LAND-LOCKED STATES AND THE LAW OF THE SEA

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The question whether land-locked states[1] have any general right to reach the sea is normally answered in the negative by legal writers, who invariably stress the importance of multilateral and bilateral treaties allowing such transit. Naturally, treaties may *specify* and *enlarge* the right of transit. However, as I have argued elsewhere,[2] there is ground for assuming that a *general right* of access to the sea does exist and that the function of treaties in this respect is merely to regulate the right in greater detail or, as may happen, to extend it. In this article I shall seek to examine state practice and the attitudes of land-locked and transit states to the problem of access of states to the sea.

A. THE TREATY NETWORK

1. *Multilateral Agreements*

In 1965 there was concluded a Convention on Transit Trade of Land-Locked States, whereby land-locked states were granted extensive rights to reach the sea, exceptions in favour of the territorial (transit) state being allowed only in the case of certain emergencies. However important this Convention may be for protecting the interests of land-locked states, it was mainly those states, and not the coastal states, that ratified or acceded to the Convention.

On the other hand, numerous states are bound under the GATT provisions to grant free transit for certain purposes,[3] and other rights of transit may be enjoyed under the Road Conventions.[4] However, states do not always rest their claims of access to the sea on these general agreements and appear to prefer more explicit bilateral arrangements. There appears,

[1] The following countries are land-locked: Afghanistan, Austria, Bhutan, Bolivia, Botswana, Burundi, Byelorussia, the Central African Republic, Chad, Czechoslovakia, Hungary, Laos, Lesotho, Liechtenstein, Luxemburg, Malawi, Mali, Mongolia, Nepal, Niger, Paraguay, Rhodesia, Rwanda, San Marino, Swaziland, Switzerland, Uganda, Upper Volta, the Vatican, Zambia.

[2] Delupis, *International Law and the Independent State*, London 1974, pp. 71 ff.

[3] *Ibid.*, pp. 69 f.

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[4] *Ibid.*, p. 66.

for example, to have been no reference to the GATT provisions in the *Right of Passage Case*[5] even though both India and Portugal were bound by GATT at the time of the dispute and thus India should, under GATT, have allowed transit rights for at least some traffic from the Portuguese enclaves. It is difficult to see why Portugal's Counsel did not rest the claims of transit on the explicit provisions in GATT, but perhaps the complexities of the contractual agreements within the international community are such that rights of transit embodied in a vast multilateral agreement, presumably as rights of secondary importance, were overlooked.

It may be of interest to note that if certain land-locked states, like Afghanistan, Laos or Bolivia, adhered either to GATT or to the Road Conventions they could, at least to some extent, avail themselves of a basic right of transit to the sea ensured by treaty. As things now stand, Pakistan, Turkey and Argentina are all bound by GATT and Thailand and the Khmer Republic are both bound by the Road Conventions. Yet, their respective land-locked neighbours, Afghanistan, Bolivia and Laos, are not themselves parties to these multilateral agreements and thus the conventions cannot operate between these states, as the instruments are restricted to contracting parties. Ironically enough, it would therefore appear that at least certain land-locked states could acquire a contractual right of transit ensured by treaty by adhering to one of the above-mentioned multilateral instruments, if these land-locked states found it desirable to do so for reasons of foreign policy.

It may be worth mentioning the early Barcelona Statute of 1921, which granted certain rights of transit on a multilateral basis.[6] The general importance of this convention, however, is undermined by the fact that it was restricted to transit by water and by rail and, above all, by the fact that most of the contracting states were European.

On the other hand, there are many treaties establishing customs unions[7] which grant freedom of transit. Apart from the EEC members (who can avail themselves of such a right), there are many land-locked states in Africa which may enjoy a right of transit under such a treaty; the land-locked states in Asia or Latin America, on the other hand, have not become members of any such union. Land-locked states like Chad and the Central African Republic are members of the UDEAC,[8] whereas Mali, Niger and Upper Volta have adhered to CEAO.[9] Uganda, on the other

[5] ICJ, *Reports*, 1960, p. 6. For comments, see Delupis, *op.cit.*, p. 70.
[6] Delupis, *op.cit.*, p. 60.
[7] For a brief survey of existing customs unions in various parts of the world, see Delupis, *Ekonomisk integrationsrätt*, Stockholm 1974, pp. 21 ff.
[8] *Ibid.*, p. 23.
[9] *Ibid.*, p. 23.

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hand, is a member of the East African Community.[1] These land-locked states all enjoy a right of transit to the sea under the basic agreements.

2. *Bilateral Agreements*

Important rights of transit to the benefit of land-locked states have been granted by certain Association Treaties with the EEC,[2] and under Investment Guarantee Agreements.[3] However, the most important treaties of transit are likely to be the bilateral agreements that have been concluded between land-locked states and other states to allow for transit from the enclaved states.

(i) *Treaties of Land-Locked States in Europe*

There are numerous bilateral treaties between land-locked states and coastal states in Europe. The function of these agreements is normally to extend the right of transit enjoyed under the above-mentioned multilateral conventions, to which numerous European states adhere. As some examples of bilateral agreements between states in Europe on the question of transit, I may mention the agreement of 1958 on international transport by road concluded between Austria and Belgium,[4] and the agreement of 1964 on certain categories of international passenger transport by road.[5] An agreement on transport of goods and on non-scheduled bus services was also concluded between Austria and the Netherlands in 1959.[6] There is a similar arrangement between Hungary and Belgium in the form of an agreement of 1967 on road transport of passengers and goods by commercial vehicles.[7] There are also treaties between Hungary and Yugoslavia, e.g. the treaty of 1962 establishing regulations for the transport of goods by lorry or similar motor vehicle and related customs procedures,[8] and the agreement of 1965 concerning cooperation and mutual assistance in customs matters.[9] Other treaties on transit in Europe

[1] Delupis, *The East African Community and the Common Market,* London 1970, and Delupis, *Ekonomisk integrationsrätt,* p. 22, which notes that there are some signs of disintegration in EAC which may make such a right less secure.
[2] See Delupis, *International Law and the Independent State,* pp. 70 f.
[3] *Ibid.,* p. 71.
[4] UNTS, vol. 312 no. 4513.
[5] UNTS, vol. 509 no. 7406.
[6] UNTS, vol. 485 no. 7054.
[7] UNTS, vol. 601 no. 8686.
[8] UNTS, vol. 577 no. 8370.
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[9] UNTS, vol. 576 no. 8367.

have been concluded between two land-locked parties, e.g. the treaty of 1963 between Czechoslovakia and Hungary on trade and navigation on the Danube.[1]

However interesting it may be to analyse existing agreements on transit in Europe, the problem is of even greater importance in other parts of the world. It is in Asia, Africa and Latin America that we find the majority of developing nations and therefore the most compelling economic reasons for such states to wish to have access to the sea.

(ii) *Treaties of Land-Locked States in Asia*

Numerous states in Asia are, as I have indicated above, bound by multilateral agreements to allow for transit of contracting states. Here, it is often the land-locked states themselves which, by virtue of their non-adherence to such multilateral arrangements, deprive themselves of the rights ensured by the conventions.

Afghanistan, for example, has not adhered to GATT, which binds Pakistan and Turkey. This country depends, therefore, on its Treaty on Transit with Pakistan of 1965[2] and on its Agreement with Turkey of 1969[3] for transit through these countries. It is true that these agreements go further than the corresponding provisions in GATT, e.g. by providing for yearly consultations on transit questions, or by establishing Mixed Committees to supervise such issues. There is also an Agreement of 1962 with Iran[4] affirming a right of transit, allowing storage facilities, and providing for a Mixed Committee.

Laos, too, is not a signatory of the Road Convention by which both Thailand and the Khmer Republic are bound.[5] Consequently, it has had to resort to bilateral agreements with these states for a treaty right of transit: there are two such agreements, both concluded in 1959.[6] Even if Thailand and the Khmer Republic are bound by the Road Convention vis-à-vis certain other states than Laos, it is important to note that by the bilateral agreements the two transit states Thailand and the Khmer Republic assume more far-reaching obligations in their relationship with Laos: for example, they allow for the operation of private warehouses in the ports by Laotian nationals.

Nepal is another land-locked state in Asia which stands outside GATT

[1] UNTS, vol. 538 no. 7812.
[2] UNTD/TRANSIT/R.2.
[3] Text supplied by the United Nations Secretariat.
[4] Text supplied by UNCTAD.
[5] For signatories in 1973, see Delupis, *International Law and the Independent State*, p. 76 note 28.
[6] UN 2001216 no. 2698 and UN Doc.A/Conf. 46/AC.2/5, Annex 8.

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and the Road Conventions. There is one agreement of 1960 with India[7] and one of 1963 with Pakistan.[8] The agreement with India provides for certain privileges beyond the right of transit, such as specific customs procedure and storage facilities in the Port of Calcutta. The agreement with Pakistan provides for freedom of transit but leaves to future agreement questions relating to customs procedure and transport facilities.

(iii) *Treaties of Land-Locked States in Africa*

Many states in Africa are bound by multilateral conventions to allow for transit of land-locked states. Such multilateral conventions are not only GATT and the Road Conventions, but also the important customs-union arrangements referred to above.[9] Few African land-locked states do not already enjoy right of transit under such agreements.

Certain bilateral agreements are of interest: one agreement concluded between Mali and Senegal in 1963 allows for the use of Senegal port facilities for transit traffic to and from Mali,[1] and another treaty between Upper Volta and Ghana regulates public road transport including transit to the sea.[2] Upper Volta has also concluded two agreements with other land-locked states in Africa, one with Mali in 1968[3] and one with Niger in 1966,[4] both on public road transportation.

(iv) *Treaties of Land-Locked States in Latin America*

In Latin America there are only two land-locked states, Bolivia and Paraguay. Neither of these states is a signatory to the Latin American Customs Union, the Andean Pact,[5] which would allow right of transit. On the other hand, Paraguay at least is a signatory of the Road Conventions, which thus operate between this state and Argentina. Between these two countries there is also an Exchange of Notes on Improvement of Trade Relations (1967),[6] which provides for the establishment of a Joint Commission. This Commission may make "recommendations" as to (1) the development of bilateral and regional trade, transport and communications, (2) water transport, (3) joint efforts to obtain international finance,

[7] A/Conf.46/Ac.2/5, Annex 6.
[8] *Ibid.*, Annex 7.
[9] *Supra*, p. 104.
[1] Text supplied by UNCTAD.
[2] Text supplied by UNCTAD.
[3] Text supplied by UNCTAD.
[4] Text supplied by UNCTAD.
[5] For a brief exposé, see Delupis, *Ekonomisk integrationsrätt*, p. 26.
[6] UNTS, vol. 634 no. 9061.

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(4) facilitating customs control in the two countries, and (5) operational procedures with respect to assistance and salvage with a view to reducing costs and ensuring safety on waterways.

Bolivia, on the other hand, is not able to benefit from any right of transport under GATT or the Road Conventions, to which she is not a signatory. But she has concluded several bilateral treaties on transit.

A number of treaties exist between Bolivia and other South American states with regard to the right of access to the sea. A treaty between Bolivia and Argentina of November 19, 1937, recognizes the "principle of free transit" by road, rail or sea.[7] Another agreement of September 19, 1964, provides for a free zone for Bolivia in the port of Barranqueras in Argentina;[8] similar treaties of April 22, 1966, and December 11, 1968, provide for such free zones in the ports of San Nicholas and Rosario.[9] Furthermore, an agreement of September 19, 1964, the so-called Act of La Paz,[1] provides, in the form of a *pactum de contrahendo,* that there shall be free navigation of Bolivian ships through waters within Argentine jurisdiction.

Treaties between Bolivia and Brazil also concern numerous "free zones" in various ports, for example, the treaty of March 29, 1958, concerning a free zone for Bolivia in the port of Belem,[2] the treaty of March 29, 1958, concerning ports in Corumba, Porto Velho and Santos,[3] and the exchange of notes of March 29, 1958, concerning a free zone in the free port of Manaos.[4] Such agreements on free zones normally grant the right to construct and maintain warehouses, to ship, receive and store goods and to treat goods, and to operate customs agencies. To mitigate any assumption of "extra-territoriality", a concept which is often used in Latin America even if it has become obsolete in most other parts of the world in most sectors of international law, there is express provision that the jurisdiction of the territorial state shall prevail and that the areas of "free zones" are to be subjected to the exclusive law of the state granting the privileges. The grantee is entitled to establish "necessary controls" relating to security in the zone, but the host country is still responsible for police services and for the enforcement of laws and may also inspect the control established by the grantee.

[7] See UN Conference on the Law of the Sea, 1958, *Official Reports,* vol. 1, A/Conf. 13/29 and Add. 1, p. 306, for a survey of this and other earlier agreements.
[8] See E. Camacho Omiste, *Bolivia, Convenios y Declaraciones Internacionales,* La Paz, Bolivia, 1967, p. 67.
[9] Camacho, *op.cit.,* p. 101.
[1] Camacho, *op.cit.,* p. 76.
[2] Camacho, *op.cit.,* p. 137.
[3] Camacho, *op.cit.,* pp. 140, 143 and 146.
[4] Camacho, *op.cit.,* p. 176.

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B. THE RIGHT OF TRANSIT AND THE FREEDOM OF THE SEA

The treaty network ensuring the right of transit is, in fact, so extensive that the great majority of states are already bound by one or the other of the above-mentioned types of agreements providing for transit to the sea. Yet for some land-locked states it is important to establish whether any general rights of access to the sea exist in the absence of international agreements.

A general right of transit to the sea operating outside the framework of treaties is inevitably deduced from the concept of the freedom of the sea. Both coastal and other states have repeatedly affirmed, by unilateral treaties as well as by collective declarations, that modern international law of the sea is founded upon the principle that the high seas are free for all states.

Already in the Treaty of Versailles it was stipulated (art. 273) that the contracting parties would "recognize any flag flown by vessels of an Allied or Associated Power having no sea coast which are registered at some specific place situated in its territory; such a place shall serve as the port of registry of such vessels".[5] The Barcelona Declaration Recognizing the Right to a Flag of States Having No Sea Coast (1921) also provided that the contracting states should

> recognize the flag flown by the vessels of any State having no sea coast which are registered at some specific place situated in its territory; such place shall serve as the port of registry of such vessels,[6]

and by the latter agreements, states which adhered did not limit such recognition to contracting states.

The 1958 Geneva Convention on the Law of the Sea postulates that a right for land-locked states to reach the sea exists by stating, for example in art. 2 of the Convention on the High Seas, that

> [t]he high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty . . .

and in art. 4 that

> [e]very State, whether coastal or not, has the right to sail ships under its flag on the high seas.

States not bound by the Convention on the High Seas may have acceded to the 1958 Convention on the Territorial Sea and the Contiguous Zone,

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[5] Redmond, *Treaties*, etc., 1923, vol. III, 3329, 3448.
[6] 7 LNTS 73.

which has a great number of signatories. Here, too, the Convention indicates that land-locked states have a right to share in the benefits of the sea, inasmuch as it states in art. 14 that ships of all states, whether coastal or not, shall enjoy the right of innocent passage.

In the Convention on the High Seas, on the other hand, art. 3 appears to suggest that the right of transit will, by future arrangement, be regulated by transit states in agreement with land-locked states. The article reads:

> 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 . . .

But would not such future agreements as are envisaged by art. 14 merely regulate an already existing right? In other words, are not coastal states already bound by international law to allow land-locked states certain minimum transit to reach the sea? Surely, a certain minimum right of transit must be deduced from the principle of freedom of the seas.

That such a minimum right of transit exists is corroborated by political realities. Recent state practice has shown that even a land-locked country must respect the claims of transit of another to use the shortest way to the sea: when Zambia was cut off from the shortest way to the sea by the closing of Rhodesia's frontiers in 1973, she appealed successfully to the international community to assist her in providing and financing alternative trade routes, and the Secretary General of the United Nations said he would "assure" alternative trade routes.[7]

C. THE 1974 DRAFT ARTICLES

A general right of transit to the sea operating within the framework of international agreements is thus inevitably deduced from the concept of freedom of the seas and from the right of innocent passage "for all states". Yet, it may be too far-reaching to claim that such a general right is "firmly established", as some land-locked states have recently asserted.

In art. II of the 1974 draft articles submitted for the Third Conference on the Law of the Sea, certain land-locked states[8] claim that the right of land-locked states to free access to and from the sea is "one of the basic

[7] Delupis, *International Law and the Independent State*, p. 74.
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[8] UN Official Records, General Assembly, 28th session, Suppl. 21, A/9021 vol. II.

principles of the law of the sea" and "an integral part of the principles of international law".

In an explanatory paper,[9] the land-locked states suggest that

> under present international law the right of land-locked States to free access to and from the sea is a firmly established and legally binding principle. It shall be reaffirmed and elaborated in the new codification instrument on the Law of the Sea. Such a conclusion is indispensable if the land-locked States are to be given real opportunity to participate in the uses of the seas and to enjoy benefits from them on equal terms with coastal States. For this purpose the land-locked States must obtain adequate legal means and guarantees ensuring them of the exercise of their right of free access to the sea-bed area beyond national jurisdiction. This necessity arises from their geographically disadvantageous position, from the fact that they lack any sea coast whatsoever and, in most cases, vast distances separate them from the coast.

The basis of these claims would seem to be that the right of all states to enjoy the benefits from the uses of the sea would remain ineffective, a *nudum ius,* unless land-locked states were given the necessary right of transit.

In art. III of the above-mentioned draft,[1] the land-locked states furthermore assert that there is an obligation of transit states to accord "free and unrestricted transit for traffic in transit of land-locked States, without discrimination among them, to and from the sea, by all means of transport and communication".

There is, as I have suggested,[2] ground for assuming the existence of a right of transit of land-locked states. Yet such a right could, in the absence of specific treaties, hardly comprise "all means of transport and communication". For transit by rail or by other fixed installations, state practice indicates that explicit permission is necessary.[3]

Thus, the draft submitted by certain land-locked states for the 1975 Conference on the Law of the Sea goes, in many respects, further than existing general international law. Arts. IX–XIII of the draft include provisions regulating various far-reaching rights of transport or communications. Under art. IX, transit states must, for example, provide adequate means of transport, storage and handling facilities at the points of entry and exit, and at intermediate stages for the smooth movement of traffic in transit. The phrasing of this article was much influenced by art. 4 of the Convention on Land-Locked States,[4] and it must be emphasized that

[9] A/Conf.62/C.2/L.29.

[1] See reference in note 8 above.

[2] Delupis, *International Law and the Independent State,* pp. 60–65.

[3] *Ibid.,* pp. 60 ff.

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[4] *Ibid.,* p. 69.

both that article and the suggested draft article go further than does existing international law outside the framework of treaties.

Art. X of the draft proclaims that land-locked states shall have the right to construct, modify or improve means of transport and communications or the port installations and equipment in the transit states where such means are inadequate or could be improved in any respect. However, such improvements and modifications are, not unreasonably, to be carried out "in agreement with the transit state" and it would appear that, in spite of its affirmative phrasing, the article does not provide for anything but a *pactum de contrahendo.*[5]

The right of land-locked states to use national rivers in order to reach the sea, as laid down by art. XII of the draft, may imply a codification of existing or at least emerging international law.[6] On the other hand, to claim that land-locked states would have a right to use several alternative trade routes within the same transit state is probably a contractual improvement or extension beyond the minimum right of transit enjoyed by land-locked states under present general international law. Other articles which provide for *pacta de contrahendo* of some interest are art. VI, which prescribes that

> if the port installations and equipments or the means of transport and communication or both existing in a transit State are primarily used by one or more land-locked States, tariffs, fees or other charges for services rendered shall be subject to agreement between the States concerned,

and art. VII, which encourages the establishment, in agreement with coastal states, of "free zones"to benefit the transit states. In such free zones, land-locked states should have the right to appoint their own customs officials to supervise operations and services for movement of traffic in transit. Although art. VIII, which deals with the details of such a régime, largely provides for future arrangements to be concluded, i.e. merely *pacta de contrahendo,* it is interesting to note that land-locked states have considered this article to "reflect practice existing in different coastal States on the basis of their bilateral agreements with neighbouring land-locked countries" and that such land-locked states believe "that such practice should become a general standard".[7]

The problem of reciprocity has given rise to special problems for land-locked states. Under the Geneva Convention, the basic right of transit

[5] Cf. *supra,* p. 110.
[6] Delupis, *International Law and the Independent State,* p. 46, and A/Conf.62/C.2/L.29, p. 10.
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[7] A/Conf.62/C.2/L.29, p. 8.

enjoyed by land-locked states would depend on reciprocity; at least this is how land-locked states themselves have interpreted art. 3 of the Convention on the High Seas.[8] However, it may be suggested that not even the drafters of that Convention intended the words "on the basis of reciprocity" to imply that the interest in transit rights of land-locked and coastal states would be identical. It is fair to assert, as certain land-locked states[9] have recently done, that a condition of reciprocity is based on the

> wrong supposition that both the land-locked and the transit states have comparable positions and identical needs for transit. This is, however, not the case, for the purpose of free transit of land-locked countries is just that of ensuring them from the exercise of their right to and from the sea.

The land-locked states submitting the recent draft articles claim that

> reciprocity shall not be a condition of free transit of land-locked States in favour of their own transit to any other country, for it would be necessitated by the need for access to the sea. Such a condition would not be just, in relation to those land-locked countries which are surrounded by several transit States.[1]

D. LAND-LOCKED STATES AND THE RESOURCES OF THE SEA

If land-locked states are to benefit from the use of the sea, it becomes important to establish where ships of land-locked states may actually carry out their fishing.

The question is particularly pertinent in view of recent extended claims to a 200-mile economic zone or "patrimonial sea", not only by Latin American states, which have a tradition of claiming large zones, but by an ever-growing number of other states as well.[2] If such zones are meant to be exclusive, land-locked states will have to add a long voyage of transit through such zones after having come to the coast after their initial overland transit journey.

It is not merely the fishing interests of land-locked states which are at

[8] Cf. *supra,* p. 110, and A/Conf.62/C.2/L.29, p. 10. Note that the Convention on Land-locked States, *supra,* p. 103, has a similar wording in its art. 15.

[9] Afghanistan, Bhutan, Bolivia, Botswana, Burundi, Czechoslovakia, Hungary, Laos, Lesotho, Mali, Mongolia, Nepal, Paraguay, Swaziland, Uganda, Upper Volta and Zambia.

[1] A/Conf.62/C.2/L.29, p. 10.

[2] See Delupis, *International Law and the Independent State,* pp. 32 ff., for a survey of present claims to a wide territorial sea or to a "patrimonial sea", an "economic zone", or similar special zones.

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stake. At the present time, such states may not be excessively interested in fishing unless there are particularly rich waters within reach after a transit journey. But the resources of the sea bed and the ocean floor may be of much greater economic importance; at least there is here a potential source of income for land-locked states that may not be negligible. In the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction,[3] it was suggested that the international machinery should provide opportunities for land-locked states to conduct activities of exploration and exploitation of the area beyond national jurisdiction, either individually, in partnership with another state, as members of a group of states, or in cooperation with the sea-bed authority. The view was also put forward that land-locked states should, through the planned international machinery, be given special opportunities for training in marine technology.

In the recent draft articles submitted by certain land-locked states, claims are reaffirmed to resources of the sea bed and the ocean floor beyond the limits of national jurisdiction.[4]

E. ACTUAL LIMITS OF NATIONAL JURISDICTION

Where, then, are land-locked states entitled to fish or explore and exploit the sea bed under existing international law? In other words, where are the limits of national jurisdiction?

The question of distinction between territorial waters and the "economic zone" or the "patrimonial sea" appears to be of little practical importance except for the question of passage: within territorial waters it appears that only civilian ships enjoy innocent passage,[5] whereas there is full freedom of navigation within the economic zone.[6] But in neither of these waters are other states, for example land-locked states, allowed to fish or exploit the sea bed without a treaty or other form of explicit permission. Thus, in order to fish, a land-locked state would have to go beyond the economic zone, which, according to African, Asian and Latin American claims, is normally assessed at 200 miles offshore.[7]

To explore and exploit the sea bed a land-locked state may have to go

[3] UN General Assembly, Official Records, 27th session, Suppl. 21 (A/8721), p. 31.
[4] UN General Assembly, Official Records, 28th session, Suppl. 21 (A/9021) vol. II.
[5] But there is some dispute as to whether warships need authorization to pass through territorial waters, see Delupis, *International Law and the Independent State*, p. 40.
[6] *Ibid.*, p. 34.
[7] See references *supra*, p. 113, footnote 2, and cf. *infra*, pp. 115 f.

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further still: at least so far coastal states have enjoyed a right to "their" continental shelf as far out as it is possible to explore. In 1958, when the Geneva Convention on the Continental Shelf was concluded, the main limit was intended to be a 200-metre depth contour, but this was supplemented by allowing for exploration, by the coastal state, as far as "possible"; it was not easy to foresee that some 15 years later technology would not put any limit on such exploration. The reaction against such far-offshore exploration came, initially, from Britain, which suggested that the whole ocean floor beyond a certain limit should be "carved up" and allocated to all states of the world to benefit even land-locked states.[8] There was some irony in this suggestion as Britain herself, by a series of bilateral treaties on the North Sea with Norway, the Netherlands, Denmark and Germany, had divided the whole sea bed of the North Sea between herself and certain other selected states.[9]

To fish or to explore the sea bed or the ocean floor a land-locked state will, as international law now stands, have to confine its prospecting to areas beyond national economic zones, or exploitation of, for example, oil, other mineral products or gas, to areas beyond the continental shelves. This rule would at least apply if land-locked states were not given explicit permission, by treaty or otherwise, by coastal states to carry on such activities at a lesser distance from the coast.

F. RECENT COLLECTIVE DECLARATIONS OF INTEREST TO LAND-LOCKED STATES

1. *The Yaoundé Recommendations*

The Yaoundé recommendations of 1972 are an important declaration issued by Algeria, Cameroon, the Central African Republic, Dahomey, Egypt, Ethiopia, Equatorial Guinea, the Ivory Coast, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Togo, Tunisia, Tanzania and Zaire, and the unanimously adopted document reflects policies which have subsequently been followed through in the sea-bed committee of the United Nations.[1] The Declaration reads:

[8] Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, 1970, A/8021, Annex VI, Working Paper submitted by the United Kingdom, p. 180.

[9] Delupis, *International Law and the Independent State*, p. 38 and p. 53 note 43, for a list of these agreements.

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[1] UN General Assembly, Official Records, 27th session, Suppl. 21(A/8721), p. 31.

On the territorial sea, the contiguous zone and the high seas:

(1) The African States have the right to determine the limits of their jurisdiction over the seas adjacent to their coast in accordance with reasonable criteria which particularly take into account their own geographical, geological, biological and national security factors.

(2) The territorial sea should not extend beyond a limit of 12 nautical miles.

(3) The African States have equally the right to establish beyond the territorial sea an economic zone over which they will have an exclusive jurisdiction for the purpose of control, regulation and national exploitation of the living resources of the sea and their reservation for the primary benefit of their peoples and their respective economies, and for the purpose of the prevention and control of pollution. The establishment of such a zone shall be without prejudice to the following freedoms: freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines.

(4) *The exploitation of the living resources within the economic zone should be open to all African States both land-locked and near land-locked, provided that the enterprises of these States desiring to exploit these resources are effectively controlled by African capital and personnel.* To be effective the rights of land-locked States shall be complemented by the *right of transit* . . .[2]

According to this rather unusual selection of entitled fishermen, land-locked states and their citizens would be able to fish some 12 miles off shore where the economic zones start. But the Declaration does not solve the problem of over-fishing in zones, say on the rich West Coast of Africa, if all land-locked states should choose the same waters. An inland state would, naturally, rather claim rights to fish in the more advantageous fishing zones and appears not to be restricted to choosing the nearest one.

The Declaration also fails to mention whether land-locked states in Africa are to have any right to resources *under* the sea, i.e. whether they are to be entitled to carry out prospecting for oil, other mineral products or gas. In the absence of specific permission allowing land-locked states to do this, one must assume that they are deprived of any such rights within the limits of national jurisdiction of the coastal states.

On the other hand, the Declaration may bind, under international law, the coastal states with respect to fishing, as it represents a "collective" but unilateral declaration which is not merely restricted to constituting a declaration of intent. By such unilateral declarations, given in a solemn form, it would appear that states can bind themselves.[3]

[2] Cf. *supra*, p. 111.
[3] E.g. Pfluger, *Die einseitigen Rechtsgeschäfte im Völkerrecht*, Zurich 1936.

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2. *The Montevideo, Lima and Santo Domingo Declarations*

The development with regard to the rights of the only two land-locked states in Latin America to the resources of the sea indicates less solidarity than that which exists between African nations. The recent Latin American Declarations on the Law of the Sea, the Montevideo, Lima and Santo Domingo Declarations, all remain silent both as to any right of land-locked states to reach the sea by transit and as to their rights to offshore resources. On the contrary, the Montevideo Declaration issued in 1970 by Argentina, Brazil, Chile, Equador, El Salvador, Nicaragua, Panama, Peru and Uruguay[4] emphasizes that one of the "basic principles of the Law of the Sea" is

> the right of littoral States to exercise control over the natural resources of the sea adjacent to their coasts and of the sea-bed and sub-soil thereof in order to achieve the maximum development of their economy and to raise the living standards of their people.

Other rights would be to

> delimit their maritime sovereignty and jurisdiction in conformity with their own geographic and geological characteristics and consonant with factors that condition the existence of marine resources and the need for national exploitation

and to

> explore, conserve and exploit the living resources of the sea adjacent to their territories, and to control fishing and aquatic game hunting operations.

The Lima Declaration was signed by the same Latin American States as subscribed to the Montevideo Principles, as well as by Mexico, Colombia, Honduras, Guatemala and the Dominican Republic.[5] At the Lima Conference, which was also held in 1970, three months after the Montevideo meeting, the representatives unanimously adopted an instrument which also stresses the privileges of a coastal state to exploit resources of the sea. The wording is similar to the Montevideo Declaration: "common principles of the Law of the Sea" would be, *inter alia,*

> the inherent right of the coastal State to explore, conserve and exploit the natural resources of the sea adjacent to its coasts and the soil and sub-soil

[4] 9 ILM 1970, p. 1081. © Stockholm Institute for Scandianvian Law 1957-2009
[5] 10 ILM 1971, p. 207.

> thereof . . . in order to promote the maximum development of its economy and to raise the level of living of its people . . . (and) the right of the coastal State to establish the limits of its maritime sovereignty or jurisdiction in accordance with reasonable criteria, having regard to its geographical, geological and biological characteristics, and the need to make rational use of its resources . . .

The Santo Domingo Declaration[6] was issued in 1972 by Colombia, Costa Rica, the Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Trinidad and Tobago, Venezuela and El Salvador. This declaration, too, emphasizes the exclusive privileges of the coastal states. Art. 1 of the section on the patrimonial sea provides that

> [t]he coastal State has sovereign rights over the renewable and non-renewable natural resources, which are found in the waters, in the sea-bed and in the sub-soil of an area adjacent to the territorial sea called the patrimonial sea.

The states adhering to the Declaration were not unaware of the interests of land-locked states and provided in another article, under the section on the territorial sea, that

> [s]hips of all States, whether coastal or not, should enjoy the right of innocent passage through the territorial sea in accordance with International Law.

However, land-locked states were not to be given any right to share in the resources of the economic zone or the patrimonial sea.

G. REGIONAL ECONOMIC ZONES TO BENEFIT LAND-LOCKED STATES

Even if recent Declarations in Latin America have indicated that land-locked states should not share in the use of the wide economic zones, the land-locked states themselves have not been silent. Bolivia and Paraguay have produced certain highly interesting draft articles on what they have called a "regional economic zone".[7] These draft articles, submitted for the imminent Third Conference on the Law of the Sea, provide in art. 1 that

> [c]oastal States and neighbouring land-locked States shall have the right to establish jointly *regional economic zones* between the 12-mile territorial sea and

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[6] UN General Assembly, Official Records, 27th session, Suppl. 21(A/8721), p. 70.
[7] A/Conf.62/C.2/L.65.

> up to a maximum distance of 200 nautical miles, measured from the applicable baselines of the territorial sea.

Not only would the land-locked states have the right to participate fully in this zone and all its "renewable and non-renewable resources" but they would also "manage" the zone "jointly" with the coastal state.[8]

The draft articles also introduce what I think must be a new concept in international law: they provide that within the "regional economic zone" there shall be *regional sovereignty*,[9] enjoyed jointly by the land-locked and the coastal state. Sovereignty is usually characterized by its exclusiveness,[1] and it is therefore startling to hear proposed a joint form of sovereignty save, of course, in the shape of a union between two states. In the case of the draft articles, however, it would appear that the land-locked states had confused "sovereignty" with "ownership" of offshore resources. The fact that a state is sovereign does not, for example, mean that it enjoys the ownership of all subsoil resources within its territory, even though this may be the most common practice.[2] The draft article in question provides that

> [w]ithin the limits of each regional economic zone there shall be *regional sovereignty* for the exploration, exploitation and conservation of the natural resources, whether renewable or non-renewable, of the sea-bed, the subsoil and the superjacent waters . . .

However, the draft article goes on:

> the jurisdictional powers over the contiguous zone shall be exercised exclusively by the coastal States.

To justify these far-reaching claims to share in the economic zones of coastal states the Latin American land-locked states suggested that just as the ocean resources beyond national jurisdiction were a "common heritage of mankind"—a rule which had already acquired the character of a rule of international law—so "the regional economic zones and their renewable and non-renewable resources shall be declared the common *heritage of the region*".[3]

Yet it remains to be seen what the reaction of coastal states will be to such claims by land-locked states. The draft articles submitted by Paraguay and

[8] Art. 3.
[9] Art. 5.
[1] Delupis, *International Law and the Independent State*, p. 3.
[2] Delupis, *Finance and Protection of Investments in Developing Countries*, London 1973, pp. 59–61.
[3] Art. 9.

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Bolivia are not restricted to safeguarding merely the rights of these land-locked states but are intended for wider application to all land-locked states in the world. It may be fair to assert that land-locked states enjoy, under present international law, a minimum right of transit to reach the sea and to share in the resources of the high seas and the ocean floor beyond the limits of national jurisdiction. But it is questionable whether coastal states will relinquish any of their rights in their ever-growing economic zones, from which they are excluding other states. In other words, the issue may be whether coastal states will feel obliged to give any priority to land-locked states of their particular continent or region and allow them, but perhaps not other states, to share in the offshore resources.

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