy areas and measures in relation to the problems of the land-locked developing countries", dealt, inter alia, with modes of transport; trade relationships; the structure of production; services, industries and marketing; the regional approach; and the question of foreign finance and aid. The concluding chapter listed a series of "specific policy measures for land-locked developing countries". The recommendations were divided into three broad groups: administrative and other measures not requiring investment; measures requiring investment in the transport and communications infrastructure; and measures directed towards adapting the economic structure of the land-locked developing countries to their land-locked position. In putting forward its recommendations, the Group also indicated the reasons which had guided its choice and the factors to be considered in the application of the proposals. Whilst it is difficult therefore to give a full account of the recommendations, the following points may be noted. As regards administrative and other measures, the Group recommended that agreements should be concluded between land-locked developing countries and their transit neighbours with respect to the appointment of representatives in transit ports, the establishment of procedures for intergovernmental consultation, and the simplification of customs and other formalities. As regards transport facilities, agreements should be sought between neighbouring countries which would facilitate the free circulation of road vehicles on a reciprocal basis, the free movement of rolling stock, and secure the freedom of navigation on inland waters. With respect to the transport infrastructure, it was pointed out that all the measures proposed would require investment, often on a heavy scale. Financial and technical assistance would be needed by both land-locked developing countries and their transit neighbours. The suggestions put forward

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73/ Special problems of the land-locked countries: report of the Group of Experts on the special problems involved in the trade and economic development of the land-locked developing countries. Document TD/B/308.

accordingly envisaged that steps be taken for the evaluation, installation and maintenance of tranport facilities in transit as well as in land-locked States.[74] Amongst the specific recommendations made was a proposal that consideration should be given to the establishment of alternative transport routes to the sea from land-locked countries, where this was economically feasible, specific attention being given in this connexion to the establishment of trunk routes which all countries within a region could use. It was also proposed that

> "... technical and financial assistance should be given for the investigation, and the establishment where economically feasible, of new forms of transport, with particular reference to pipelines for oil, natural gas and other suitable products." [75]

192. The recommendations made with regard to the economic structure referred to the need for feasibility studies and investment to adapt the economies of the States concerned to their land-locked situation: the steps to be taken included the development of import substitute industries, the processing of raw materials for export, and thorough exploration to determine the resource endowment of minerals of land-locked countries.

193. Having regard to the comprehensive nature of the study made by the Group of Experts, it may be of interest to note the accent placed in the conclusion of the report on the need for regional measures. The two final paragraphs of the report of the Group of Experts are as follows:

> "129. In all of the policy measures suggested particular emphasis must be placed on regional co-operation and integration, and this is most important in the measures relating to economic structure. Most of the eighteen land-locked developing countries are too small and too little developed to be able to achieve significant results acting independently. We wish to emphasize that the development strategy of a land-locked developing country will frequently call for combined efforts by these countries themselves, their transit neighbours and the international community. In this context there are in all regions multinational projects for the improvement of the regional infrastructure and the common exploitation of natural resources from which both a land-locked country and its neighbours could greatly benefit.

74/ Ibid., para. 124.

75/ Idem.

"130. Whether particular groups of land-locked developing and transit countries decide that the best strategy lies in joint enterprises in transport and other fields, in preferential trade and tariff agreements, or in closer arrangements for economic co-operation and integration, it is imperative that there should exist some regular machinery for approaching the problems of the land-locked developing countries on a regional or subregional basis. In this respect the three regional economic commissions of the United Nations, regional and subregional economic organizations and regional development banks have an important role to play in providing a forum for discussion and a platform for action."

194. Lastly, the report contains, in its series of annexes, an annex III which gives data on the transport methods and access to the sea of the land-locked developing countries. Annex IV, describing the arrangements made in the field of transport related to land-locked developing countries, has already been referred to.[76/]

5. Tenth session of the Trade and Development Board, 1970

195. During the first part of its tenth session (26 August - 24 September 1970) the Trade and Development Board considered the report submitted by the Group of Experts and, on the basis of the report, adopted resolution 69 (X). The resolution invited the land-locked developing countries and their transit neighbours to take note of the recommendations made by the Group of Experts in evolving mutually acceptable solutions (operative paragraph 1), and affirmed the need to take effective remedial steps to solve the problems of land-locked developing countries within the context of the international development strategy (operative paragraph 2). The Board also recommended that the Governments of land-locked developing countries and their transit neighbours should continue their joint efforts to make arrangements to review administrative and other measures governing the flow of transit trade and trade between land-locked and transit States, with a view to facilitating that trade, curbing smuggling and diversion of trade, and arranging for regular intergovernmental consultations (operative paragraph 3). The Governments concerned were also recommended to co-operate in the elaboration and promotion of projects for the development of road, rail, water and other transport systems, for their

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76/ Paras. 52-53 above.

mutual benefit (operative paragraph 4). In further provisions of the resolution the Board

- invited the United Nations Development Programme, the specialized agencies, international financial institutions and the Governments of developed countries members of UNCTAD to take into account the appropriate recommendations of the Group of Experts and the special needs of land-locked developing countries and their transit neighbours, particularly in the field of transport, and to give favourable consideration to requests from these countries for financial and technical assistance, including, where appropriate, financial assistance on soft terms, to achieve the objectives of the present resolution and therefore requests the Secretary-General of UNCTAD to transmit the report of the Group of Experts and the present resolution to the above-mentioned organizations for appropriate action; (operative paragraph 7)

- instructed the Committee on Shipping and the Committee on Invisibles and Financing related to Trade to study and make proposals designed to assist land-locked developing countries, including proposals regarding reduction of their balance of payments burden in respect of transit trade and insurance costs; (operative paragraph 8)

- invited the United Nations Development Programme, specialized financial institutions and the Governments of developed countries to assist transit developing countries to improve their port installations and facilities which should help to meet the trans-shipment requirements of land-locked countries; (operative paragraph 9) and

- invited the Intergovernmental Group on trade expansion, economic co-operation and regional integration among developing countries, to include in its agenda a review and analyses of the special problems of the land-locked developing countries, with a view to giving special consideration to the need for their greater participation in the regional and international trade. (operative paragraph 10)

196. The resolution also requested the appropriate organs of UNCTAD to recommend specific practical measures for alleviating the special problems of land-locked developing countries within the context of the international development strategy. The resolution requested the Secretary-General of UNCTAD to submit to the Board at its eleventh session and to the third session of the United Nations Conference on Trade and Development a progress report on the actions taken pursuant to the resolution.

B. General Assembly resolution 2626 (XXV) of 24 October 1970 on international development strategy for the Second United Nations Development Decade

197. Following consideration of the subject by the Preparatory Committee for the Second United Nations Development Decade, which made use of various relevant documents, including those of UNCTAD bodies,[77/] the General Assembly adopted, without vote, resolution 2626 (XXV) proclaiming the Second United Nations Development Decade, starting from 1 January 1971, and adopting the international development strategy to be followed. Part C of the Strategy, listing policy measures, contained headings dealing with "special measures in favour of the least developed among the developing countrie" and "special measures in favour of the land-locked developing countries". The paragraph under the last-mentioned heading provides:

> "National and international financial institutions will accord appropriate attention to the special needs of land-locked developing countries in extending adequate financial and technical assistance to projects designed for the development and improvement of the transport and communications infrastructure needed by these countries, in particular of the transport modes and facilities most conveient to them and mutually acceptable to the transit and land-locked developing countries concerned. All States invited to become parties to the Convention on Transit Trade of Land-locked States of 8 July 1965 which have not already done so, will investigate the possibility of ratifying or acceding to it at the earliest possible date. Implementation of measures designed to assist the land-locked countries in overcoming the handicaps of their land-locked position should taken into account the relevant decisions and resolutions which have been or may be adopted in the United Nations Conference on Trade and Development."

77/ It may be noted in this connexion that a group of experts, appointed by the Secretary-General of UNCTAD in accordance with resolution 63 (IX) adopted by the Trade and Development Board "with a view to devising effective measures that would enable the least developed among the developing countries to benefit from the Second United Nations Development Decade", submitted a report in which it was stated that "...the land-locked situation is not necessarily synonymous with being least developed. Some land-locked countries may not be least developed and some of the least developed are not land-locked. However, as a matter of empirical observations it is found that most of the land-locked developing countries would seem to belong to the category of the least developed". Special measures in favour of the least developed among the developing countries: report of the Group of Experts on special measures in favour of the least developed among the developing countries (document TD/B/288).

C. Economic Commission for Africa

198. In addition to its efforts directed towards measures of regional and subregional co-operation, which have been designed to benefit land-locked as well as coastal States, ECA has also taken a number of more specific steps to assist land-locked countries in Africa. ECA submitted a study dealing with the transit problems of African land-locked States to the Committee on Preparation of a Draft Convention relating to Transit Trade of Land-locked Countries, which met in 1964. References to the problems of land-locked countries have also been made in the context of the Commission's work relating to transport, customs administration, and trade and development.[78/] ECA has, in addition, adopted two resolutions on land-locked countries. In resolution 167 (VIII) of 24 February 1967, the Commission invited the Executive Secretary to take the necessary steps with a view to the signature of the Convention on Transit Trade of Land-locked States by all member States and the effective implementation of its recommendations by the Governments of African States.

199. Resolution 218 (X), on the question of Africa's stragety for development in the 1970s, adopted on 13 February 1971 at the Commission's tenth session (the first meeting of the Conference of Ministers of ECA), also included a provision on land-locked countries. The relevant passages of paragraph 8 of the resolution, which sets out the strategy for development, read as follows:

> "(42) Thirteen out of a total of eighteen land-locked countries can be found in Africa. The position of these countries, in particular because of the high costs of transportation, the poor development of their infrastructure; inadequate and inconvenient transport, storage and port facilities; the lack of opportunity to use their own transport equipment and to establish their own transport facilities; and the unfavourable trend of transport tariffs and charges, is a factor seriously inhibiting the expansion of their trade and economic development.
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> "(43) The solution of the special problems of the land-locked and island countries require special measures to be taken in their favour within the region and in the broader framework of the Second United Nations Development Decade. The various elements of such a strategy would include the following:

78/ In this connexion see "The transit problems of Eastern African land-locked States", document E/CONF.46/AC.2/4 (E/CN.14/INR 44); "Report of the Expert Panel on Transit Traffic in West Africa", annex I, document E/CN.14/206; and "Transit problems of African land-locked States", document E/CN.14/TRANS/29.

(i) detailed studies identifying their most serious bottlenecks to rapid economic development;

(ii) effective recognition of their right to, and facilitation of, free access to the sea;

(iii) priority attention to their financial and technical assistance needs, including the granting of soft-term loans and the provision of funds designed to subsidize their additional transport costs;

(iv) application of special measures in their favour along the lines of those accorded to the least developed among the developing countries."

D. Economic Commission for Asia and the Far East[79/]

200. The following developments should also be mentioned: (a) the United Nations Development Programme has completed a feasibility study of a trans-Saharan route. Algeria has already initiated action domestically and submitted an application to UNDP; (b) ECA is following up road network development among the Entente countries, namely, Ivory Coast, Togo, Dahomey, Niger and Upper Volta, with links to Ghana; (c) a meeting of six African countries and prospective donors is due to start on 14 June to examine arrangements for initiating a trans-Central African highway involving Kenya, Uganda, the Democratic Republic of the Congo, the Central African Republic, Cameroon and Nigeria; (d) ECA is following up the activities of rural development projects which include trade outlets vis-à-vis neighbours and exports; (e) under the leadership of Mauritania, the Senegal River basin States are supporting a road from Mauritania to the West African coast to be known as Unity Road. Development of the Senegal basin might extend port facilities for relatively large boats up to Gouina in Mali.

201. As regards more recent actions, a meeting of government experts on trade expansion was convened by ECAFE in August 1968, to examine various aspects of regional trade expansion policy and payments arrangements, including problems of land-locked countries. The meeting recognized the geographical handicaps of such countries, which had resulted in high transportation costs for their external trade, and felt that improved transportation methods and facilities should be found to reduce such costs.

79/ The following account is based on material supplied by ECAFE.

202. Since the land-locked as well as the transit countries in the ECAFE region were developing countries with limited resources, the meeting recommended that the developed countries should give special consideration to extending technical and financial assistance to both the land-locked and transit countries, with a view to overcoming the former's special difficulties. International and regional financial institutions were also urged to extend loans with specially favourable terms for such purposes. Full exploration of the possibility of modernizing transportation methods, such as by the use of roll-on and roll-off facilities, palletization and containerization should be made with the expert assistance of the developed countries. In this connexion, the meeting drew the attention of Governments and international financial institutions to UNCTAD resolution 11 (II).

203. The meeting also discussed a proposal to establish a standing intergovernmental consultative committee on transit trade of land-locked countries, consisting of land-locked countries, transit countries and others interested in the trade expansion and economic development of the land-locked countries in Asia. It felt that, although ultimately the transit problems faced by both the land-locked and transit countries required solution on a bilateral basis in the context of the circumstances pertaining to each particular case, consultations at the regional level could supplement the measures for dealing with the transit trade problems of the land-locked countries and assist in finding suitable solutions thereto. While this proposal was supported by several experts at the meeting, it was felt that consideration of any such proposal should await the results of the special study by the Group of Experts constituted by the Secretary-General of UNCTAD in accordance with UNCTAD resolution 11 (II).

204. Pursuant to a recommendation of the meeting, ECAFE secured the services of a trade expert from a developed land-locked country, who prepared a study on the export promotion problems and needs of three Asian land-locked countries. Follow-up action on the recommendations made has already been taken by some countries.

205. In February 1970 the ECAFE Committee on Trade agreed that there was an urgent need for introducing special measures to assist the land-locked countries in overcoming the impediments they faced in their efforts to expand their international trade. It welcomed a suggestion that the Executive Secretary create a unit in the ECAFE International Trade Division to deal with the special problems of the land-locked countries and the least developed among the developing countries of the region. It was also suggested that the ECAFE secretariat undertake studies on the

effects of the freight structure in the over-all trade of land-locked countries, with a view to ensuring favourable freight rates for those countries, as well as a study of the possibility of improving the present international railway and highway systems so as to provide better communications between the land-locked countries and the nearest seaports.

206. In resolution 107 (XXVI) of 23 April 1970, on transit problems of land-locked countries, the Commission requested the Executive Secretary to assist in promoting and continuing the institutional arrangements required for a smooth implementation of the recommendation concerning the transit problems of the land-locked countries in the region, and to prepare a long-term plan for solving their problems, for implementation during the Second Development Decade. The Commission also urged the member countries concerned which had not yet ratified or acceded to the 1965 United Nations Convention on Transit Trade of Land-Locked States to give favourable consideration to the possibility of doing so at an early date, so as to facilitate the development of intra-regional and world trade. At that session, the representative of the Republic of Viet-Nam made an offer to provide access to the sea for the Laotian traffic on the completion of the necessary infrastructural requisites in the country.80/

207. Pursuant to the decision of the Committee on Trade and the Commission, a unit was created in the ECAFE International Trade Division in 1970 to give continuous attention to the problems of land-locked and less developed countries of the region with a view to providing suitable solutions thereto, and in order to co-ordinate the activities of other substantive divisions of the secretariat. The unit is also responsible for maintaining close co-operation with the UNCTAD secretariat and other United Nations bodies dealing with the subject.

208. The Council of Ministers on Asian Economic Co-operation, at its fourth session held at Kabul in December 1970, in considering proposed schemes of regional trade and monetary co-operation as well as related supporting projects, adopted the "Kabul Declaration on Asian Economic Co-operation and Development" in which, recognizing the need for adequate transit facilities for the land-locked countries and the difficulties encountered in promoting the economic development of the least developed among developing countries of the region, the Council urged the member and associate

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80/ ECAFE Annual Report 1969/1970, E/4823; E/CN.11/932, p. 43, para. 398.

member countries of the region, in co-operation with the ECAFE secretariat, inter alia, to render every possible assistance to the land-locked countries of the region to enable them to enjoy the right of free access to the sea; to provide port and transport facilities, minimum and simple customs formalities, reasonable transport charges and transit by air and overland routes; and to accord specially favourable treatment to imports from the least developed among the developing countries in respect of tariff and non-tariff barriers. It was also agreed in this context that disputes between two countries in the region should not be allowed to affect adversely the interests of third countries in the region.

209. Under the programme of work and priorities in the field of trade for 1971 and 1972, ECAFE has given high priority to subjects relating to the special problems of land-locked and least developed among developing countries of the region. In accordance with the recommendation of the Committee on Trade, which was endorsed by the Commission, at its twenty-seventh session held in April 1971, the ECAFE secretariat proposes to work out a plan to organize a mission of experts, in 1971/1972, to visit the land-locked countries of the region in order to identify their trade and economic problems and evolve suitable solutions thereto. The mission will comprise experts in the fields of transport and communications, trade promotion and policy, and industrial and agricultural development. The ECAFE secretariat also proposes to organize in the land-locked and least developed among developing countries of the region, roving seminars and training courses in trade promotion and policy in 1971 and 1972, with the co-operation of the UNCTAD/GATT International Trade Centre.

210. Finally, at its twnety-seventh session held in April 1971, the Commission adopted resolution 114 (XXVII), on the special problems of land-locked countries, in which it requested the Executive Secretary to establish a special body to make recommendations for the purpose of implementing the provisions of the Kabul Declaration in regard to the land-locked countries, as well as the 1965 United Nations Convention on Transit Trade of Land-locked States. A report on the work of the special body is to be submitted to the Commission at its next session.

PART THREE. SPECIAL PROBLEMS OF LAND-LOCKED COUNTRIES RELATING TO THE EXPLORATION AND EXPLOITATION OF THE RESOURCES OF THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, BEYOND THE LIMITS OF NATIONAL JURISDICTION

211. Besides requesting, in operative paragraph 1 of resolution 2750 B (XXV) of 17 December 1970, "an up-to-date study of the matters referred to in the memorandum dated 14 January 1958", the General Assembly also asked the Secretary-General

> "to supplement that document, in the light of the events which have occurred in the meantime, with a report on the special problems of land-locked countries relating to the exploration and exploitation of the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction".

212. This part of the present study is accordingly devoted to an examination of the problems in question. However, by comparison with earlier portions of this report (in particular part II, A and B, dealing with multilateral and bilateral treaties relating to access to the sea), there is, as yet, no practice to draw on as regards the exploration and exploitation of the sea-bed resources lying beyond national jurisdiction.[81/] Furthermore, as is well known, there are many issues still to be settled regarding the international régime and machinery to apply with respect to the area. In the light of these facts, the Secretary-General would like to point out that this part of the report cannot therefore proceed beyond a certain level of inquiry: it cannot summarize what the actual experience of land-locked - or of non-land-locked - States has been as regards the development of the sea-bed resources in question, nor can it attempt to prejudge what course Member States may decide to follow as regards the various matters still to be determined. Apart from references to discussions held and proposals made by Member States, the study made is accordingly (like certain others which the Secretary-General has submitted relating to sea-bed matters) of a tentative nature, dealing with various possible situations which may arise. The difficulty in this connexion, however, as will be appreciated, is to isolate the "special problems" of land-locked countries, referred to in the General Assembly's resolution; to a

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81/ It has been assumed that the resources referred to in resolution 2750 B (XXV) are mineral and not living resources of the area in question.

considerable extent those problems cannot be distinguished until the problems - special or otherwise - faced by other States have also been established, a task which, to be undertaken fully, requires a step-by-step inquiry into the actual way, or ways, in which sea-bed exploitation might proceed in practice. Whereas some problems of land-locked countries may be special in the sense that only land-locked countries may encounter them, other problems may be special to land-locked countries only as a matter of degree, according to the factors prevailing in various circumstances. In indicating some of those circumstances, however, the Secretary-General has done so merely for the purposes of illustration and analysis, and not in order to express any recommendation on his part as to the decisions to be taken by Member States.

213. The matters examined have been arranged as follows. First, a brief account is given of the developments since 1958 relating to the exploration and exploitation of marine mineral resources. After this historical summary, reference is made to certain general issues: the questions which present themselves as regards particular categories of land-locked countries; and land-locked countries and the question of the sharing of benefits derived from sea-bed exploitation. The remainder of this portion of the study is then devoted to an examination of the problems raised, as regards the participation of land-locked countries, in the exploration and exploitation of sea-bed resources. This section is subdivided, the first part dealing with the participation (or representation) of land-locked countries in any organizational machinery which might be established, and the second with participation by land-locked countries in actual exploration and exploitation activities, and questions relating thereto.

I. DEVELOPMENTS SINCE 1958

214. The 1958 study dealt with rights of transit and of access to the sea of land-locked countries and did not discuss questions concerning sea-bed activities. The major events which "have occurred in the meantime" (in the words of resolution 2750 B (XXV)) as regards the exploration and exploitation of offshore minerals, have been twofold: the adoption of the 1958 Convention on the Continental Shelf[82/] and of various measures whereby coastal States have proclaimed

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82/ United Nations, Treaty Series, vol. 499, No. 7302. The Convention came into force on 10 June 1964.

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jurisdiction over sea-bed areas off their coasts; and, secondly, the development of technological means of exploitation of mineral resources, which raise the possibility that exploitation might come to take place at distances far from the shore, and indeed on the deep ocean floor.

215. Taking these matters in turn, it may be recalled that, in preparing its draft articles on the régime of the continental shelf, the International Law Commission considered that the limit of 200 metres depth "would be sufficient for all practical purposes at present and probably for a long time to come".[83/] The Commission nevertheless adopted a double criteria whereby the outer limit of the continental shelf was expressed as being the 200 metres isobath "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of natural resources"[84/] of the submarine areas adjacent to the coast.

216. With relatively slight amendment these criteria were adopted by the United Nations Conference on the Law of the Sea, which was convened in 1958. Article 1 of the Convention on the Continental Shelf provides:

> "For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the sea-bed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the sea-bed and subsoil of similar submarine areas adjacent to the coasts of islands."

217. Article 2 of the Convention specifies that the coastal State exercises over the continental shelf "sovereign rights for the purpose of exploring it and exploiting its natural resources". While the rights of the coastal State over the continental shelf "do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters"[85/] the rights granted to the coastal State are

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83/ This opinion was expressed in 1953. For an account of the evolution of the Commission's views with regard to the legal definition of the continental shelf, see Yearbook of the International Law Commission, 1956, vol. II, A/3159, commentary to article 67, from which the above quotation is taken.

84/ Draft article 67, idem.

85/ Article 3.

"exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State". 86/

218. Under the provisions of the Convention coastal States were thus given sole rights with respect to the resources of the continental shelf. Since 1958 these rights have been claimed and exercised by a large number of States,87/ both those parties to the Convention88/ and those which are not parties. When, during the 1960s, technological advances were made which suggested that means now existed, or would shortly be in operation, whereby exploration and exploitation could proceed at depths considerably greater than 200 metres, attention was drawn to the fact that the definition of the continental shelf contained in the Convention (which, it may be noted, has been incorporated in a number of national enactments, including enactments adopted by States not parties to the Convention) could be interpreted in different ways so far as the outer limit was concerned.

219. Following the work of an Ad Hoc Committee in 1968, the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction (hereinafter referred to as the "Sea-Bed Committee") was set up89/ to consider the questions raised. A complete account of its activities would not appear to be called for in the present connexion, but only those of particular relevance to the problems of land-locked countries. Thus it may be specially noted that the Declaration of Principles Governing the Sea-bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, which was

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86/ Article 2, paragraph 2.

87/ It may be noted that, under article 2, paragraph 3, of the Convention the rights of the coastal State "do not depend on occupation, effective or notional, or on any express proclamation."

88/ As of 1 May 1971 the following forty-seven States were parties to the Convention: Albania, Australia, Bulgaria, Byelorussian SSR, Cambodia, Canada, China, Colombia, Czechoslovakia, Denmark, Dominican Republic, Fiji, Finland, France, Guatemala, Haiti, Israel, Jamaica, Kenya, Madagascar, Malawi, Malaysia, Malta, Mauritius, Mexico, Netherlands, New Zealand, Nigeria, Poland, Portugal, Romania, Senegal, Sierra Leone, South Africa, Spain, Swaziland, Sweden, Switzerland, Thailand, Trinidad and Tobago, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United States of America, Venezuela and Yugoslavia. The parties thus include several land-locked States.

89/ By resolution 2467 A (XXIII) of 21 December 1968.

adopted by the General Assembly[90/] on the basis of the Committee's deliberations up to 1970, includes the following provisions:

"1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind.

2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

3. No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international régime to be established and the principles of this Declaration.

4. All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international régime to be established.

5. The area shall be open to use exclusively for peaceful purposes by all States whether coastal or land-locked, without discrimination, in accordance with the international régime to be established.

...

7. The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether land-locked or coastal, and taking into particular consideration the interests and needs of the developing countries.

...

9. On the basis of the principles of this Declaration, an international régime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The régime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal.

..."

90/ Resolution 2749 (XXV) of 17 December 1970.

220. Thus, unlike the position with regard to the area referred to in the Convention on the Continental Shelf, whereby rights are given exclusively to adjacent coastal States, the General Assembly has declared that the use of the international area beyond is open to "all States whether coastal or land-locked", in accordance, however, with the international régime to be established.

221. In resolution 2750 C (XXV) of 17 December 1970, the mandate of the Sea-bed Committee was extended to cover the preparations to be made for a Conference on the Law of the Sea, to be convened in 1973.[91/] In operative paragraph 2 of the resolution, it is stated that the Conference will deal with "the establishment of an equitable international régime - including an international machinery - for the area" and the resources of the sea-bed beyond the limits of national jurisdiction, a precise definition of the area, and "a broad range of related issues". The Sea-bed Committee was instructed to meet in 1971 in order, inter alia, to prepare for the Conference "draft treaty articles embodying the international régime, including an international machinery for the area and the resources of the sea-bed", taking into account "the equitable sharing by all States in the benefits to be derived therefrom, bearing in mind the special interests and needs of developing countries, whether coastal or land-locked", on the basis of the Declaration of Principles.

222. To enable it to carry out the task allotted to it, the Sea-bed Committee decided at its session held in March 1971 to establish three Sub-Committees.[92/] According to the agreed statement concerning the organization of work read out by the Chairman at the forty-fifth meeting of the Committee, held on 12 March 1971, the subjects and functions assigned to Sub-Committee I include the preparation of "draft treaty articles embodying the international régime - including an international machinery" - for the area and its resources, in accordance with the wording of resolution 2750 C (XXV) quoted immediately above, and

> "economic implications resulting from the exploitation of the resources of the area (resolution 2750 A), as well as the particular needs and problems of land-locked countries (resolution 2750 B)".

91/ Subject to the provisions of operative paragraph 3 of the resolution.

92/ The views expressed by representatives of Member States at the March session with respect to the matters dealt with in the present study are summarized in paragraphs 22-24 above. Further reference has also been made below to some of the particular points raised.

223. Although speakers in the Sea-bed Committee have discussed various aspects of the exploration and exploitation of mineral resources, the Sea-bed Committee has not yet proceeded to the stage of detailed examination of specific proposals. There are thus many issues with regard to the future régime and the possible forms of international machinery which have not yet been determined. That being so, the following account of the special problems relating to land-locked countries is necessarily tentative, reflecting the range of alternative courses which States may adopt. As already indicated, the matters covered fall into two broad groups: those of a general nature, and those which relate to more specific issues concerning the participation of land-locked countries in future international machinery and exploration and exploitation activities.

II. GENERAL ISSUES

A. Particular categories of land-locked countries

224. Whilst land-locked countries, treated as a group, have a number of problems in common with regard to sea-bed exploitation - and it is primarily these common problems which are examined here - the nature and extent of the problems may vary according to the characteristics of particular groups of land-locked States.

225. The first and most obvious distinction is between developed and developing land-locked countries. Whereas land-locked countries with a developed economy may require that appropriate consideration be given to their interests in determining the conditions under which exploration and exploitation of mineral resources of the sea-bed may be pursued, they will probably be in a relatively better position to take advantage of such possibilities as are provided than land-locked countries with economies at a less advanced stage of development. The latter will share with other developing countries the general lack of trained manpower and of financial capital to enable them to participate - or to participate easily at least - in future exploitation activities. The question may, however, be raised as to whether, and to what degree, land-locked developing States may be in a particularly disadvantageous situation in this respect. As already indicated, studies made by UNCTAD suggest that land-locked developing States tend to belong

to the category of the least developed among developing States, and resolutions adopted by the General Assembly lend support to this view.[93/] The representative of one land-locked developing country, speaking in the Sea-bed Committee, suggested that these States should be treated as amongst the category of "least developed" States, in keeping with the spirit of the International Development Strategy for the Second United Nations Development Decade, when considering problems relating to the sea-bed. In the event that, in accordance with this reasoning, special measures were to be adopted (for example, programmes of training, or other forms of assistance) to help, in particular, the "least developed" States, appropriate attention might therefore be given to the land-locked developing States in this regard.

226. Another category of land-locked countries which can be distinguished is that of countries which are producers of minerals which may also be produced from the sea-bed. The only land-locked countries whose economies are dependent to any marked degree on the production of materials which are, or may be, also obtained from the sea, are developing countries. Insofar as these particular States may have skilled manpower or installations already in operation which enable them to participate in sea - as well as land-based - exploitation, they may be exceptions (at least to some extent) to what was said above regarding the absence of trained personnel and of difficulties in the way of direct participation by land-locked countries in sea-bed activities. This would appear, however, to be only a partial - and possible - factor on the positive side. More immediately, these countries may possibly be affected by variations in commodity prices: the Secretary-General was requested in resolution 2750 A (XXV) to study the problems involved in this connexion and has submitted a separate report on the subject.[94/] Land-locked

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93/ See the quotation from the report of the UNCTAD Group of Experts "Special measures in favour of the least developed among the developing countries", (Document TD/B/288), cited in note above, which concludes "... as a matter of empirical observation it is found that most of the land-locked developing countries would seem to belong to the category of the least developed". As regards General Assembly resolutions, see paragraphs 190 and 197 above.

94/ "Possible impact of the sea-bed mineral production in the area beyond national jurisdiction on world markets, with special reference to the problems of developing countries: a preliminary assessment", A/AC.138/36.

developing countries which are large-scale mineral producers would not appear to be in a substantially different position in this respect from other developing countries which are also engaged in mineral production.

B. Land-locked countries and the question of sharing of benefits

227. The question of the distribution of benefits obtained from sea-bed exploitation has been frequently mentioned during discussions in the Sea-bed Committee and the Secretary-General has submitted two studies on the subject.[95/] The Declaration of Principles refers, in paragraph 9, to the need that the proposed international régime shall ensure the "equitable sharing" of the benefits derived from the area, "taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal", language which is substantially repeated in operative paragraph 6 of resolution 2750 C (XXV).

228. The Sea-bed Committee has not yet proceeded to detailed discussion of the specific ways in which the benefits concerned might be shared. It may, however, be noted that, during the session of the Committee held in March 1971, the representative of a coastal State, speaking in Sub-Committee I, suggested that the spirit of the Declaration of Principles could best be implemented if the sharing of benefits was related to need and based on an agreed scale whereby the least developed would receive the most and the most developed would receive the least. As indicated above, the delegate of one land-locked developing State advanced the view that countries in this category should be treated as amongst the "least developed" States when questions relating to the sea-bed were considered.

229. In the course of presentation during the March session of a detailed statement regarding, inter alia, the payment of a tax on marine resources, the delegate of a coastal State suggested that about 20 per cent of the international net income so gained should be used in land-locked countries, for studying the efficient use and improvement of the human environment, preferably in matters relating to lakes and rivers.

95/ "Possible methods and criteria for the sharing by the international community of proceeds and other benefits derived from the exploitation of the resources of the area beyond national jurisdiction", A/AC.138/24, and ibid., A/AC.138/38.

III. PARTICIPATION OF LAND-LOCKED COUNTRIES IN INTERNATIONAL MACHINERY AND IN EXPLORATION AND EXPLOITATION ACTIVITIES

230. The questions raised under this heading are, in certain respects, the most central. Put at its most general, the problem presented may be expressed as follows: having regard to their geographical situation and the accompanying factors which would tend to prevent or hinder land-locked countries from taking part in sea-bed exploration and exploitation, and the recognition that, under the concept of the "common heritage of mankind", these States are entitled, along with others, to participate in determining the conditions under which such activities may be conducted and to share in the benefits derived, what arrangements should be made so that land-locked States may actually exercise the rights involved? The large number of outstanding issues with respect to the nature of the future sea-bed régime renders it extremely difficult to give a specific answer, or series of answers, in this matter: there is a wide variety of solutions which could be devised, according (inter alia) to the basic choice made as regards the type of machinery to be instituted and, beyond that, to the relative degree of success in extracting minerals at economic prices. The following account, which seeks to indicate the major ways in which the problem may be approached, is accordingly put forward as an initial guide which may help to clarify the issues, presented under various possibilities, rather than as a statement of specific proposals relating to an already agreed situation.

231. By way of preliminary distinction, the question of participation in institutional arrangements may be separated from the issue of actual exploration and exploitation of sea-bed minerals by land-locked countries (or by entities acting under their authorization). These two issues are therefore treated separately below.

A. Participation of land-locked countries in international machinery

232. As already noted,[96/] the Declaration of Principles envisages that an international régime, including "appropriate international machinery" shall be established on the basis of "an international treaty of a universal character,

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96/ Paragraph 219 above.

generally agreed upon". Such machinery might take various forms,[97] but while no conclusions have been reached, it has been increasingly assumed by speakers in the Sea-bed Committee that the machinery would need to be more than a secretariat unit and would comprise (whatever the precise range of its functions) one or more organs composed of State representatives. In his first report on international machinery the Secretary-General gave information on the systems of representation and voting followed in various bodies within the United Nations system.[98] The Secretary-General did not, however, submit specific proposals regarding the way in which representation and voting might be arranged within a possible institution for the sea-bed.

233. It may be noted that, in the case of the four written papers which have far been submitted by individual States[99] regarding the question of international machinery, all envisage one plenary body in which all contracting parties (including land-locked countries) would be equally represented, and various other organs of more restricted membership, one of which would act as the executive authority. As regards the composition of this organ, the drafts of the United Republic of Tanzania and of the United States are the most specific. The United Republic of Tanzania proposes the establishment, not only of a plenary assembly, but also of a council which is to consist "of 18 members elected by the Assembly" and include "not less than three land-locked States".[100] The United States draft provides for an assembly and for a council, of twenty-four contracting parties,

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97/ "Study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and the use of these resources in the interests of mankind: report of the Secretary-General", annexed to the report of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction, Official Records of the General Assembly, Twenty-Fourth Session, Supplement No. 22 (A/7622).

The Secretary-General's second report, entitled "Study on international machinery", annexed to the subsequent Report of the Committee, ibid., Twenty-Fifth Session, Supplement No. 21 (A/8021).

98/ Paragraphs 104-125 (membership) and 126-140 (voting).

99/ By France, the United Kingdom, the United Republic of Tanzania and the United States. The proposal by the United Republic of Tanzania is contained in document A/AC.138/33; the other papers are annexed to the report of the Sea-bed Committee to the twenty-fifth session of the General Assembly, Official Records of the General Assembly, Twenty-Fifth Session, Supplement No. 21 (A/8021).

100/ Article 24 (1). It is provided that "Members serving on the Council shall be selected with due regard to geographic distribution".

which is to include at least two "land-locked or shelf-locked countries".[101] During the session of the Sea-bed Committee held in August 1970, one of the delegates of the two land-locked States represented on the Committee at that time, while in principle supporting the United States draft convention, expressed dissatisfaction with the particular provision referred to on the grounds that it did not reflect the actual proportion of United Nations Member States which were land-locked or shelf-locked. The United Kingdom paper[102] refers to a board of governors, to be elected by the plenary conference, whose membership "would reflect the interests of, and the technical contribution which could be made by, the developed and developing countries, both land-locked and maritime".[103]

B. Participation of land-locked countries, or of entities authorized by them, in exploration and exploitation activities

234. Distinct from the question of representation in international machinery is the issue of the actual participation by land-locked countries, or of entities acting under their authority, in the direct exploration and exploitation of sea-bed resources. Proposals have been made that the international body should be set up with powers enabling it to undertake such activities directly, or by means of a system of subcontracting; many speakers appear to have envisaged, however, that the international body would licence others - normally States or groups of States - who in turn would licence or authorize entities to explore or exploit given areas. In some instances it has been suggested that both possibilities should be combined.

101/ Article 36, para. 3. Land-locked or shelf-locked countries are defined in article 75(9) as contracting parties which are not trustee parties. The twenty-four members of the council are to consist of the six most industrially advanced contracting parties and eighteen additional contracting parties, of which at least twelve are to be developing countries, to be elected by the assembly. Since none of the six most industrially advanced contracting parties are likely to be land-locked or shelf-locked, the two land-locked or shelf-locked States are presumably to be among those elected.

102/ The paper submitted by France does not specify the composition of the proposed permanent board.

103/ Paragraph 6 (b). It is stated that "In principle the Board might work on a majority voting basis."

Assuming however that the international body was not itself the sole entity engaged in direct sea-bed activities and that those undertaking the exploration and exploitation of mineral resources included States and bodies authorized by them, acting under the authority of international machinery, the question arises as to the position of land-locked States in this regard. The Declaration of Principles, and the proposals or papers submitted by individual States, have assumed that the opportunities for engaging in sea-bed activities would be open to all. Those proposals do not, however, include provisions which deal specifically with the question of land-locked countries (or entities acting under them) wishing to engage themselves in actual activities of exploration and exploitation of sea-bed resources of the international area. It would appear a necessary part of the present study to try to distinguish whether, and to what extent, land-locked States, or entities acting under their authority, might encounter special problems in this respect.

235. Having regard to the many issues still to be settled regarding the actual way in which the future international régime and machinery may operate, it is difficult to reach any definitive conclusions in this matter. Broadly speaking, however, it is possible to distinguish, on the one hand, certain particular matters relating to land-locked States which would need to be considered in the present connexion - the question of transit to and from the international area of minerals and of persons and equipment engaged in sea-bed activities, and the extent of the need for facilities on the coast, being the most obvious - and, on the other, the more general conditions under which sea-bed activities might be conducted, as they might affect land-locked countries.

236. Taking the wider question first: as regards the over-all circumstances in which a land-locked country might seek to engage in direct exploration and exploitation of sea-bed resources, much would depend on the position - in particular the economic position - of the particular State in question. It may be taken as self-evident that, other things being equal, a land-locked developed country will be in a better position to attempt to engage in direct exploration and exploitation than a land-locked developing country. Equally, even a land-locked developed country may be at a disadvantage by comparison with a number of coastal developing States - and the reverse may also be true. As a further complication, for land-locked as for non-land-locked States, not only will their circumstances vary in many particulars (population, size, the stage of economic development reached,

different wage rates, and many other differing factors), the question will also have to be considered from the standpoint of the economic viability of individual sea-bed activities: here one of the main points of differentiation will be between activities undertaken to produce minerals for the sponsoring State's own home market, and activities undertaken in order to produce minerals to sell to others.

237. The possible variations are so great that it is extremely hard to establish, in a conclusive manner, exactly what special problems land-locked countries may encounter. In an attempt at least to gauge those problems, however, reference must be made - subject to the many variables mentioned - to the question of the system of allocation which may be adopted with respect to areas of the international sea-bed zone. The proposals which have been made with regard to the future sea-bed régime and machinery appear to have envisaged the division of the international zone into a series of areas (for exploration and/or for exploitation, possibly varying in size according to particular minerals), allocation of those zones being supervised by the international machinery to be established. Those proposals have not entered closely into the question of how those areas might be allocated as between individual States[104/] (which in turn might authorize entities to conduct actual operations). From an analytical standpoint it is possible to distinguish two broadly distinct means which might be used, with an almost infinite number of variations and modifications between them. At one extreme, areas might be allocated on the basis of activities carried out by States, at their own initiative and, in principle, financed by the State in question. The international zone itself would not be divided up, ab initio, but only those areas for which application was made, arrangements being made for payment of international dues and revenue according to any agreed scale. The alternative to this approach (which might of course be accompanied by many additional elements, such as the lease of particular areas on the basis of the bids received) would be some system - the specifications of which might vary greatly - whereby areas were allocated in such a way that the States of

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104/ The international machinery may itself conduct operations, or arrange for them to be carried out by contractors, in which case the problems discussed in the text would not arise. It has been assumed, for the purposes of present discussion, that activities would, at least in part, be State sponsored or authorized, within the framework of the international régime and machinery.

different regions would all be engaged, or might all have an opportunity from the outset in being engaged, in the exploration and exploitation of different areas. Under the second heading (which, as indicated, would permit many different forms of application) it would be possible, for example, to devise a scheme whereby particular sea-bed areas were allocated to a given group of States (say, those bordering the seas in question), together with the land-locked States in that region, or for areas to be allocated in a way which gave a preference, at least to some degree, to States (including those which were land-locked) in that region.

238. The importance of this distinction can be seen if one applies the two situations to the case of land-locked countries, with which this study is concerned. If, as under the first possibility, activities were to be authorized by the international authority on the basis of the application made by individual States, founded on actual activities carried out by them with their own resources, then it is probable that land-locked countries would - as a generalization - be in a broadly disadvantageous position. Such States may perhaps be able to offer by favourable terms as regards their home markets, but, in the majority of instances, and almost certainly in the case of land-locked developing countries, it appears unlikely that they will be able, on the basis of their own resources, to provide commercially attractive opportunities as regards sea-bed activities conducted under their own individual auspices. To a very large extent - as was pointed out delegates from coastal developing States during the twenty-fifth session of the General Assembly - the problems which land-locked developing States may encounter in this respect are the same as those which other developing countries may face, and the difference between them is only one of degree: all would suffer from a lack of skilled manpower, of capital resources, and of the necessary transport and industrial infrastructure to enable them to undertake such ventures. Although it is possible to posit contingencies in which this would not necessarily be the case in every instance[105/], on the whole, granted their present difficulties, it is

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105/ For example, major corporations might establish subsidiary bodies in developing States (including land-locked States) which would carry out sea-bed activities in order to produce minerals which were then processed and sold by the parent corporation. However, although this might be profitable for a limited number of developing countries, it might not provide a suitable solution for them all, regarded as a group.

As a qualification of the above, however, the possibility of using minerals for consumption in the developing State (including land-locked States) might be distinguished from mineral production undertaken in order to sell to other, presumably in most cases developed, States.

difficult to reach any other general conclusion, if the assumption is that sea-bed exploitation is to be pursued on a basis of initial initiative and financing from the individual State's own resources.

239. As regards land-locked developing States, this will be particularly the case. Whilst it may be assumed that the greater the distance from the shore, the less difference there will be in transport costs between land-locked countries and non-land-locked countries, the fact would remain that the land transport would still be longer and subject to intervening administrative formalities, and land-locked countries are, on the whole, poorer than their neighbours; furthermore, it appears to be agreed that, at least with present means of extraction, the costs of exploitation of hydrocarbons at least increase with depth and distance from the coast. Land-locked countries are, virtually by definition, not for the most part States with a developed shipping industry or States with experience of off-shore mineral production. Whereas it will be possible - at least for some coastal States (including coastal developing States) - to gain experience of off-shore mineral exploration and exploitation by proceeding from their shores and building up the necessary processing and marketing facilities as they do so, land-locked countries will have to begin at the area beyond that of national jurisdiction, and without having had any previous opportunity to acquire experience. As a result, they will tend to suffer from special problems or disadvantages - or, to express the matter more fully, by reason of their initial disadvantages, their problems will tend to be greater than those of other States, and in this sense they will have special problems.

240. As against this it can, however, be argued that, in the event that areas were not allocated solely according to previous activities carried out at the initiative of individual States - which would tend to favour those States able to finance such activities - but according to some other system of allocation then, although land-locked States might be at a disadvantage, then at least their relative disadvantage would be lessened. Assuming that areas were allocated on the basis of activities carried out on the initiative of individual States, without restriction, it is unlikely that the majority of land-locked States - and certainly those amongst them which are developing States - would be able to finance such activities (insofar as those activities were to be financed by the State in question) or that those States, regarded as separate units, could offer commercial

opportunities within their boundaries which would make it likely that capital would be forthcoming from external sources. If, on the other hand, areas were allocated beforehand or in some other way, it is possible that a land-locked State (possibly alone, or acting together with neighbouring States) might be allocated an area which was commercially valuable, and on this basis engage in actual exploration and exploitation. In this instance too it might suffer from disadvantages, but these would tend to be less than in the previous instance. To give hypothetical examples of the two situations envisaged: if, on the one hand, areas were to be allocated on the basis of activities conducted at the initiative of individual States, how could such activities - even assuming that they take place in the nearest adjacent ocean - be undertaken by a relatively poor land-locked State in Africa, Asia or Latin America? If, on the other hand, the particular area had commercial possibilities, or was thought to have, then the area would have, or might have, a commercial value which the land-locked State (again, either alone or acting together with neighbouring coastal States) could realize, even if the area concerned was far from its territory.

241. There are, however, two central points which should be emphasized (or re-emphasized) at this juncture. The first is that the special problems which land-locked States will encounter - or may encounter - will be one of degree; many of these problems may also be faced by developing States which are not land-locked. Thus if, for the sake of argument, two West African States, one coastal and one land-locked, were both to be assigned areas in the Pacific, both would almost certainly need port facilities on the coast nearest to the areas and it might make relatively little difference that the States to whom the areas assigned were respectively land-locked and coastal as regards the extent of their relative difficulties. If, on the other hand, no such allocation were made, it is difficult to see how the land-locked State could engage - or at least could engage easily - in activities even nearer to its territory, whilst a coastal State may at least have the chance (according to its circumstances) of developing whatever resources lie off its shores, and then proceeding to examine the nearby areas of the international zone.

242. The second point which may be made here supplements, and to some degree cuts across the first. The previous inquiries made by various United Nations bodies into the problems of land-locked States - both those conducted under the auspices

of UNCTAD and those made by ECA and ECAFE - have all, to a greater or lesser degree, pointed to the need for regional and subregional measures if both land-locked developing States and their coastal neighbours are to prosper. These conclusions would appear particularly apposite in the present context. Various speakers have referred during the discussions in the Sea-bed Committee to the desirability of regional co-operation in this sphere, as a means whereby the developing countries could pool their resources for mutual benefit and so participate in direct sea-bed activities. Through recourse to measures of regional and subregional co-operation as regards such aspects as exploration and exploitation, transport (both at sea and on land), processing and marketing of sea-bed minerals, undertaken with coastal States, land-locked States may accordingly be able to avoid or mitigate the special problems they may otherwise encounter through attempts to act on their own - attempts which, if undertaken, will tend to suffer from considerable disadvantages and which, if not undertaken at all may merely lead to the result that direct benefits from sea-bed exploitation are gained solely by coastal States.

243. Assuming, however, in order to complete this part of the study, that land-locked countries (or bodies acting under their authorization) were to engage in exploitation ventures on their own, within the framework of an international régime and machinery, the following more particular issues, previously distinguished, would need to be considered:

- (a) the transit of minerals, and of persons and equipment engaged in sea-bed exploration and exploitation, to and from the coast;
- (b) the need for facilities on the coast to allow exploration and exploitation to be conducted; and
- (c) transit through inland waters and the territorial sea of the coastal State.

244. In so far as sea-bed operations would entail the use of the high seas, the provisions of the Convention on the High Seas would be applicable.[106/] As

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106/ Paragraph 13 of the Declaration of Principles states inter alia that

> "Nothing herein shall affect:
> (a) the legal status of the waters superjacent to the area or that of the air space above those waters."

previously noted,[107] under the Convention the freedom of navigation, and others recognized by the general principles of international law, may be exercised by all States, with reasonable regard to the interests of others, and every State, whether coastal or not, has the right to sail ships under its flag on the high seas. No provisions specially relating to land-locked countries would appear to be called for as regards the use of the high seas in connexion with sea-bed exploitation. Similarly as regards the application of operational standards and other matters affecting exploration and exploitation activities - the question of liability for example, and the duration of international authorizations granted - the conditions applicable to land-locked States under the international régime and the machinery to be established might be the same as those applied to other States; no distinction would appear to be called for.

245. As regards the three issues mentioned above, the need for the transit of minerals, as well as of persons and equipment, through the coastal State (and any other State of transit) does not require demonstration. For the most part the conditions already applicable, either under multilateral agreements[108] or under bilateral treaties between the land-locked State and the coastal State or State of transit, might be applied. The extent to which amendment of those agreements - the most detailed of which are the bilateral treaties - might be required is difficult to evaluate in over-all terms; the matter would have to be reviewed in the light of the particular circumstances. In principle, having regard to the general tenor of existing agreements, including multilateral instruments, coastal and transit States might be called upon not to impede the transit in question. Possibly provision would have to be made, however, for supplementary facilities - for example, for the installation of a pipeline, and of storage depots or of processing plants. The

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107/ Paragraph 28 above.

108/ The relevant provisions of the Convention on the Transit Trade of Land-Locked Countries are described in paragraphs 30-48 above. Note also article 3 of the Convention of the High Seas, referred to in paragraph 28 above.

information available to the Secretariat suggests that relatively few land-locked developing States have a pipeline to and from the coast and, although a number have storage facilities at the coast, few or none have refineries or similar installations in operation on the coast.[109/]

246. More generally, as regards the extent of the need of a land-locked State to have facilities on the coast, such facilities might be broadly of two kinds: facilities to enable exploration and exploitation to be carried on, and facilities to enable any minerals acquired to be stored and processed. To reduce the bulk of material otherwise requiring transport, and to increase its value, land-locked States might wish to try to obtain facilities for refining oil on the coast, for example, and not to be required to set up such facilities solely within their own boundaries. Except where land-locked countries already enjoy such facilities, the consent of the coastal State (or other State of transit) would be required to establish installations of this character.[110/]

247. There remains the question of the transit of vessels engaged in sea-bed exploration and exploitation through the inland waters and territorial sea of the coastal State. Subject to special problems which may arise of a technical

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109 Relatively few land-locked States are producers of hydrocarbons at the present time. Assuming deposits are not found within their territories they will accordingly remain purchasers of hydrocarbons produced by coastal States (unless, of course, they were to obtain hydrocarbons from the international zone). If coastal States increase off-shore production, coastal facilities will be further expanded: on the one hand, the extra facilities so developed could be open to use or sharing by land-locked States as they undertake exploitation in the international zone; on the other hand, this production of hydrocarbons by land-locked States from the international zone may entail a change in the marketing patterns already established, and may give rise to difficulties on that account.

110/ Arising out of this might be the question of the conditions under which land-locked countries (and indeed other States) would, or might, be entitled to sell mineral products obtained from the international sea-bed area in countries other than their own, including coastal States. Although the fact that the potential seller was a land-locked State may be regarded as a special factor, the wider issue raised is that of the conditions under which minerals derived from the international sea-bed area are to be marketed. It is suggested that this broader question would itself have to be examined before any determination could be made as to whether, and if so how, any special consideration should be given to land-locked States in this respect.

nature,[111] the basic principles already established and contained in article 3 of the Convention on the High Seas and the provisions of the Convention on the Territorial Sea relating to innocent passage would appear to be generally applicable, together with any relevant articles of bilateral agreements relating to the use of ports. One matter which might require special consideration, however, concerns the laying of pipelines on the floor of the territorial sea and on the continental shelf of the coastal State.[112]

248. In summary of the above, it is suggested that, in the event that land-locked countries were to engage individually in direct exploration and exploitation activities, although their position as regards activities on the high seas or on the sea-bed might be subject to the same conditions as those applicable to other States, consideration would have to be given to the adequacy of existing arrangements as regards transit rights through the coastal State or State of transit, the need for coastal facilities, and transit through inland waters and the territorial sea. The extent of the adequacy (or inadequacy) of existing arrangements would depend on the terms of the particular instruments applicable in the given case and the scale of the enterprise. In the event that a relatively large volume of minerals were obtained by the land-locked State and transported back within its own frontiers, or processed or sold abroad, then it is probable that supplementary arrangements would have to be made.

111/ For example, if submersibles were used, consideration would have to be given to the existing rule regarding the passage of submarines through territorial sea on the surface. The increase in drilling rig traffic might require that consideration be given to the need for special navigation rules and procedures. Such issues as might be presented in this connexion would not however necessarily be confined to the operations of land-locked countries.

112/ Article 4 of the Convention on the Continental Shelf provides "Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf."

ANNEX I

MULTILATERAL TREATIES ON TRANSIT AND RELATED QUESTIONS

1. The purpose of this annex is to set out the present status of the multilateral agreements referred to in chapter IV, section 2, of the 1958 study. These were six agreements dealing with transit and related questions, concluded under the auspices of the League of Nations at the General Conferences on communications and transit held at Barcelona (1921) and Geneva (1923). The Secretary-General of the United Nations assumed depository functions with respect to these treaties pursuant to General Assembly resolution 24 (I) of 12 February 1946.

2. Four of these treaties were among those referred to in General Assembly resolutions 1903 (XVIII) of 18 November 1963 and 2021 (XX) of 5 November 1965. By those resolutions, the General Assembly decided that certain treaties of the League of Nations should be open for accession by any State which is a Member of the United Nations or member of a specialized agency, or a party to the Statute of the International Court of Justice, or which, being otherwise ineligible, is designated for this purpose by the General Assembly. The four treaties here concerned were the following:

- Convention and Statute on Freedom of Transit;
- Convention and Statute on the Régime of Navigable Waterways of International Concern;
- Additional Protocol to the Convention on the Régime of Navigable Waterways of International Concern;
- Convention and Statute on the International Régime of Maritime Ports, and Protocol of Signature.

3. In addition to the foregoing treaties, the 1958 study included the following agreements:

- Declaration recognizing the right to a flag of States having no sea-coast;
- Convention and Statute on the international régime of railways.

4. The status of the six agreements, as at 1 May 1971, is set out below. In respect of each agreement, the information provided combines in alphabetical order the names of countries given in the official lists of signatures, ratifications and accessions of the League of Nations - as they appear in those lists - as well

as the names of countries which have formally taken action subsequent to the assumption of depository functions by the Secretary-General.[1/]

1. Convention and Statute on freedom of transit, done at Barcelona, 20 April 1921

Came into force on 31 October 1922, in accordance with article 6.
Ratifications or definitive accessions, or notification of succession:
Albania, Austria, Belgium, British Empire, Bulgaria, Chile, Czechoslovakia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Iran, Iraq, Italy, Japan, Khmer Republic (Cambodia), Laos, Latvia, Luxembourg, Malta, Mauritius, Nepal, Netherlands, New Zealand, Nigeria, Norway, Poland, Romania, Rwanda, Spain, Swaziland, Sweden, Switzerland, Thailand, Turkey, Yugoslavia.
Signatures or accessions not yet perfected by ratification: Bolivia, China, Ethiopia, Guatemala, Lithuania, Panama, Peru, Portugal, Uruguay.

2. Convention and Statute on the régime of navigable waterways of international concern, done at Barcelona, 20 April 1921

Came into force on 31 October 1922, in accordance with article 6.
Ratifications or definitive accessions or notification of succession:
Albania, Austria, British Empire, Bulgaria, Chile, Czechoslovakia, Denmark, Finland, France, Greece, Hungary, Italy, Khmer Republic (Cambodia), Luxembourg, Malta, New Zealand, Nigeria, Norway, Romania, Swaziland, Sweden, Thailand, Turkey.
Signatures or accessions not yet perfected by ratification: Belgium, Bolivia, China, Colombia, Estonia, Guatemala, Lithuania, Panama, Peru, Poland, Portugal, Spain, Uruguay.

1/ For the official list of signatures, ratifications, accessions, etc., as at 31 December 1970, see Multilateral Treaties in respect of which the Secretary-General Performs Depository Functions, ST/LEG/SER.D/4 (United Nations publication: Sales No.: 71.V.5). For the treaties contained in this annex, ibid, pp. 422, 423, 424, 426, 427 and 438.

3. Additional Protocol to the Convention on the régime of navigable waterways of international concern, done at Barcelona, 20 April 1921

Ratifications or definitive accessions or notifications of succession: Albania, Austria, British Empire, Chile, Czechoslovakia, Denmark, Finland, Greece, Hungary, Luxembourg, Malta, New Zealand, Nigeria, Norway, Romania, Sweden, Thailand, Turkey.
Signatures or accessions not yet perfected by ratification: Belgium, Peru, Portugal, Spain.

4. Declaration recognizing the right to a flag of States having no sea-coast, done at Barcelona, 20 April 1921

In Force
Ratifications or definitive accessions or notification of succession: Albania, Austria, Australia, Belgium, British Empire, Bulgaria, Canada, Chile, Czechoslovakia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Iraq, Italy, Japan, Latvia, Malawi, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Romania, Rwanda, Spain, Swaziland, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, Union of Soviet Socialist Republics, Yugoslavia. (Estonia, France, Italy, Netherlands and Switzerland accepted the Declaration as binding without ratification.)
Signatures or accessions not yet perfected by ratification: Bolivia, China, Guatemala, Iran, Lithuania, Panama, Peru, Portugal, Uruguay.

5. Convention and Statute on the international régime of railways, and Protocol of signature, done at Geneva, 9 December 1923

Came into force on 23 March 1926, in accordance with article 6.
Ratifications or definitive accessions, or notification of succession: Austria, Belgium, British Empire, Denmark, Estonia, Ethiopia, Finland, France, Germany, Greece, Hungary, India, Italy, Japan, Latvia, Malawi, Netherlands, New Zealand, Norway, Poland, Romania, Spain, Sweden, Switzerland, Thailand, Yugoslavia.
Signatures or accessions not yet perfected by ratification: Brazil, Bulgaria, Chile, China, Colombia, Czechoslovakia, Lithuania, Panama, Portugal, Salvador, Uruguay.

6. Convention and Statute on the international régime of maritime ports, and Protocol of signature, done at Geneva, 9 December 1923

Came into force on 26 July 1926, in accordance with article 6.
Ratifications or definitive accessions, or notification of succession: Austria, Australia, Belgium, British Empire, Cyprus, Czechoslovakia, Denmark, Estonia, France, Germany, Greece, Hungary, India, Iraq, Italy, Ivory Coast, Japan, Madagascar, Malaysia, Malta, Mauritius, Mexico, Netherlands, Nigeria, Norway, Sweden, Switzerland, Thailand, Trinidad and Tobago, Upper Volta, Yugoslavia.
Signatures or accessions not yet perfected by ratification: Brazil, Bulgaria, Chile, Lithuania, Panama, Salvador, Spain.

ANNEX II

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A. List of selected United Nations documents on the problems of land-locked States, issued since 1958

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2. UNCTAD documents

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"Transit problems of eastern African land-locked States". Document E/CONF.46/AC.2/4 and ECA; E/CN.14/INR/44.

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