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Access of Land-Locked States To and From the Sea

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COMMENT

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I. General Considerations

LAND-LOCKED COUNTRIES have a strong interest in free access to the sea, using it as a medium for the importation and exportation of goods. In addition to the narrow interest of the land-locked countries, the international community has an interest in strengthened international economic cooperation. The land-locked countries wish to have their interest recognized as the basis for creating particular legal rights. However, coastal states maintain that the interest can be obtained only by employing a general legal principle of access. Therefore, all arguments pertaining to free access to the sea may be expressed either as a notion of a right or a conception of a principle.

The issue of free access to the sea has been of such international importance that it was discussed at both the First and Third UN Conference on the Law of the Sea. At the First Conference, the issue of access to the sea by land-locked countries required the creation of a systematic, yet theoretical, solution. Although functional solutions were arrived at among the interested countries, difficulties arose at the Conference when attempts were made at codification of the solutions to this issue. The central problem at the Conference was the inability to elucidate a definition which would correspond to the existing states' relations. Advocates of the concept of a separate juridical interpretation of access to the sea suggested the recognition of a new legal-political concept which would be wider than the previously known economic-technical concept of transit. Acceptance of this approach was not ensured. Neither a special convention on the free access to the sea of land-locked countries was adopted, nor was the mention of a right made in the provisions of the other adopted conventions relating to the land-locked countries. The Confer-

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ence achieved nothing more than a reiteration of those agreements which arose out of bilateral or multinational conventions. Despite the focus on international relations, to preclude interference with States' sovereignty, no new rights were defined, instead land-locked states received only moral support for the recognition of their interests.

Holding the First Conference on the Law of the Sea encouraged those states interested in the recognition of free access for non-coastal states to request that the Sea Constitution include such a right of free access. The attitude of the participant states was that no new right need be granted because the right of access was already a component of international law. The issue was whether this right would be omitted by the Conference or included in its general codification of rules relating to the legal guidelines for the sea. The non-coastal states found the basis of this right in the principle of freedom of the seas and in the right of all nations to exploit the high sea. Accordingly, this right was not perceived as being an international servitude, but rather an inalienable and fundamental right of a state without which recognition of the freedom of the high sea would be meaningless. If, by the principle of freedom of the sea, all coastal and non-coastal states have an equal opportunity to exploit the high sea, the non-coastal states could not use this right without also being granted free access to the sea. Thus, this right is a logical consequence of the freedom of the sea and a correlative of the equal right of all states to use the high sea. This right also represents a necessary correction of the geographical inequality of the non-coastal states, which are deprived of a sea coast. Previously, this inequality had been corrected by bilateral and multilateral agreements, giving non-coastal states transit rights over the coastal states. These agreements made the sea accessible to the non-coastal states for commercial purposes.

The free accessibility to the sea by non-coastal states has international implications. However, mutuality is missing from recognition of transit relations for non-coastal states. Transit rights would be subjectively evaluated by non-coastal states; for coastal states they would represent an obligation without any equivalent rights. Furthermore, acceptance of transit across a foreign territory as a permanent right would result in the existence of multiple jurisdictions on the same territory. The creation of such a situation would impair the principle of sovereignity, resulting in its altered meaning or its disappearance.

Access to the sea, understood as a general principle, does not have an independent existence. As with every general principle, free access to the sea is proclaimed with the understanding that specific rights are to be resolved in response to emerging circumstances. Whether a principle or a right, free access to the sea should not be considered in isolation, because it leads to the following particular rights: freedom of navigation under a state's national flag; transit of goods or persons over a foreign territory;

and, use of the maritime ports of the coastal state. Each of these rights is specific. The first right derives from sea law. The second does not have a direct connection with the law of the seas because it stops at the coast, and because the identical transit can occur between non-coastal states. The third right involves both maritime and land transport law. Taken individually, each of the rights is unquestioned. However, taken in concert, these rights become subject to criticism.

The most expressive manifestation of the presence of non-coastal states on the high sea is the flying of their flags on their ships. Nevertheless, this act alone cannot bring recognition to non-coastal states as having a special status on foreign territory. The sovereignty of a non-coastal state's flag ends at the coast, from there it is replaced by another state's flag until the non-coastal state's border is reached. This exchange of flags, representing an exchange of goods, has been regarded as an international transit problem, and the crux of the problem for non-coastal states.

Access to the sea by the non-coastal states is actually the consequence of authorized transit. As an economic issue, without international legal implications, access to the sea would not have faced obstacles to its technical development. However, when the aspirations of non-coastal states addressed the formation of an independent international legal rule requiring practical application, the notion of access to the sea was transformed from a narrow interpretation of transit into a broader concept embracing transit as only one of its essential elements. The existence of the agreed right of passage through a foreign territory is determined by a temporary resolution of an international convention, and as such, is flexible and subject to termination. Thus, as a practical decision, the First Convention did not include any provisions for absolute free access to the sea in its final resolutions.

II. Tendencies Towards Double Application Of The Innocent Passage Concept

Certain extreme interpretations equate an innocent passage by foreign ships through territorial waters with access to the sea by land-locked countries which requires crossing foreign territory. However, there is no similarity between continental and marine innocent passage in the legal situations that necessitate such passage. It would suffice, though, to suggest the same significance for the sake of comparing these two types of innocent passage.

The restriction on the authority of a coastal state, over its territorial sea, takes its origin from the general principle of freedom of the sea. The same principle of freedom of the high seas which justifies innocent marine passage serves as a justification for continental innocent passage. It is conceivable that all states, regardless of their geographical position, pos-

sess a legal right of access to the high seas based only upon marine or continental passage. If the freedom of the high seas were not guaranteed, it would be superfluous to discuss the justification of either type of passage. This principle of continental and sea passage, however, does not extend to conclusions as to their comparative benefits. Within the guidelines of the Geneva Convention, by passing through the territorial sea one passes through an area which is under state sovereignty.

One outgrowth of the First Conference was an exchange of views regarding innocent passage. Under the English view, innocent passage through the territorial sea is an independent right, not subordinated to the coastal state's rights in the territorial sea. In contrast to this view, the Yugoslav representative stated that sovereignty is the rule, and innocent passage only an exception. Both approaches acknowledged that the territorial sea is separated from the high sea and is conceptually treated as a territorial extension to the land of the coastal state.[1] For this conception to be realized, an exception to innocent passage was necessary; without such an exception, the use of the high sea would be impossible. In contrast, the acceptance of an innocent passage through the foreign territory would probably not provide sufficient justification for a similar fiction, like the territorial sea.

The separation of the sea and the land, and the dividing line between their legal natures, creates the difference between innocent passage through the territorial sea and agreed transit through a foreign land territory. Unlike transit through foreign territory, innocent passage through the territorial sea is not entirely subordinate to the exclusive competence of a coastal state. Prior to the Geneva Convetion, innocent passage through the territorial sea found its source in customary law, and today, in a Convention rule, while transit through foreign territories has been permitted only as a result of an agreement by the interested parties. Access to and departure from seaports could be an additional application of this distinction as well as a result of the freedom of the sea, but legislation on this subject is under the jurisdiction of the law of the sea. Nevertheless, access to the seaports by the land is merely a termination of land transit which does not necessarily have its extension to the sea. Guidelines in this area are determined by the rules of transit law. Although some attempts were made at the First Conference to extend the notion of transit to include access to and from the sea, they were without result. As the transit right comes from transport law, it could not contribute to the argument for innocent passage and the juncture of regulations applicable to land and sea passage.

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[1] U.N. Conference on the Law of the Sea (Vol. VII) 12, 20, U.N. Doc. A/CONF/SR.13/43 (1958) [hereinafter cited as Conference].

III. International Servitude

The distinction between innocent passage across territorial sea and agreed transit over foreign territorial land is also supported by legal scholars as manifested by their acceptance of the principle of international servitude. Most authors acknowledge, either specifically or impliedly, the existence of international servitudes. It is likely that the principle of international servitude has received wide acceptance because it serves as a convenient justification for the existing exploitation of foreign territory. Acceptance of international servitude as a legal principle represents a conceptual transition from real property law to international law. Those writers who endorse this principle also agree that it is applicable to the territorial sea. Opponents of this doctrine negate its validity on the ground that the transition from real property to international law is incomplete.

IV. Free Access to the Sea and State Sovereignty

The law of the sea is one of the most recent developments in international law. It is a radical principle in that its development has endangered the principle of sovereignty. According to non-coastal states, the principle of freedom of the sea should be interpreted to mean that every state, whether coastal or non-coastal, has equal rights to use the high sea. Since the issue of free access to and from the sea is of vital importance for non-coastal states, it is contrary to the basic principles of the United Nations to construe this right as being limited to concessions made by coastal states.

In contrast, the argument could be made that there are differences not only in the extent, but also in the legal nature, between the principle of freedom of the sea and the principle of free access to and from the sea. Both concepts are established principles of international law; the former represents the legal regime on the high sea, while the latter is subordinated to the sovereignty of the coastal state. The application of this distinction depends upon international trade and is determined by the conventional relations among interested parties.

There are other approaches to this issue which are less extreme than the two views already mentioned. According to one opinion, access to the sea does not encompass the right to transit across land. Therefore, access to the sea only relates to passage of ships from non-coastal states through the territorial sea, to or from the high sea and port. Such a narrow view of access to and from the sea would not violate the principle of freedom of the sea.

As an outgrowth of the disagreement over the application of these basic principles, the Conventions on the Law of the Sea were convened in Geneva, commencing in 1958. These Conventions did not result in any

significant departures from the existing principle of state sovereignty. Only the Convention on the Continental Shelf produced a compromise solution. Pursuant to this Convention, coastal states have been granted "sovereign rights" rather than sovereignty over natural resources on the continental shelf, which is part of the high sea. These sovereign rights, relating only to natural resources, are not absolute rights. One proposed solution to determine the rights to the continental shelf maintains that there should be no further deviation from the principle of sovereignty. Access to the sea by non-coastal states should remain under the sovereignty of the coastal states.

Departure from the principle of sovereignty is justified only in exceptional situations warranted by the protection of mutual interests. The coastal states perceive an imbalance of rights, with the advantage being held by non-coastal states. The position maintained by non-coastal states is that many world ports, such as Anvers and Rotterdam, would diminish in importance if they were dependent solely on domestic support.

An additional question to be considered is whether the establishment of an absolute right of access to the sea, which would create multiple legal orders operating concurrently, would result in an anarchy of legal order. This theory could not be applied to the issue of free access to the sea. Today, the character of international relations precludes the possibility of one country exercising control over another's territory without having received express consent. In the course of discussion, demands have been made for the recognition of a permanent right to transit by water, rail and air. During the debates at the First Conference on the Law of the Sea, the opponents of this position stressed that recognition of such a right for the railroad would result in the internationalization of the railroads. In contrast, suggestions ranged from providing free airport zones, to advocating the extension of jurisdiction of one country over the transport means of another.[2] Ultimately, these demands have resulted in the diminution of state sovereignty application to the issue of free access for land-locked states.

V. International Developments

After the First World War, provisions contained in several international treaties proclaimed the right of those states having no sea coast to fly their nation's flag on the high seas. Furthermore, the Covenant of the League of Nations emphasized the need to secure and maintain freedom of communications and transit, along with equitable treatment for the commerce of all members of the League.

As a consequence of these treaties and Covenant provisions, the

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[2] *See generally* Conference *supra* note 1.

Council of the League of Nations, by the Resolution of May 19, 1920, convened a General Conference on Communications and Transit in Barcelona, in 1921. A second Conference on the same matter was convened in Geneva in 1923. The land-locked countries were represented at both Conferences. These countries obtained recognition of their right to freedom of transit and of their right to fly their flag on the high seas. In addition, the Barcelona Conference recommended many useful provisions concerning free zone and non-free zone ports, and the principle of equality for all nations using a port. These principles were adopted at the Geneva Conference and incorporated in a convention. Following the Geneva Conference, many bilateral and multilateral conventions concerning the right of transit and free access to the sea were concluded.

Despite these fledgling efforts, it quickly became evident that the aspirations of land-locked countries would not be fulfilled. Therefore, prompted by an invitation by the Swiss Government, a Preliminary Conference of non-coastal states was held in Geneva on the eve of the Conference. This informal Preliminary Conference was attended by 14 non-coastal states. All of the delegations agreed on the basic issue, the grant of free access to the sea. The focus of the discussion was on practical actions which would insure the most effective enjoyment of that right. The concentration of the Preliminary Conference on developing practical solutions distinguished it from the Conference itself which gave attention to theoretical considerations of the right to free access to and from the sea.

The Preliminary Conference suggested general principles which were derived from a comprehensive study of the problem; especially significant were drafts submitted by Afganistan, Switzerland and Czechoslovakia. Afganistan proposed equating the rights of non-coastal states to those of coastal states. Switzerland demanded recognition of permanently free transit. And, Czechoslovakia regarded free access to the sea to be a result of the principle of freedom of the high sea. Regardless of their differences, these drafts unanimously recognized the right of non-coastal states to free access to and from the sea.[3]

Acknowledgment of this right of free access was reemphasized in the introduction to the Report of the Preliminary Conference. The introduction states that there is no reason to apply the most-favored-nation clause on behalf of other states. The Report also states that the rights of non-coastal states are regulated by the general principles of international law.

Reflecting the attention which was given to the issue of free access to the sea, a special conference committee was formed. The committee was referred to as the Fifth Committee—Question of Free Access to the Sea

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[3] *See generally* Conference, *supra* note 1.

of Land-Locked Countries. The purpose of the Fifth Committee was to review the report of the Preliminary Conference, as well as a documented memorandum prepared by the Secretariat of the United Nations.[4] Ignoring previous considerations, along with suggestions made by representatives from 15 countries,[5] the Fifth Committee did not propose a draft of a convention. Instead, the Committee recommended that the First Conference add provisions granting access to the sea by non-coastal states. These recommendations referred to the right of all states to freedom of the high seas, the right of every state to sail ships under its own flag and the questions of free access to the sea by land-locked countries and innocent passage through the territorial sea. The Committee's suggestions were embodied in the Convention on the Territorial Sea and Contiguous Zone[6] and in the Convention on High Seas.[7] It should be noted, that article 4 of the Convention on the High Seas mentions "the right" to sail ships under a nation's own flag.

Article 3 of the same Convention provides that coastal states or states of transit should receive support for their right to free access to the sea. Non-coastal states are to receive recognition of "the special conditions". As opposed to other law of the sea questions discussed in Geneva in 1958, free access to the sea by land-locked countries did not receive the status of an independent judicial concept. The essential difference between this allegedly permanent right and other rights that were treated as definitive rules of international law at the Conference, may be found in their application.

According to Article 20, the Convention on the High Seas takes effect on the 30th day following the date the instruments of ratification are deposited, or upon the accession of at least two land-locked states and two transit states having a sea coast. In June, 1967, the 30th day following the date the instruments of six non-European land-locked countries and two transit states were deposited, the instrument entered into force. The Convention was accompanied by two resolutions: The first related to facilitation of maritime trade of land-locked countries; the second resolution noted that land-locked countries comprise one-fifth of the nations of the world and recommended that these states become parties to the Convention as soon as possible.[8]

Since 1958, several multilateral treaties and arrangements have been

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[4] Conference, *supra* note 1, at 1-28.

[5] *See generally* Conference, *supra* note 1.

[6] Geneva Convention on the Territorial Seas and Contiguous Zones, *entered into force* Sept. 10, 1964, 15 U.S.T. 1606, T.I.A.S. No. 5639 at art. 14.

[7] Geneva Convention on the High Seas, *entered into* force Sept. 30, 1962, 13 U.S.T. 2312, T.I.A.S. 5200 at arts. 2, 3 and 4.

[8] Final Act of the United Nations Conference on Transit Trade of Land-Locked Countries, *done* July 8, 1965, No. 8641, 597 U.N.T.S. 3.

concluded, primarily on a regional or sub-regional basis. The increasing number of such treaties and arrangements, coupled with the uncertainty which has surrounded the legal substance of the allegedly permanent right of free access to the sea, indicate the need for a more penetrating study than that which was undertaken at the First Conference.

VI. Third United Nations Conference on the Law of the Sea

In the years which followed the First Conference on the Law of the Sea, the universally acceptable regulation of free access to the sea has ripened simultaneously with the idea of convening the Third Conference. The emergence of new states and the exclusion of substantial portions of the high sea from the application of freedom of the seas—because of the formation of exclusive economic zones—have strengthened the arguments of the land-locked states. These countries have made vigorous efforts to draw attention to their specific needs and to protect their rights in the forthcoming codification debates. First in the Preparatory Committee,[9] and subsequently in the deliberations of the Third Conference, the representatives from these countries have required the full equality of land-locked states in the exercise of freedom of the seas. The aspirations of the land-locked countries finally had a sound political, moral and legal basis, grounded in the concept of the common heritage of mankind which was initially considered to be an ideological basis for the future legal order of the sea. After December 17, 1970, the Resolutions of the U.N. General Assembly have emphasized the necessity to consider the interests and the needs of the land-locked countries, and therefore, have reinforced the hopes of these countries to have free access to and from the sea recognized as an absolute right.

U.N. General Assembly Resolution 2750 devoted attention to the needs of land-locked countries, and recognized that the Third Conference on the Law of the Sea would convene in 1973. Invited by a stipulation in Resolution 2750, the General Secretary of the United Nations has prepared a study on matters concerning the free access of land-locked countries to the sea.[10] This study reflected events which occurred after the First Conference, and which related to the exploitation of the resources of the sea-bed by the land-locked countries. The issue has not only consisted of free access to and from the sea, but also a recognition of the rights deriving from the concept of the common heritage of mankind. Applying this approach, the land-locked countries, as joint heirs, were entitled to participate in the sharing of benefits from sea-bed exploitation and to be represented by an international authority.

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[9] U.N. Conference on the Law of the Sea (Vol. I), U.N. Doc. A/CONF/SR.13/37 (1958).
[10] G.A. Res. 2750, 25 U.N. GAOR, Supp (No. 28) 25, U.N. Doc. A/8028 (1970).

Interim events had resulted in a reduced international area and in the introduction of exclusive zones for the coastal states. Therefore, claims of the land-locked countries expanded from the realm of international seas into the national economic zone of the expanded neighboring coastal state.

In accordance with operative paragraph 2 of U.N. General Assembly Resolution 3029 A of December 18, 1972,[11] the Preparatory Committee Report was submitted, in 1973, to the General Assembly. By a Resolution of November 16, 1973 the General Assembly expressed its appreciation to the Preparatory Committee for the work it had done, dissolved the Committee and proceeded to the immediate inauguration of the Conference, in 1973.[12]

At the meeting of the Third Conference, opinions were exchanged on the problem of free access to the sea by the land-locked countries. The theoretical considerations did not lose their importance, and reappeared in just slightly altered versions. At the Caracas session, the representative of Czechoslovakia, a land-locked country, recalled that the Geneva Convention on the High Seas, while proclaiming the principle of free access to the sea and recognizing that states having no sea-coast had equal rights with coastal states, had not included adequate measures to ensure effective application. The representative of Switzerland stated that any attempt to exclude the land-locked countries from the exploitation of either category of economic zone resources would be misguided. The Soviet representative proposed that while the principle of free access of land-locked states to the sea should be embodied in the future convention, technical and other specific arrangements relating to transit could be the subject of bilateral agreements between the land-locked and the transit states. According to this opinion, it would seem that free access should remain to be considered as a principle.[13]

On the eve of the Conference, in order to facilitate its work, a group of non-coastal states submitted a document entitled, *Draft Articles relating to Land-Locked Countries*.[14] The Conference of the Developing Land-Locked and other Geographically Disadvantaged States, held in Kampala, Uganda from March 20, to March 22, 1974, stressed in its declaration the right of land-locked states to free and unrestricted access to and from the sea as one of the cardinal rights recognized by international law.

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[11] G.A. Res. 3029, 27 U.N. GAOR, Supp. (No. 30) 21, U.N. Doc. A/8730 (1972).

[12] 28 U.N. GAOR, Supp. (No. 21), U.N. Doc. A/9021 (1973).

[13] 29 U.N. GAOR, Third U.N. Conference on the Law of the Sea 3, U.N. Doc. A/CONF.62/33 (1974).

[14] 28 U.N. GAOR, Committee on Peaceful Uses of Sea-Bed and Ocean Floor 1-6, U.N. Doc. A/AC.138/SR. 93 (1973).

In the preamble of the Declaration of the Organization of African Unity on the Issues of the Law of the Sea, it was recognized that Africa has many disadvantaged states including those that are land-locked or self-locked and whose access to the ocean is exclusively dependent upon passage through straits. African States endorsed the right of access to and from the sea by the land-locked countries, as well as their sharing on an equal basis as nationals of coastal states in the exploitation of living resources of neighboring economic zones.

From a different perspective, Pakistan submitted draft articles on land-locked states which proclaimed that each land-locked state should enjoy free access to and from the sea. Because it was concerned with the exploitation of the economic zone resources of neighboring coastal states, this Draft provided that coastal states could enter into bilateral or regional arrangements with neighboring land-locked states to enable the nationals of such states to participate in the exploitation of the living resources. There was no indication as to their position on land-locked countries sharing non-living resources in exclusive economic zones of neighboring coastal states. However, the delegate from Pakistan declared at the Geneva session that no state had the right to share in resources which, under existing law, belonged to a coastal state. Therefore, non-living resources in exclusive economic zones were regarded as being non-negotiable. Given a spirit of goodwill, however, living resources, over which coastal states had not previously exercised sovereign rights, might be shared predicated upon appropriate arrangements.

Article 27 of the U.S. Draft takes an opposing stance on non-living resources. According to this provision, the coastal state should segregate those benefits resulting from the exploitation of the non-living resources of the economic zone on behalf of the international community. This idea summarizes President Nixon's proposal for an international trusteeship zone from which each coastal state would receive a share of the international revenues.

At the Caracas meeting, the problem of the land-locked countries shared the attention with other issues. Postponement of the final decisions resulted from constant bargaining and painful negotiations. In order to reflect in generally acceptable terms the trends which have emerged out of the proposals submitted either to the Preparatory Committee or to the Caracas session of the Third Conference, a document was published. This document, entitled *Main Trends*, was available after the closing of the Caracas session. Its purpose was to highlight the fundamental issues and ensuing discussion.

The work at Geneva was directed toward reviewing the complement of documents produced at Caracas, to proceed to informal consultations, to encourage activities of working groups and to invite delegations which have maintained differing views in an attempt to reach compromises or

set out alternative formulas. Recognizing that the Geneva session would not adhere to the convention, each chairman of its three Main Committees was asked to prepare a single negotiating text covering the subjects entrusted to their Committees. On the eve of the closing Geneva session, these negotiating texts were submitted to the Conference. These texts were informal in character without prejudicing the position of any delegation, nor representing any negotiated text or accepted compromise.

Part four of the negotiating text, presented by the chairman of the second Committee, contains provisions concerning land-locked states, each with only one formulation. Article 109 of that text states that land-locked states shall have the right of access to and from the sea for the purpose of exercising rights provided for in the present Convention, including thoe relating to the freedom of the high seas and the principle of the common heritage of mankind. Article 110 excludes provisions establishing rights and facilities of land-locked states from the application of the most-favored-nation clause. Article 116 provides that land-locked states may participate in the exploitation of the living resources of the exclusive economic zone of adjoining coastal states.[15]

At the New York session, in 1974, the incompletely formulated Single Negotiating Texts gave rise to criticism, once more precluding the possibility of reaching an agreement. New provisions were presented in the Revised Single Negotiating Text dealing with the problems of the right of access of land-locked states to and from the sea and the freedom of transit. One provision reiterates the desirability of participation by the land-locked states in the exploitation of living resources in the exclusive economic zone. There are also two new provisions; one deals with equal treatment in maritime ports for land-locked states, and the other foresees a grant of greater transit facilities. Overall, however, the Revised Single Negotiating Text provided only slight improvement in the limited rights granted to land-locked states.[16]

A factor which is often overlooked, but which should be a central point, in the discussion of land-locked states is the distribution of the countries and their geographical position. If the Vatican is included along with three even smaller states (Liechtenstein, Andorra and San Marino), then there are 30 land-locked states worldwide. The largest number of these states are situated in the areas of: Africa, Mali, Upper Volta, Niger, Chad, Central African Republic, Uganda, Rwanda, Burundi, Zambia, Malawi, Southern Rhodesia, Botswana, Swaziland and Lesotho. Surprisingly, almost one-third of the African Countries have no sea coast. There

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[15] 31 U.N. GAOR, Third U.N. Conference on the Law of the Sea (4th session) 51, U.N. Doc. A/CONF.62/WP.8/Rev.1/ Part II (1976).

[16] 31 U.N. GAOR, Third U.N. Conference on the Law of the Sea (2nd session) 53, U.N. Doc. A/CONF.62/WP.8/Rev.1/Part II (1976).

are only two land-locked Latin American States, Bolivia and Paraguay, and five land-locked Asian States (Afganistan, Nepal, Bhutan, Laos and Mongolia). In Europe, there are five land-locked states: Switzerland, Austria, Luxembourg, Czechoslovakia and Hungary.

The geographical position of some of these non-coastal states presents the problem of determining the practical use for the seas' resources and how to determine which coastal state should give up part of its coastline to which land-locked country. An additional problem involves the right of land-locked states to operate in the economic zones of more than one adjacent country. Of the 30 land-locked countries, two border on only one coastal country—San Marino, Italy and Lesotho, South Africa. One land-locked entity borders only two other land-locked states, Austria and Switzerland. Afganistan, however, borders the U.S.S.R., China, Pakistan and Iran.[17]

In contrast, states with potentially rich economic zones, such as the United States, Canada, Australia, New Zealand, and Mexico have no land-locked or otherwise geographically disadvantaged neighbors; others, such as the U.S.S.R., Brazil, Argentina and Peru have only a few such neighbors.

VII. Conclusion

Since the Third Conference on the Law of the Sea was concerned with establishing a new order on the seas, within the context of sea law, it seemed likely that the issue of free access to the sea by land-locked states would be resolved. Previously, the problem of free access to and from the sea by land-locked countries had been raised only in terms of passage through the territorial sea to the ocean. However, this principle was accepted at the outset at the Third Conference. When discussion focused on the establishment of the economic zone, a maritime zone extending 200 miles from shore in which the coastal state would have sovereign rights over natural living resources, it became necessary to define the rights of other states, particularly those of the land-locked states inside this coastal state zone. During the session, the views of the land-locked countries on resource rights were in conflict with the views of the coastal states. Thus, the exploitation of the living resources within the economic zone has remained an issue of debate.

No valid conclusion can be drawn without first describing the exploitation by land-locked states of living resources in the exclusive economic zone of the coastal states. The pretentions of the land-locked states which were expressed during the Conference sessions became the

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[17] Alexander & Hodgson, *The Impact of the 200-Mile Economic Zone on the Law of the Sea* 12 San Diego Law Review 569-599 (1974-75).

primary inspiration for the revision of the original concept of the exclusive economic zone for coastal states. An understanding of the recognized rights of land-locked states within the exclusive economic zones requires drawing attention to the participation of these countries in the exploitation of living resources and in the participation in marine scientific research. Incidentally, it should be noted that any discussion of resource distribution is focused on living resources because it is generally recognized arrangements with third parties had accounted for the allowable catch and had no surplus to declare. Ultimately, the disparate opinions were reconciled in the articles of the Draft Convention on the Law of the Sea.

The question of marine scientific research was held in abeyance until the resumption of the ninth session of the Third Conference. Although progress was evident only in the formulation of the provisions, it could be concluded that a consensus had been reached on this issue. It was generally agreed that such research should be undertaken for peaceful purposes only, nevertheless, the coastal states that all minerals in the zone belong exclusively to the coastal state.

In the course of debate, opinion was divided as to whether or not this access of land-locked states to the living resources in the zone should be deemed a "right to participate." Land-locked states strongly defended the right of access to living resources, while the coastal states demanded that their capacity to harvest the living resources be maintained. Many land-locked and geographically disadvantaged states proposed more effective provisions to guarantee their rights. Conversely, many coastal states held the view that the convention would excessively limit their rights to their offshore waters. Furthermore, the issue was raised as to whether the land-locked states were entitled to preferential participation in the exploitation of living resources in the exclusive economic zone. Also, a question existed to whether resource rights should be distributed according to whether states were developed, developing land-locked, or geographically disadvantaged.

A few land-locked states maintained entitlement to more than an "equitable right to participate in the surplus" of the allowable catch. They sought the right to access even when the coastal state, through its own industry or worried that foreign researchers would misuse these rights and, under the pretext of scientific research, undertake projects of a military character or exploit living resources. Researchers, however, were worried that their permits might be unjustifiably withdrawn. The Informal Composite Negotiating Text provided that researchers should take into account the interests and the rights of land-locked states. Researchers were required to notify land-locked states of the proposed research project, and these states would be given the opportunity to participate by appointing qualified experts.

The regulation of interests of land-locked states has been parallel to the transformation of the law of the sea. Examining the debates of the Third Confrence concerning various issues of interest to land-locked states, it becomes apparent that competing motives were influencial. Several pretentions of the land-locked states were met with a certain uneasiness. This insecurity had not altered the position of states in the international zone, because that zone and its riches had always been recognized as a common heritage of mankind. According to this universally accepted principle, no distinction should be made among the states in that zone.

In order to normalize the situation, land-locked states should be more conscious of the existing global situations. While maintaining international solidarity by recognizing the material interests of the land-locked states, states should not become involved in useless efforts to find the material synthesis between international solidarity and state sovereignty.

Acceptance of the principle of right to access of land-locked states to and from the sea, and freedom of transit, was beyond doubt. The transition has been made from freedom of transit to the request of recognition of an absolute right across a foreign territory, and now to the recent claims to participate in the share of benefits in the economic zone of the coastal states. If this latter proposal is accepted, one might ask whether the benefits will impact on the legal nature of transit across a foreign territory. Regardless of this possible problem, it would seem that free access to and from the sea by land-locked countries can be only regarded as a principle, not a right. A right may exist only if it is absolute and independent from an outside will. Such is not the case with free access to and from the sea, despite the inaccurate references which often regard access as a right. Acknowledgement that a general right stems from a multilateral convention, and that its parameters of usage are left to particular conventions, strengthens the nature of the existing principle.

The problem of free access by land-locked states to and from the sea can be approached from two perspectives. Historically, free access to and from the sea and international goods transport have been interwoven with the function of transport as a permanently settled rule of international law. Concerned that the implementation of such a principle would affect their territorial sovereignty, coastal states argued that there was nothing in law to justify this violation of their sovereignty.

From the practical view of present-day application, free access to and from the sea by land-locked countries cannot be legally equated with the right of transit over a foreign territory. Transit is a right which is based on conventions, agreed upon for that purpose. Free access to and from the sea is a generally accepted principle, a principle of universal significance and one which is fundamental to international law. This principle is an underlying assumption on which particular conventions are based,

relating to transit and other connecting rights. Therefore, all such conventional rights could exist and be carried out only if considered as originating from this principle of universal significance, which is one of the fundamental principles of international law. Reduced to its essence, the conclusion could be drawn that the problem of free access by landlocked states may in fact correspond to the basic features embodied in the concept of the Common Heritage of Mankind.