

CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL

VOLUME 23

1992-1993

NUMBER 1

"THE OAR OF ODYSSEUS": LANDLOCKED AND "GEOGRAPHICALLY DISADVANTAGED" STATES IN HISTORICAL PERSPECTIVE

SAMUEL PYEATT MENELEE*

You must take a well-cut oar and go on till you reach a people who know nothing of the sea and never use salt with their food, so that our crimson-painted ships and the long oars that serve those ships as wings are quite beyond their ken. And this will be your cue—a very clear one, which you cannot miss. When you fall in with some other traveller who speaks of the "winnowing-fan" you are carrying on your shoulder, the time will come for you to plant your shapely oar in the earth and offer Lord Poseidon the rich sacrifice of a ram, a bull, and a breeding boar.

Homer, *Odyssey*¹

INTRODUCTION

Like Homer's mythical sailor, the 1982 Law of the Sea Convention has found a strange home, far from the ocean's roar. Devised to regulate the

* J.D. Harvard Law School; LL.M. (Oceans), University of Virginia School of Law. Maury Fellow, Center for Oceans Law and Policy and I.M.B. Fellow, I.C.C.-International Maritime Bureau. Vice Chairman, Maritime Law Association Committee on the International Law of the Sea. Author (with Moore and Pires Filho) of *Materials on Oceans Law* (1982) and of numerous articles on oceans-related topics. Special thanks go to Prof. Martin Ira Glassner for his general encouragement of work on this topic. The views expressed in this article (and any errors) are those of the author alone.

1. Speech of Teiresias to Odysseus, *Odyssey*, Book XI, 101-74, in HOMER, *THE ODYSSEY* 174 (E.V. Rieu trans., 1969); see also GEORGIOS A. MEGAS, *FOLKTALES OF GREECE* xiv (Helen Colaclides trans., 1970), which mentions that "[i]n a tale still told, the Prophet Elijah was a sailor weary of the sea who walked with an oar on his shoulder to a place where people would mistake it for a shovel. He reached a mountain top, settled, and there he is worshipped." Megas goes on to note a "version known at the present time to Greek sailors, who link the episode to their patron saint, Nicholas. Maine lobstermen tell a purely secular and bawdy form, a witness to its circulation over the centuries among the international fraternity of seafarers." *Id.* at xiv-xv; see also Stilpon P. Kyriakides, *The Language and Folk Culture of Modern Greece*, in STILPON P. KYRIAKIDES, *TWO STUDIES ON MODERN GREEK FOLKLORE* 97 (Robert A. Georges & Aristotle A. Katranides trans., 1968); IRWIN T. SANDERS, *RAINBOW IN THE ROCK: THE PEOPLE OF RURAL GREECE* 35 (1962); RICHARD M. DORSON, *REGIONAL FOLKLORE IN THE UNITED STATES: BUYING THE WIND* 38-39 (1964); Robert A. Georges, *Addenda to Dorson's 'The Sailor Who Went Inland'*, 79 *JOURNAL OF AMERICAN FOLKLORE* 373-74 (1966) (noting that St. Elias is also associated with the tradition).

uses of the sea, this Convention, when it enters into force² will include several provisions in the treaty structure applying to landlocked and otherwise geographically disadvantaged states.³

Commentary concerning such nations has concentrated largely on UNCLOS III (the Third United Nations Conference on the Law of the Sea), the 1982 Convention, and its controversies.⁴ Despite the existence of an excellent bibliography⁵ and occasional historical discussions of individual states,⁶ no extended general overview exists of the problem in its historical

2. Convention on the Law of the Sea, opened for signature Dec. 10, 1982, U.N. Doc. A/CONF.62/122, reprinted in UNITED NATIONS, OFFICIAL TEXT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH ANNEXES AND INDEX, U.N. Sales No. E.83.V.5 (1983) [hereinafter UNCLOS 1982]. According to art., 308(1), the Convention will enter into force 12 months after the date of deposit of the sixtieth ratification or accession. See 1 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 339 (Myron Nordquist, ed. 1985). As of November, 1992, the following 54 states have ratified: Angola, Antigua and Barbuda, Bahamas, Bahrain, Belize, Botswana, Brazil, Cameroon, Cape Verde, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic Yemen, Djibouti, Dominica, Egypt, Federated States of Micronesia, Fiji, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Iceland, Indonesia, Iraq, Jamaica, Kenya, Kuwait, Mali, Malta, Marshall Islands, Mexico, Namibia (UN Council for), Nigeria, Oman, Paraguay, Philippines, Saint Lucia, Sao Tome and Principe, Senegal, Seychelles, Somalia, Sudan, Togo, Trinidad and Tobago, Tunisia, Uganda, United Republic of Tanzania, Uruguay, Yugoslavia, Zaire, and Zambia.

3. See UNCLOS 1982, arts. 58, 62, 69-72, 82, 87, 90, 124-32, 140-41, 148, 150, 152, 238, 256, 266, 269, 272, 274. See NORDQUIST, *supra* note 2, at 229, 231-32, 235-38, 242, 244, 255-57, 260, 263, 264, 268, 313, 320, 323, 324, 325. Additionally it could be argued that arts. 122-23, dealing with enclosed or semi-enclosed seas, by their very nature relate to geographical disadvantage. See *id.* at 255. Other articles of course apply generally to these countries.

4. See, e.g., ANDREW MPAZI SINJELA, LAND-LOCKED STATES AND THE UNCLOS REGIME (1983); Susan Ferguson, UNCLOS III: Last Chance for Land-locked States?, 14 SAN DIEGO L. REV. 637 (1977); Martin Ira Glassner, *The Landlocked States at the Third United Nations Conference on the Law of the Sea*, PROCEEDINGS OF THE COMMITTEE ON MARINE GEOGRAPHY OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 119 (1978); Martin Ira Glassner, *Final Report of the Committee on Land-locked States*, PROCEEDINGS OF THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION 75 (1983-84); Martin Ira Glassner, *Land-locked States and the 1982 Law of the Sea Convention*, 9 MARINE POLICY REPORTS 8 (Sept. 1986); M.A. Suliaman, *Free Access: The Problem of Land-locked States and the 1982 United Nations Convention on the Law of the Sea*, 10 SO. AFRICAN Y.B. INT'L L. 144 (1984); Ibrahim J. Wani, *An Evaluation of the Convention on the Law of the Sea from the Perspective of the Landlocked States*, 22 VA. J. INT'L L. 627 (1982).

5. MARTIN IRA GLASSNER, BIBLIOGRAPHY ON LAND-LOCKED STATES (1980); BIBLIOGRAPHY ON LAND-LOCKED STATES: SECOND REVISED AND ENLARGED EDITION (Martin I. Glassner, ed. 1986) (listing over 1068 citations); BIBLIOGRAPHY ON LAND-LOCKED STATES: THIRD REVISED AND ENLARGED EDITION (Martin I. Glassner, ed. 1991) (listing over 1726 citations).

6. Among the best of these are the discussions of the problems of Afghanistan, Bolivia, and Uganda from a historical perspective in MARTIN IRA GLASSNER, ACCESS TO THE SEA FOR DEVELOPING LAND-LOCKED STATES 39-83, 84-136, 137-82 (1970). Other studies, while apparently concentrating on a single country, lack thorough (indeed, sometimes any) historical grounding. Additionally, landlocked states such as San Marino, Liechtenstein, the Vatican City, Rwanda, Bhutan, and Mongolia have had little or nothing written about the historical aspects of this problem. Nor has work been done on former landlocked states, on the new landlocked states of the '90s (many created as a result of the dissolution of the U.S.S.R.), or on the historical geographical disadvantage faced by many states with a limited access to the sea.

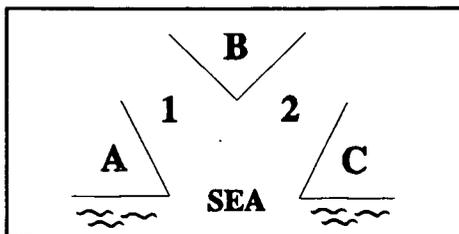
perspective.⁷ The purpose of this article, then, will be to view landlocked and geographically disadvantaged states historically down to the time of the Third United Nations Conference and to comment on major legal developments which have occurred in this area. Such a survey will perforce be somewhat impressionistic, but it will provide a useful background to this continuing contemporary problem.

LANDLOCKED AND "GEOGRAPHICALLY DISADVANTAGED" STATES: A BACKGROUND

"Landlocked states," simply defined, are those nations which possess no seacoast.⁸ Scattered across four continents—Europe, Africa, Asia, and

7. Again, the most useful work to date is Glassner's *Access to the Sea*, with a discussion of slightly over twenty pages divided into a) "Developments Through the Nineteenth Century" (*id.* at 17-19), b) "The Barcelona Conventions of 1921" (*id.* at 20-22), c) "Developments After World War II" (*id.* at 22-29), d) "The United Nations Conference on the Law of the Sea" (*id.* at 29-32), e) "The United Nations Conference on Trade and Development" (*id.* at 32-35), and f) "The Convention on Transit Trade of Land-Locked States" (*id.* at 35-38). See *id.* at 16-38. Glassner's work, however, devotes little space to pre-18th century developments. *Id.* at 17-18.

8. See, e.g. GLASSNER, *supra* note 6, at 2 ("[t]he term *land-locked* means having no seacoast whatever, being completely mediterranean."); Jeffrey Povolny, *Landlocked States and the Law of the Sea*, 2 MARINE POLICY REPORTS at 1 (Mar. 1980) ("Landlocked states have no coastlines and enjoy no direct access to the sea"); R. Makil, *Transit Rights of Land-locked Countries: An Appraisal of International Conventions*, 4 J. WORLD TRADE ABR. LAW 35 (1970) ("[l]andlocked countries by definition are countries which do not have sea coasts"); Patrick Childs, *The Interests of Land-locked States in Law of the Seas*, 9 SAN DIEGO L. REV. 701 (1972) ("having no direct access to the sea within the boundaries of their territorial jurisdiction"). UNCLOS 1982, art. 124 (1) (a) defines "land-locked state" as one "which has no sea-coast." 1 NORDQUIST, *supra* note 2, at 255. Cafilisch notes that "[a]t first glance, the definition of a landlocked state does not seem to offer any difficulty" though he goes on to note Iraqi and Jordanian arguments "that they could almost be assimilated to land-locked countries because they have but one small and narrow outlet on a semi-enclosed sea." Lucius C. Cafilisch, *Land-Locked and Geographically Disadvantaged States and the New Law of the Sea in 7* THESARUS ACROASIMUM, 343, 347 (1977).



Two questions lurk here, the first being whether a country *must* be landlocked if it has no seacoast and the second, whether there are circumstances which may cause it to be landlocked if it does. Arguing theoretically, one may posit the existence of three countries (A, B, C), two of which (A and C) have sea coasts and one of which (B) does not. If these states are separated from each other by rivers (1 and 2) it is possible for a geographical situation to exist in which B would have no seacoast, but yet, using an equidistance principle, would have territorial jurisdiction which touched the sea. In such a case it would appear that B would not be landlocked. The arguments raised by Jordan and Iraq lead to the second question, which finds a more interesting manifestation in the current existence of Uzbekistan, a state which abuts on the (totally enclosed) Aral Sea. Arguably Uzbekistan has a seacoast, but is it not in fact

South America⁹—these countries constitute about one fifth of the world's nations, but represent only eight and one half percent of its land area and four percent of its population.¹⁰ While European states such as Luxembourg, Switzerland, and Hungary are considered developed, many non-European landlocked countries fall into the very poor "basket case" category.¹¹ Thus while lack of ports and direct access to the shiplanes of the world can affect all these nations, they particularly exacerbate the poverty of the latter group.

Geographically, the only thing these states have in common is their landlocked status. They vary widely in size, but it is also true that no really large state is landlocked.¹² All depend upon one or more states for their access to the sea (only Liechtenstein is a landlocked state, itself completely bordered by other landlocked nations—Austria and Switzerland).¹³ In some cases they are completely surrounded by other countries, as San Marino is by Italy, or Lesotho by South Africa.¹⁴ Outside of Europe, only Malawi, Lesotho, and Bolivia are within 300 miles of the sea;¹⁵ only Bolivia and Zambia have easy potential access to two oceans.¹⁶ Again, if one excepts the European waterway system, only the Central African Republic, Laos, Bolivia, and Paraguay have access to river transport linking these states with the sea.¹⁷ Landlocked states, such as Chad, Mali, and Niger are located in geographical pockets of poverty—their coastal neighbors are often only

landlocked? Problems such as these indicate both the inherent difficulty in coining a universally concise definition of "landlocked" and the consequent utility of the more amorphous epithet "geographically disadvantaged."

9. See Table I, *infra*. Authorities differ as to the number of states include, which of course vary over time. According to Povolny, writing in 1980, "[b]efore World War II, there were twelve landlocked states in the world, now there are thirty." Povolny, *supra* note 8, at 1; see also Lewis M. Alexander, *The disadvantaged states and the law of the sea*, 5 MARINE POLICY 185 (1981); Wani, *supra* note 4, at 628. Makil, however, gives the number as twenty-eight, and Glassner, writing in 1970, speaks of "the thirty-five landlocked states and other territories." See Makil, *supra* note 8, at 35; GLASSNER, *supra* note 6, at 4. *But see* Martin Ira Glassner, *Developing Land-Locked States and The Resources of the Seabed*, 11 SAN DIEGO L. REV. 633, 634 (1974) (giving the number as "some 26"). The listing given in Table I, although ignoring autonomous regions in Yugoslavia and the Commonwealth of Independent States, nonetheless lists 48 landlocked entities, some of which have indeterminate international status. The vexed question of what constitutes a "state" is obviously responsible for some of the numerical disparities, at the same time, it is clear that the number of landlocked states is increasing.

10. See Childs, *supra* note 8, at 701; Ferguson, *supra* note 4, at 637 n.1. These estimates all antedate the historic events in Eastern Europe and the former Soviet Union—all are obviously higher today.

11. See Alexander, *supra* note 9, at 185; Povolny, *supra* note 8, at 1; Glassner, *supra* note 9, at 634.

12. GLASSNER, *supra* note 6, at 4.

13. Caflisch, *supra* note 8, at 352.

14. *Id.* at 352 n.16.

15. See GLASSNER, *supra* note 6, at 4.

16. *Id.* at 5 (noting that Afghanistan and Rwanda also have some choice).

17. See *id.* at 8.

marginally richer.¹⁸ Some, like Mongolia and Afghanistan are forced to eschew the most direct route to the sea because of political considerations.¹⁹

Historically, the landlocked countries tend to fall into four major categories.²⁰ First, there are those smaller enclaves which have never combined into larger nation-states, such as San Marino, Liechtenstein, and Andorra. In medieval Europe, and up into the nineteenth century, many mini-states lacked access to the sea, and while some gained this through merger, a few have been arrested in their development. A second group of landlocked countries resulted from the collapse of colonial systems—Spain's South American Empire in the early nineteenth century (Bolivia and Paraguay), the African colonies of Britain (Swaziland, Lesotho, Malawi, Zimbabwe), Belgium (Rwanda, Burundi), and France (Chad, Mali, Niger, Burkina Faso), French Indochina (Laos), and the European and Asiatic constituents of the U.S.S.R. (Belarus, Moldova, Armenia, Kirgizstan, Tajikistan, and Uzbekistan) in the twentieth century. Most, though not all, of these countries enjoyed better access to the sea under their colonial overlords; it was the pressures of independence and new nationhood which brought with it local quarrels and regional fragmentation. A related third group are those landlocked states which have resulted from the dismemberment of great powers. Serbia, as part of the Ottoman Empire, and Poland, created out of Imperial Germany, are two historical examples, but perhaps the most enduring legacy of this type resulted from the partition of the Austro-Hungarian Empire after World War I, creating Czechoslovakia, Hungary, and Austria.²¹ Finally, there is a group of landlocked states which serve as buffers between great powers: Mongolia (Russia and China), Afghanistan (Russia, China, and, formerly, British India), Nepal (China and India) and arguably Switzerland and Luxembourg in Europe.²² Landlocked countries, therefore, represent nations which have either not been incorporat-

18. See *id.*; Alexander, *supra* note 9, at 186.

19. See Alexander, *supra* note 9, at 185-86.

20. This division owes a certain debt to Martin Glassner's analysis of the subject. He notes four historical categories serving three functional purposes, but defines these differently than the divisions given above.

The oldest are those which are essentially remnants of fragmented medieval Europe. . . . Second are those which emerged from the collapse of the Spanish American Empire. . . . Next are those which emerged a century later as successor states of the old Austro-Hungarian Empire. . . . Youngest of all are those former colonies and protectorates of European powers in Africa. . . . This leaves only those in Asia to be accounted for. Each has a distinctive national history. . . .

Functionally, the land-locked states can be categorized as buffer states, refugee states and administrative conveniences.

GLASSNER, *supra* note 6, at 9-10.

21. Obviously these groupings are for convenience and are liable to varying interpretations. Thus the U.S.S.R.'s demise could be considered either the collapse of a colonial system or the dismemberment of a great power.

22. Liechtenstein can also be viewed either as a historical survival or as a buffer between Austria and Switzerland.

ed into larger entities or which have resulted from the collapse of larger nation-states or colonial systems. Additionally, as Eric Fisher has noted, there is a continuing tendency for nations to “seek the sea,” thus decreasing the number of landlocked states.²³

As a group, landlocked states not only lack port and sea access, but they must generally depend on other states for transport facilities. This leads to reduced bargaining power and to the recognition of their dependency on other countries; a status which has been described by Glassner as “national claustrophobia” or “a feeling of geographic strangulation.”²⁴

Mention is also necessary of the theories under which landlocked states have access to the seas. In one, based on “natural right” or on “freedom of the seas,” the argument runs that “[i]f the ocean is free to all mankind [*res communis*], it is reasonable to suppose that every people should have access to the shores of the ocean and the right to navigate all navigable rivers discharging into it, since they are ‘only a natural prolongation of the free high seas.’”²⁵ A second idea holds that rights of access arose from “freedom of transit” or from the related shared goal of “expansion of international trade and economic development.”²⁶ Finally, there is a minority position that transit under such circumstances constitutes a “public law servitude”—a customary right-of-way to the sea.²⁷

TABLE I. LANDLOCKED STATES OR AREAS* AND THEIR CHARACTERISTICS²⁸

Country/Region	Area (miles ²)	Adjacent Territories [landlocked]	Population (year est.)
<i>Europe</i>			
*Andorra	181	France, Spain	54,507

23. See GLASSNER, *supra* note 6, at 11.

24. See *id.* at 13-14.

25. See Norman J.G. Pounds, *A Free and Secure Access to the Sea*, 49 ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 257 (1959), quoted in GLASSNER, *supra* note 6, at 16; Lucius C. Caflisch, *Land-Locked States and Their Access to and from the Sea*, 49 BR. Y.B. INT'L L. 71, 78 (1979).

26. See GLASSNER, *supra* note 6, at 16-17; see also Caflisch, *supra* note 25, at 78 (noting that this may be asserted “regardless of whether transit is or is not effected with a view of obtaining access to and from the sea.”).

27. See Caflisch, *supra* note 25, at 79; GLASSNER, *supra* note 6, at 16 (claiming that this view had little support and is almost extinct today).

28. As previously indicated, see *supra* note 10, many autonomous regions have been excluded from this table. Asterisks do not (necessarily) indicate that the areas they represent do *not* have some or all the attributes of states, only that their exact political status is subject to varying amounts of question, because of conflicting claims, recent independence, lack of some commonly recognized state attribute, etc. Population and area figures are taken from the 1992 *Britannica Book of the Year*, the *Statesman's Yearbook for 1992-1993* and the 1983 *Britannica Book of the Year*. Brackets for these numbers indicate *adjustment* of figures from the totals given in those works.

			(1990)
Austria	32,377	Germany, Italy, Yugoslavia, [Leichten- stein, Switzerland, Hungary, Czechoslovakia]	7,812,100 (1991)
Belarus	80,200	Russia, Ukraine, Poland, Lithuania, Latvia	10,260,400 (1991)
Czechoslovakia	49,382	Germany, Poland, Ukraine, Austria, Hungary	15,667,666 (1991)
Hungary	35,920	Yugoslavia, [Austria, Czechoslovakia], Romania, Ukraine	10,375,323 (1991)
*Liechtenstein	62	[Austria, Switzerland]	28,452 (1990)
Luxembourg	999	Belgium, France, Germany	385,317 (1991)
*Macedonia (Yugoslavia)	9,928	Greece, Albania, Yugoslavia ([Serbia]), Bulgaria	2,033,964 (1991)
Moldova	13,000	Ukraine, Romania	4,366,100 (1991)
*San Marino	24	Italy	23,108 (1991)
*Serbia (Yugoslavia)	21,609	Yugoslavia (Croatia, [Bosnia- Herzegovina], Montenegro, [Macedonia]) Albania, Bulgaria, Romania, Hungary	5,753,825 (1991)
Switzerland	15,943	France, Germany, Italy, [Liechtenstein, Austria]	6,750,000 (1991)
*Vatican City	.17	Italy	c. 1000 (n.d.)
<i>Africa</i>			
*Bophuthatswana (Republic of South Africa)	15,610	Republic of South Africa, Botswana	[1,740,600] (1985)
Botswana	224,607	Namibia, Republic of South Africa, [Zimbabwe, Zambia]	1,320,177 (1991)

Burkina Faso [Upper Volta]	105,946	Ivory Coast, Ghana, Ghana, Togo, Benin, [Niger, Mali]	9,012,000 (1990)
Burundi	10,740	Zaire, Tanzania, [Rwanda]	5,356,266 (1991)
Central African Republic	240,324	Cameroon, Congo, Zaire, Sudan, [Chad]	2,875,000 (1990)
Chad	495,755	Libya, Nigeria, Cameroon, Sudan, [Niger, Central African Republic]	5,678,000 (1990)
Ethiopia	[427,100]	Somalia, Kenya, Sudan, (Eritrea), ([Tigre]), Djibouti	[48,293,785] (1991)
Lesotho	11,720	Republic of South Africa	1,760,200 (1990)
Malawi	45,747	Mozambique, Tanzania, [Zambia]	8,831,000 (1990)
Mali	478,841	Mauritania, Senegal, Guinea, Ivory Coast, Algeria, [Chad, Mali, Burkina Faso, Niger]	8,151,000 (1990)
Niger	458,075	Benin, Nigeria, Libya, Algeria, [Chad, Mali, Burkina Faso]	8,040,000 (1991)
Rwanda	10,169	Zaire, Tanzania, [Burundi, Uganda]	7,232,000 (1990)
Swaziland	6,704	Union of South Africa, Mozambique	770,000 (1990)
Uganda	93,070	Zaire, Tanzania, Kenya, Sudan, [Rwanda]	17,213,400 (1991)
*Venda (Republic of South Africa)	2448	Republic of South Africa	[459,986] (1985)
Zambia	290,568	Angola, Namibia, Mozambique, Tanzania, Zaire, [Zimbabwe, Malawi]	8,456,000 (1990)
Zimbabwe	150,873	Namibia, Republic of South Africa, Mozambique, [Zambia, Botswana]	9,600,000 (1991)
<i>Asia</i>			
Afghanistan	251,825	Turkmenistan, [Uzbekistan], [Tajikistan], Iran, Pakistan	15,592,000 (1990)

Armenia	11,500	Turkey, Georgia, Azerbaijan, Iran	3,376,000 (1991)
Bhutan	18,150	India, [Sikkim, Tibet]	1,442,000 (1990)
*Danman and Diu (India)	43	India	101,439 (1991)
*Jammu and Kashmi (India)	85,805	Pakistan, India, China, [Afghanistan]	7,718,700 (1991)
Kirgizstan	76,600	[Tajikistan], [Uzbekistan], Kazakhstan, China	4,222,200 (1991)
Laos	91,400	Burma, Thailand, Cambodia Vietnam, China	4,024,000 (1990)
Mongolia	604,800	Russia, China	2,116,000 (1990)
Nepal	56,827	India, [Sikkim, Tibet]	18,917,000 (1990)
*Sikkim (India)	2,740	India, [Tibet, Nepal, Bhutan]	405,505 (1991)
Tajikistan	55,300	[Uzbekistan], [Kirgizstan], [Afghanistan], China	5,358,300 (1991)
*Tibet (China)	471,700	India, China [Nepal, Sikkim, Bhutan]	2,196,010 (1990)
Uzbekistan	172,700	Turkmenistan, Kazakhstan, [Kirgizstan], [Tajikistan], [Afghanistan]	20,708,200 (1991)
<i>South America</i>			
Bolivia	424,164	Peru, Chile, Argentina, Brazil, [Paraguay]	7,322,000 (1990)
Paraguay	157,048	Argentina, Brazil, [Boliva]	4,279,500 (1990)

*exact political status in question

States which do not fall into the landlocked category may yet be classified as "geographically disadvantaged."²⁹ This grouping, which

29. As has been indicated above, *see supra* note 8, this term is open to varying definitions. Alexander and Hodgson call it "[o]ne of the more ambiguous terms to have surfaced in recent law of the sea negotiations" while Cafilisch states that "[t]he question of what is a 'geographically disadvantaged' State . . . is extremely disputed." Lewis M. Alexander & Robert D. Hodgson, *The Role of the Geographically Disadvantaged States in the Law of the Sea*, 13 SAN DIEGO L. REV. 558 (1975-76); Cafilisch, *supra* note 8, at 346. UNCLOS 1982, art. 70 (2)

became popular during negotiation for the Third Law of the Sea Conference initially applied to shelf-locked states, often abutting enclosed or semi-enclosed seas. Subsequently, however, the net was more widely cast; Professor Alexander, for example suggests a total of twelve factors to be used in identifying group members.³⁰ (The first seven would be indicative of “seriously disadvantaged” states, and the last five of “nominally disadvantaged” countries.)

- 1) Limited length of coastline
- 2) Restricted continental shelf
- 3) Restricted continental margin and/or exclusive economic or fisheries zone
- 4) Limited resource potential in the exclusive economic or fisheries zone
- 5) Isolated location
- 6) Lack of economic zone
- 7) Status as “least developed state”
- 8) Zone-locked status
- 9) Shelf-locked status
- 10) Heavy dependence for nutritional needs on exploitation of living resources in economic or fisheries zones of neighboring states

defines “geographically disadvantaged States” (for the purposes [Exclusive Economic Zone] only) as:

coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal states which can claim no exclusive economic zones of their own.

1 NORDQUIST, *supra* note 2, at 236. Useful discussion of geographical disadvantage occur in Alexander & Hodgson, *supra*; and Alexander, *supra* note 9.

30. See Alexander, *supra* note 9, at 187-90. This appears to have been developed from the groups listed by Alexander and Hodgson from years earlier:

- Land-locked states
- States with limited coastlines (1)
- States with small continental margins or economic zones (see 3; also see 8)
- Shelf-locked states (9; also see 2)
- States with indications of limited resource potential in prospective economic zones (see 4)
- States in isolated locations (5)
- Developing states producing minerals/raw materials which may be affected by seabed mining (12)
- Developing states dependent on the exploitation of other states' economic zones to satisfy nutritional needs (10)
- States which can claim no economic zone (6)
- Least-developed countries (7)

Alexander & Hodgson, *supra* note 29, at 561-67.

- 11) Location on an enclosed or semi-enclosed sea
- 12) Major exporter of minerals which will be derived from the Area

It is perhaps not surprising that by the criteria of this list some 56 countries are disabled or seriously disadvantaged, while 46 have a nominally disadvantaged status.³¹ While the concept of geographical disadvantage is new in its application to oceans law, an historical survey will suggest that it has played an important geo-political role from early times. Having therefore introduced the general concepts of this study, let us proceed to a chronological evaluation of landlocked and geographically disadvantaged states and their problems.³²

"MARCH TO THE SEA": LANDLOCKED ORIGINS AND THE CLASSICAL WORLD

Seen in the terms of this study, the earliest groups to suffer from a geographically disadvantaged status included those Bedouin tribes whose access to the Mediterranean was blocked by Egyptian expansion along the eastern coast of that sea circa 1430-1300 B.C.³³ In a similar way, early Greek settlement in Asia Minor in the ninth through seventh centuries B.C. must have infringed on some coastal contacts for the kingdoms of the interior.³⁴ To the extent that such settlements may be considered colonial in nature they illustrate one of the earliest applications of a truism repeated down through history; the connection between overseas colonization and landlocked or disadvantaged states for neighboring areas located in the hinterlands. This same general period offers another early example of the fluid dynamics of nations as regards their oceanic access; the tendency of major empires to expand in ways which obviated prior disadvantaged status--which might be termed a national "march to the sea." Thus the Assyrian Empire under Shalmaneser II (860-825 B.C.) had only a limited opening onto the Mediterranean and lacked any access at all to the Persian Gulf.³⁵ By the time of Assurbanipal, some two centuries later, the latter goal had been achieved, while the entire seaboard of present day Lebanon and Israel had

31. See Alexander, *supra* note 9, at 188-89. These computations were made in 1981; recent changes in Eastern Europe and the former Soviet Union might result in different figures.

32. The following sections are not strictly chronological, particularly as regards the case studies, where it has occasionally been felt important to bring the historical analysis of a particular country or area down to the present. No claim is made that all major examples have been touched upon (an impossibility in a study of this brevity) or that those which *have* been used have been covered completely. What *is* important is the historical background given the question.

33. See WILLIAM R. SHEPHERD, HISTORICAL ATLAS 4 (8th ed. 1956).

34. See *id.* at 5.

35. *Id.*

been incorporated into the Assyrian Empire.³⁶ In a similar manner, the sparring between Greece and Persia in the 6th century B.C. resulted from Persian pressures against Greek cities lying between that Empire and the Aegean.³⁷

Even when a great empire, such as Alexander's had been created, its breakup led to inequities when access to the sea was considered. The Kingdom of Ptolemy, for example (c. 301 B.C.) had more than its fair share of frontage in the Mediterranean, largely at the expense of the Kingdom of Seleucus.³⁸ As might have been expected, this situation was subject to change; by 200 B.C. the Kingdom of Seleucus had expanded along the Mediterranean at the expense of Egypt, seizing Cilicia and the Phoenician littoral.³⁹ Furthermore, the conquests of Antiochus III (223-187 B.C.), while restoring much of Seleucus's former eastern territories, resulted in cutting Parthia off from the Persian Gulf and the Arabian Sea, and in making Bactria totally landlocked.⁴⁰

The Romans, too, from their early Italian conquests⁴¹ on, left a flotilla of geographically disadvantaged neighbors in their wake. The Second Punic War (218-202 B.C.) resulted in acquisition of Hither and Farther Baetica on the southern coast of Spain, and in 146 B.C. the littoral area around Carthage itself came under Roman control.⁴² The shores of western Anatolia followed slightly over ten years later,⁴³ Narbonensis (southern France) in 121 B.C., part of north Africa in 107 B.C. and Cilicia in 102.⁴⁴ Often the process involved first granting a protectorate and subsequently incorporating the shoreside real estate into Rome's growing empire.⁴⁵ Additionally, geographically disadvantaged nations, such as the Kingdom of Pergamon and landlocked states like Greater Armenia (an ally of King Mithradates) gained access to the littoral through the extension of Roman influence.⁴⁶ Eventually the Empire covered the shores of the Mediterra-

36. *Id.* Indeed, the earlier struggles of the Tribes of Israel with the Philistines and the Canaanites (Phoenicians) during the period 1250-722 B.C. could themselves be viewed as a possible Jewish push to the sea. *See id.* at 6-7.

37. *See id.* at 8, 12-13. Again this can be linked to the geographical disadvantage caused inland cultures by the coastal colonies of seafaring peoples such as the Greeks and the Phoenicians. *See id.* at 12.

38. *See id.* at 18.

39. *See id.* at 19.

40. *See id.* For further discussion of Antiochus III and Bactria, *see infra* text at notes 64 and 67-68.

41. *See* SHEPHERD, *supra* note 33, at 29.

42. *See id.* at 34-35.

43. In 133 B.C. *See id.* at 35.

44. *See id.* at 34-35.

45. This was the case with Bithynia and the Kyden of the Cimmerian Bosporus. *See id.* at 33.

46. *See id.*

nean, much of the Black Sea and even included parts of the Red, Caspian, and North Sea shorelines.⁴⁷

The disintegration of the Empire also saw changes in geographical advantage. No longer did Roman rule reach the Caspian and North Seas, while the northerly coast of the Black Sea also fell under non-Roman influence.⁴⁸ In the west, the Vandals occupied the shores of North Africa, while the Sueves and West Goths partially blocked imperial access to the Atlantic.⁴⁹ Tribal migrations and conquests from the north and east brought new groups into the crumbling Empire, which formed the nucleus for landlocked territories such as those occupied by the Alans and the Burgundians.⁵⁰ In consequence, the collapse of Roman rule and the rise of the Dark Ages saw a consequent increase in landlocked and geographically disadvantaged entities.

CASE STUDY: THE THOUSAND CITIES OF BACTRIA

"The Thousand Cities of Bactria," known throughout the Hellenistic world,⁵¹ are, alas, a thousand enigmas today. As Woodcock notes, any histories which may have been written concerning this easterly outpost of Greek civilization were swept away by nomadic invasions in the first century B.C.⁵² Yet it seems clear that

the . . . events which made Bactria independent are to be found in the wealth of the country, which the local settlers were disinclined to surrender to outside rulers, and in the character and strength of the Greek population. No familiarity with the wastelands and deserts of blown sand that in our century cover most of northern Afghanistan can give any conception of the fertility of Bactria in Hellenistic times. Then it was a green land full of pastures and gardens, the Jewel of Iran. . . . The Greek historian Apollodorus states explicitly that it was the fertility of their land that made the Bactrian Greeks powerful. Beyond the tilled fields stretched the wide grazing grounds on which were reared the great herds of Bactrian horses that provided mounts for both the Greek and the Iranian cavalry. But the richly productive and well-watered soil was not the only source of Bactria's wealth. The province stood at the commercial cross-roads of Asia, and if the Bactrian Greeks did not initiate the trade routes of this region, . . . they were the first to open out and develop them. The route from India went northward to Bactria, the capital, and westward through the city's

47. *See id.* at 34-35.

48. *See id.* at 42-43, 48.

49. *See id.* at 48.

50. *See id.*

51. George Woodcock notes this is a "proverbial phrase" of the Greeks and states that, based on the remarks of the second century B.C. traveller Chang-k'ien, who records seventy walled cities in one border province that "it is likely that there were at least several hundred fortified places in Bactria proper in his time." GEORGE WOODCOCK, *THE GREEKS IN INDIA* 63 (1966). These were, perhaps more properly, fortified villages. *Id.* at 64.

52. *Id.* at 68.

markets and bazaars passed the silk trade from China and the gold caravans from Siberia.⁵³

In the 6th century B.C., Scylax, a Greek in the service of King Darius, appears to have traversed this area before sailing down the Indus at the king's command to the Arabian Sea, and coasting westward to Egypt.⁵⁴ More commonly, east-west contact appears to have been by land, along the trade routes.⁵⁵ Even so, Bactria was considered the remote corner of the Achaemenian Empire, and acquired the reputation of a fifth century Siberia to which the Persians dispatched, among others, Ionian Greek exiles.⁵⁶ It was here (in 327 B.C.) that Alexander the Great pursued the satrap Bessus, pretender to Darius' title.⁵⁷ Besides establishing numerous cities in Bactria and reorganizing the system of government,⁵⁸ Alexander, after his foray into India, followed the example of Scylax in descending the Indus. With eighty light warships and about one thousand total vessels, he followed the river to its mouth, explored the Indus delta, and sailed on the Arabian Sea, before dispatching his navy west to the Persian Gulf and personally marching his army back toward the setting sun. That Alexander grasped the strategic importance of the river for Bactria and his other landlocked conquests is suggested by his founding of three new cities along its coast—two with shipyards and one at the river's mouth. Ironically, however, it was his east-west *land* routes which survived and flourished.⁵⁹

Seleucus, a lieutenant of Alexander's, who finally established his rights to that leader's Asian conquests, turned his attention to Bactria in 306 when the local satrap declared himself independent. While Seleucid authority was

53. *Id.* at 63.

54. *See id.* at 17-20; M. CARY & E.H. WARMINGTON, *THE ANCIENT EXPLORERS* 61-62 (1929); AUGUSTE TOUSSAINT, *HISTORY OF THE INDIAN OCEAN* 24-27 (June Guicharnaud trans. 1966).

55. *See* H.C. RAWLINSON, *BACTRIA: FROM THE EARLIEST TIMES TO THE EXTINCTION OF BACTRIO-GREEK RULE IN THE PUNJAB* 2 (1978 [1908]) ("It lay directly in the great trade route to India: the caravans, then as now, passed through Kabul and Kandahar on their way from India to the Caspian and Asiatic ports. . . ."); WOODCOCK, *supra* note 51, at 16 ("For two hundred years the Greeks had been passing to and fro along the trade routes that linked India with the Persian empire and the Indian cities of Asia Minor, and their journeys had been magnified into legend—the tales of the expeditions to India by the Greek gods Dionysus and Heracles. . . .") *id.* at 48 ("trade along the great main route from Pataliputra through Taxila and Alexandria-of-the-Caucasus to Bactria and Persia, and thence by caravan and sea to the Greek island of Delos. . . .").

56. *See* RAWLINSON, *supra* note 55, at 23 ("The Persian commanders before the battle of Lade tried to coerce the wavering rebels with threats of 'Transportation to Bactria!').")

57. *Id.* at 24-28; WOODCOCK, *supra* note 51, at 28.

58. WOODCOCK, *supra* note 51, at 28; RAWLINSON, *supra* note 55, at 28-35 (giving evidence that at least *some* of these towns were built as a place to leave his less trustworthy troops on his advance to India).

59. *See* WOODCOCK, *supra* note 51, at 39-41, Woodcock suggests that the two cities with shipyards—"one at the junction of the Chenab and the Indus and another lower down the river" may not have been completed. The third was located "at Patila, at the mouth of the Indus, near to the site of present-day Hyderabad. . . ." *Id.* *See also* CARY & WARMINGTON, *supra* note 54, at 62-66; TOUSSAINT, *supra* note 54, at 28-32.

successfully asserted over the population, these breakaway tendencies may be seen as prophetic.⁶⁰ According to Woodcock,

lack of any real identity of aim between the Seleucid dynasty and the Greeks of Bactria made the break almost inevitable. The rulers in Antioch saw Bactria as a province whose wealth should be used for the general advantage of their empire. The Bactrian Greeks, on the other hand, did not see any advantage for themselves in the Seleucid connection. They had reached an excellent understanding with their Iranian neighbours, and had not yet begun to regard the nomads of Central Asia as a serious threat on their frontiers. . . .⁶¹

Apparently, sometime around 256 B.C. Diodotus Soter, a governor appointed by Antiochus I, precipitated the break by declaring himself King of Bactria.⁶² This revolt was quickly followed by a Parthian uprising to the west; indeed Diodotus II of Bactria helped maintain his country's independence by forming an alliance with Parthia against the Seleucids. While this pact was successful in its political objective, it had the cultural effect of isolating the Bactrians from their fellow Greeks.⁶³ At about the same time, landlocked Bactria came under pressure from Scythian tribes to the east; this indeed served as the basis for a threat exercised successfully by King Euthydemus in retaining his kingdom against the onslaught of the Seleucid Antiochus III, who had reconquered Parthia and advanced into Bactria in 209 B.C.⁶⁴ As a jewel strung on the east-west caravan routes, it is not surprising to find that Bactria, after covering her Seleucid flank, turned her attention to Central Asia; military maneuvers in the following years "had a double purpose--to deter the nomads by a display of force, and to ensure the freedom of communication along the silk routes from China and the golden road from Siberia."⁶⁵

While the sources are unclear about dates and means, it is apparent that the Bactrians also thrust south toward the sea. According to Strabo (quoting Apollodorus):

Their chiefs . . . conquered more nations than Alexander. These conquests were achieved partly by Menander, partly by Demetrius, son of Euthydemus, king of the Bactrians. They got possession not only of Patalene

60. See WOODCOCK, *supra* note 51, at 62; RAWLINSON, *supra* note 55, at 43.

61. WOODCOCK, *supra* note 51, at 65-66.

62. *Id.* at 66-68; RAWLINSON, *supra* note 55, at 45-47.

63. WOODCOCK, *supra* note 51, at 67-68, 66. See also RAWLINSON, *supra* note 55, at 48-49, 52.

64. WOODCOCK, *supra* note 51, at 71 ("Euthydemus threatened, he would order his eastern frontiers to be opened to the Scythians, and he and Antiochus would founder together in the nomad flood."); RAWLINSON, *supra* note 55, at 57-63.

65. WOODCOCK, *supra* note 51, at 72.

[on the Indus delta] but of the kingdom of Saraostus [Saurashtra], and Sigerdis, which constitute the remainder of the coast.⁶⁶

Woodcock argues that these conquests must have been made during the 180's, a time when Antiochus III had been defeated by the Romans in the west.⁶⁷ The geo-political effect of this Bactrian advance was to separate the Seleucids from their ally, the Mauryan Empire. Perhaps even more importantly, it resulted in Bactrian control of the Indus delta.⁶⁸ While Woodcock suggests that (excepting Scylax and Alexander's navy) "no other Greek travelled by sea either to or from the coasts of India until the final decades of the second century B.C.,"⁶⁹ Strabo records two exploratory voyages by Eudoxus to India, datable to circa 120-110 B.C.⁷⁰ This leaves open the interesting possibility that the potential of a sea-route from India had been recognized, and that another Bactrian aim could have been to gain this further trading advantage, or at least to deny it to competitors. Toussaint notes that some Seleucid subjects appear to have made voyages to India for spices, but that they were generally deterred by piracy in the Persian Gulf, while Agatharchides, writing before the voyages of Eudoxus, reported that Indian merchants from Patala brought their cargoes to Aden and Mocha on the Arabian peninsula where they were met by merchants and goods from Egypt.⁷¹ It is also ascertainably true that Hippolous' experience with the monsoon winds resulted in a land-fall on the Indus delta after his departure from the Arabian coast.⁷²

Whatever the reason for Demetrius' "march to the sea," events soon overtook Bactria and her Greeks. Despite the success of their thrust to the sea, and of Menander's campaigns in northern India, dynastic turmoils took a toll. The fragmentary "king lists" which have come down to us indicate a kaleidoscopic succession involving at least three "royal houses," which make the War of the Roses simplicity incarnate. At some periods multiple

66. *Id.* at 79-80; *see also id.* at 72 (noting that they "made a port at Berygaze (or Broach) on the coast of Gujerat"); RAWLINSON, *supra* note 55, at 69 ("Their object, obviously, was to reach the sea for trading purposes—the same object which led them to secure the high road into China.").

67. WOODCOCK, *supra* note 51, at 78 (which also notes: "Demetrius . . . then turned south into Gedrosia, where he reached the Arabian Sea not far from the site of Karachi. Tarn has put forward a good case for the foundation of a second city in this region, Demetrias-in-Sind, on the site of Alexander's Patala; if such a town was built, it would mean that Demetrius extended his conquests at least as far as the western side of the Indus delta."); *see also* RAWLINSON, *supra* note 55, at 69-70.

68. *See* WOODCOCK, *supra* note 51, at 78-79.

69. *Id.* at 138; *see also id.* at 51 ("there are no records of any Greek captains having followed the course of Scylax in reverse before the second century B.C.").

70. TOUSSAINT, *supra* note 54, at 33-34; CARY & WARMINGTON, *supra* note 54, at 70-71.

71. TOUSSAINT, *supra* note 54, at 32, 34; *see also* AGATHARCHIDES OF CNIDUS, ON THE ERYTHRAEAN SEA 169, 169 n.3 (Stanley M. Burstein trans. 1989).

72. WOODCOCK, *supra* note 51, at 141-42. *See also* TOUSSAINT, *supra* note 54, at 9; CARY & WARMINGTON, *supra* note 54, at 75; Samuel P. Menefee, *Pre-UNCLOS Marine Scientific Research: An Introductory Survey of Law and Policy*, 13 SEA CHANGES 37 (1991).

claimants asserted authority; at other times, kings were deposed, only to regroup their forces in the mountains and stage successful comebacks.⁷³ The Parthians, who had reasserted their independence, invaded Bactria's western provinces about 160 B.C.⁷⁴ The death blow to Bactria, however, was struck by northern tribes who overthrew Greek authority in about 125 B.C., although Bactrian rule may have lingered a few years in the mountain fastnesses.⁷⁵ Obsessed in seeking the sea and the spoils of India, it is apparent that the Bactrian Greeks neglected to put their house in order and to bar the door to Asia. Now the thousand cities are no more; and Bactria and its rulers are only a whisper on the winds of time. Ironically, many of Bactria's problems have been inherited by a modern day landlocked successor—Afghanistan.⁷⁶

"WALLED GARDENS": GEOGRAPHICAL DISADVANTAGE IN THE DARK AND MIDDLE AGES

Like the medieval walled gardens of song and courtly story, communities during the Dark and Middle Ages often turned inward, with a consequent growth in landlocked and geographically disadvantaged entities. In the late 5th century A.D. four major kingdoms of Europe—those of the Burgundians, the Alamanni, the Thuringians, and the Ostrogoths, were all landlocked.⁷⁷ The next one hundred years, however, saw a growth in Frankish power, as the Alamanni, part of the Thuringian territory, and all of Burgundy were absorbed in turn.⁷⁸ The Ostrogoths, meanwhile, had reached the Adriatic and expanded into Italy before being overwhelmed in turn by the Lombards. This allowed the Eastern Roman Empire, controlled from Constantinople, to regain ground in the west, so that it controlled much of the Adriatic, as well as the Aegean and the eastern and southern Mediterranean (including the former Kingdom of the Vandals).⁷⁹ After about 632 A.D., however, much of the Byzantine territory in the Middle East and North Africa was in turn overrun by the Arabs and Saracens, so that by 750 the Caliphate controlled the shores of the entire southern Mediterranean.⁸⁰

73. For general discussions of this period of Bactrian history, see WOODCOCK, *supra* note 51, at 81-130; RAWLINSON, *supra* note 55, at 73-137.

74. This occurred under the rule of Mithridates I. See WOODCOCK, *supra* note 51, at 90-93; RAWLINSON, *supra* note 55, at 74-80.

75. See RAWLINSON, *supra* note 55, at 88-113, 136-37; WOODCOCK, *supra* note 51, at 116-17, 126-28.

76. For more on this later landlocked state, see MARTIN IRA GLASSNER, *ACCESS TO THE SEA FOR DEVELOPING LAND-LOCKED STATES* 39-83 (1970); R. GOPALAKRISHNAN, *THE GEOGRAPHY AND POLITICS OF AFGHANISTAN* (1980); ABDUL HAKIM TABIBI, *FREE ACCESS TO THE SEA FOR COUNTRIES WITHOUT SEA COAST; THE POSITION OF AFGHANISTAN ON THIS QUESTION* (1958).

77. See SHEPHERD, *supra* note 33, at 50.

78. See *id.* at 53.

79. See *id.* at 52.

80. See *id.* at 53.

In the west, the Carolingian Empire was divided in three by the Treaty of Verdun (843 A.D.). The East Frankish Kingdom of Louis, seriously geographically disadvantaged, with only a small North Sea shoreline, must have found outlets to the Baltic and Adriatic through its Slavic tributaries. Although these states (including the landlocked Moravian Kingdom) were lost from Frankish control by 888 A.D., the middle kingdom of Lothair, wedged uncomfortably between the East Frankish state and the West Frankish Kingdom of Charles, had been split between the two surviving rulers in 870 A.D., giving increased outlets to the sea in the north and south to the former nation.⁸¹ While on one level, access was still preserved, the rise of feudal divisions in France, Italy, and Germany led to the patchwork of territories and sovereignties which continued to dominate these areas of Europe for several centuries to come. In central Europe the Duchies of Upper Lorraine, Upper Burgundy, Swabia, East and West Franconia, Thuringia, Bohemia, and Bavaria were all landlocked!⁸² Aragon was cut off from the sea in the west, as were Poland and Hungary in the east.⁸³ At the same time, Glassner notes that “[a]s early as the eleventh and twelfth centuries, territories in Europe, particularly Italy, began giving treaty rights to landlocked territories and began the internationalization of rivers, the first means of assuring access to the sea for land-locked states.”⁸⁴ The establishment of Crusader states in the Holy Land during the twelfth century resulted not only in the landlocked County of Edessa (first to be retaken by the Moslems), but in the Principality of Antioch, the County of Tripoli, and the Kingdom of Jerusalem, which caused severe geographic disadvantage to the landward Arab populations.⁸⁵ During the late fourteenth century the landlocked states of Eurasia included Navarre, Anjou, Poland, Wallachia, the Dominions of Mohammed Artin and the state of the Turkomans, while Castille, France, Hungary, and Lithuania were all seriously geographically disadvantaged.⁸⁶ That the situation was even more complex is suggested by a glance at the map of central Europe during this period. “Statelets” such as the Bishopric of Trent, the Archbishopric of Salzburg, the Swiss Confederation, the Bishopric of Basel, the Bishoprics of Sion and of Geneva, Bescana, Wurtemberg, the Palatinate of the Rhine, the Burgraviate of Nurenberg, Hesse, the County of Nassau, the Archbishopric of Treves, the Duchy of Luxemburg, Bremen, and the Electorate of Saxony were landlocked (and this does not come close to exhausting the list). When one throws in

81. *See id.* at 56.

82. *See id.* at 62-63 (showing map of A.D. 919-1125).

83. *See id.* at 66-67 (circa 1097).

84. GLASSNER, *supra* note 6, at 18.

85. *See* SHEPHERD, *supra* note 33, at 68. Similarly the Sultinate of Iconium had access to the sea blocked by the Byzantine Empire and the Kingdom of Armenia, *see id.*, while as late as the 13th century it still suffered disadvantage due to Armenia and the “Empires” of Nicaca and Trebizond. *See id.* at 73.

86. *See id.* at 77.

the question of geographical disadvantage, it is clear that one might research for years in this single phase of history.⁸⁷ In 15th century Italy at least six states: the Marquisates of Saluzzo and of Montferrat, Asti, the Duchy of Milan, the Marquisate of Montua, and the Republic of San Marino were landlocked, while three others, Savoy, Modena, and Lucca were demonstrably geographically disadvantaged.⁸⁸ If generalization is possible here, it is clear that the fission of empires long before those of Austria-Hungary and the Soviet Union resulted in landlocked and geographically disadvantaged relicts. Conversely, as shall be seen, such problems may have played a role in the combination of entities and the eventual formation of nation-states.

CASE STUDY: SAN MARINO, AN "ARK ON THE HILLTOP"

San Marino, allegedly the world's smallest republic,⁸⁹ "has been likened to the Ark stranded on the hilltop."⁹⁰ Traditionally founded by San Marino or Marinus, a fourth century ecclesiastical refugee from the seaport of Rimini (which lies some 14 miles to the northeast),⁹¹ San Marino's presence can be traced at least as far back as 755 A.D., with a mention of the "Castellum Sancti Marini."⁹² Early on, it was a "canonical corporation,"⁹³ but subsequently evolved as a republic. In 1100 it purchased the towns of Penna Rossa and Casole from the Count of Carpegna.⁹⁴ While interdicted by the Pope in 1247-49 for joining the Ghibellines, the city state successfully avoided other factional quarrels of the period.⁹⁵ "The Republic of San Marino is not redoubtable, nor to be feared. Such is the cause of its long prosperity."⁹⁶ A fourteenth-century crisis occurred due initially to the increasing influence of the Bishops of Montefeltro. When Bishop Benvenuto was unsuccessful in his demand for payments from San Marino, he attempted to sell his rights to a more forceful purchaser—Malatesta of Rimini.⁹⁷ This

87. *See id.* at 78-79 (for 1378). While the map had changed, the situation was substantially similar in this area in 1477. *See id.* at 86-87.

88. *See id.* at 90.

89. *San Marino*, in 19 ENCYCLOPAEDIA BRITANNICA 950 (1964).

90. VIRGINIA W. JOHNSON, TWO QUAINT REPUBLICS: ANDORRA AND SAN MARINO 131 (1913).

91. *Id.* at 133-44; *San Marino*, *supra* note 89, at 950.

92. *San Marino*, *supra* note 89, at 950.

93. JOHNSON, *supra* note 90, at 156 (referred to in early records as the "Community of the Castle of San Marino").

94. *Id.* at 158-59.

95. *San Marino*, *supra* note 89, at 950; *see also* JOHNSON, *supra* note 90, at 165 (noting that the Ghibellines and Guelphs were rival branches of the German houses of Bavaria and Suabia "which resulted from the death of Barbarossa in 1190") *id.* at 175 notes a gain in population from external refugees in these quarrels.

96. Messr. Barghou-Fortriou, *quoted in* JOHNSON, *supra* note 90, at 174.

97. *Id.* at 176; *see also San Marino*, *supra* note 89, at 950.

claim was countenanced by the Pope and the city-state only saved itself by resorting to legal remedies.

The Commonwealth employed a sagacious *avvocato* . . . of Rimini to make careful researches into early archives to prove that no allegiance to the Holy See was obligatory, as the community had been accorded a treaty by Pepin le Bref. Rimini turned aside, capriciously, to other matters, and San Marino triumphed even to the extent of making an amicable compact with the dangerous Malatesta for mutual protection.⁹⁸

A subsequent attempt by another Bishop of Montefeltro—Peruzzi—for control, also failed. “A judge of Rimini drew up a *Privilegium* for the state, attesting rights to rule itself, pass sentence civil and criminal, and acknowledge no jurisdiction of the Church.”⁹⁹ In the early fifteenth century, the state is identified as “[t]he Castle of San Marino . . . elevated, strong and inaccessible, with three hundred hearts and two forts.”¹⁰⁰

Despite some peripheral dabbling in supranational politics,¹⁰¹ by the fifteenth century, San Marino is described as being “poised in the scales between Urbino and Rimini. The Dukes of Urbino were steadfast friends and protectors of the tiny Republic, which served as a bulwark, in state policy, between the two principalities and the restless violence and intrigues of the Malatesta of Rimini.”¹⁰² Thus it appears that the republic was a longstanding natural buffer; indeed the Dukes of Urbino were originally members of the Montefeltro family,¹⁰³ suggesting that San Marino’s pivotal position had been in place for well over a century. In the struggle between Duke Federigo of Urbino and Sigismondo Malatesta of Rimini, San Marino took the side of the former when Pope Pius II, to whom the republic had appealed for protection, joined forces with Urbino. Rimini was vanquished, and San Marino received as “spoils” the villages of Florentino, Serravalle, Faetano, and the Castle of Montegiardino,¹⁰⁴ but refused to participate further in regional politics.¹⁰⁵

98. JOHNSON, *supra* note 90, at 176.

99. *Id.* at 177.

100. *See id.*

101. The city-state, for example, fought against Feltri at the siege of San Leo in support of Papal power and was strongly influenced by Cardinal Albormoz of Toledo, the Papal legate. *See id.* at 179-80.

102. *Id.* at 181-82; *see also id.* at 186; *San Marino*, *supra* note 89, at 950 (“Most of the republic falls within the diocese of Montefeltro, a small portion within that of Rimini.”).

103. *See San Marino*, *supra* note 89, at 950.

104. JOHNSON, *supra* note 90, at 190; *see also San Marino*, *supra* note 89, at 950.

105. JOHNSON, *supra* note 90, at 190. (“[O]ffers were subsequently made, by letter, to the Captains to enlist in the service of the Pope, the King of Naples, the Lord of Fali, and Florence, but military enterprise, other than as a means of self-protection, was refused.”)

In the sixteenth century, the republic was troubled by the machinations of Cesare Borgia¹⁰⁶ and later by Venice.¹⁰⁷ Although the Pope himself intervened, declaring San Marino under his protocol, Leo X considered handing the state to his nephew as a fief.¹⁰⁸ Surviving a surprise attack by the Condottiere Piero Strozzi,¹⁰⁹ San Marino, despite internal disorders, continued under the protection of the Dukes of Urbino.¹¹⁰ Duke Francesco Mario II, last of the house, ensured that San Marino remained independent when the Duchy of Urbino was absorbed by the Papal States.¹¹¹

In the eighteenth century, the major threats faced by the Republic were the machinations of Cardinal Alberoni. This Papal Legate characterized San Marino as "a very Geneva in the heart of the Papal States, a hot-bed of tyrants, . . . if a hostile prince should seize it, he could make of it a strong standpoint from which to attack the Pontifical domains."¹¹² In consequence, Alberoni

harassed the frontiers of San Marino, checked business transactions with Ravenna [where he was Legate] and even had merchandise seized on the roads by his bravos. He tapered with disaffected elements . . . and bribed some exiles to complain that they belonged within the jurisdiction of the House of Loreto. He persuaded several traitors to betray their country by signing an address to the Pope, requesting to be incorporated in the Roman States.¹¹³

These preliminary moves were followed by an actual invasion of the Republic on October 17, 1739 by forces under Alberoni, but the seizure was revoked by Clement XII in a treaty of amity the following year, and the impetuous cardinal was deposed.¹¹⁴

Napoleon, fortunately for the Republic, appears to have viewed San Marino as a model state and a natural "ally" of republican France.¹¹⁵ This amity extended to succeeding French governments, providing a counter-

106. See *id.* at 194 ("the death of Alexander VI, and the illness of Cesar [sic] averted the catastrophe," noting that Venice had been appealed to in vain for protection). But see *San Marino*, *supra* note 89, at 950 ("It fell into the hands of Cesare Borgia in 1503 but soon regained its freedom").

107. See JOHNSON, *supra* note 90, at 195 ("[Venice] took Rimini, and Pandolfo Malateste endeavoured to corrupt San Marino in his jealousy of Venetian influence.").

108. *Id.* at 195-96.

109. In 1542. *Id.* at 196.

110. *Id.*; *San Marino*, *supra* note 89, at 950. Johnson notes that "[a] document exists in the [Urbino] archives in which [Duke] Guidobaldo [II] promised to defend San Marino from adversaries, at all times, as other members of his house had done." JOHNSON, *supra*, 197.

111. This was done by a treaty with Pope Clement VIII. The status of San Marino was confirmed when the Duchy of Urbino reverted to the Holy See in 1631 under Pope Urban VIII. See JOHNSON, *supra* note 90, at 198-99; *San Marino*, *supra* note 89, at 950.

112. JOHNSON, *supra* note 90, at 200.

113. *Id.* at 201.

114. See *id.* at 201, 204; see also *San Marino*, *supra* note 89, at 950.

115. See JOHNSON, *supra* note 90, at 204-06 (noting that San Marino declined Napoleon's offer to enlarge its boundaries).

weight to more local pressures. Charles X, for example, stated that French protection would be given the Republic if necessary, while Chateaubriand, although a French monarchist, staked his claim as a "San Marino republican."¹¹⁶ San Marino served as (an unwilling) host to the defeated troops of Garibaldi, incurring Austrian enmity, and also antagonized Pope Pius IX by protecting republican fugitives from Rome.¹¹⁷ Both Napoleon III and the House of Savoy supported the Republic, however, San Marino came under the protection of the Kingdom of Italy in 1862.¹¹⁸ Although exporting cut stone and wine, much of the country's revenue is gained through the sale of postage stamps and the granting of monopoly concessions to the Italian state for the sale of tobacco, playing cards, and other items.¹¹⁹ Co-existence with a benign neighbor thus mitigates the Republic's land-locked status, which in any case does not appear to have hampered its self-sufficiency. Indeed such geographical factors may have *contributed* to the continued existence of this state.

"MANIFEST DESTINIES": THE GROWTH OF NATION-STATES

The period from the 15th or 17th century on up to the present has seen the foundation and development of modern nation-states.¹²⁰ While there

116. *Id.* at 207-08.

117. *Id.* at 208-10.

118. *Id.* at 210-11; *San Marino*, *supra* note 89, at 950. With certain problems, this arrangement has remained in force up to the present. *See id.*, which notes that "[i]n World War II San Marino remained neutral, but suffered a severe bombing raid and other infringements of its neutrality. The fascist regime was overthrown in 1943."

119. *San Marino*, *supra* note 89, at 950.

120. Opinions differ as to when this process, and the connected phenomenon of nationalism, actually began. Barnes argues:

The older generation of historians . . . were wont to regard the origin of the modern state system as the product of the so-called "Renaissance," or, . . . conventionally dated the emergence of nationality from the Protestant revolt and its resulting political adjustments in the Peace of Augsburg [1555] and the Treaty of Westphalia [1648]. . . . [B]oth "Renaissance" and "Reformation," in their broadest aspects, were but phases or results of that great transformation which marks the origin of the modern world and the national-state system—the "Commercial Revolution." By this is meant not only the discoveries, the revival of trade and the "intervention of capital" but also the reactions of these innovations upon the whole basis of European civilization.

Harry Elmer Barnes, *Nationalism*, 19 THE ENCYCLOPEIDA AMERICANA 743d, at 748-49 (1954). Barnes dates this from the voyages of Columbus and Vasco de Gama in the 1590's. *Id.* at 748. *But see* Hans Kohn, *Nationalism*, 16 ENCYCLOPAEDIA BRITANNICA 145, 146 (1964), who seems to date its rise from the 18th century and who notes: "[t]he first full manifestation of modern nationalism occurred in 17th-century England, in the Puritan revolution."

[N]ationalism arose as a dominant force in the 18th century in western Europe and in North America; the American and the French revolutions may be regarded as its first powerful manifestations. From the western world, after having penetrated the new countries of Latin America, it spread in the early 19th century to central Europe, thence, toward the middle of the century, to eastern and southeastern Europe, until, at the beginning of the 20th century, it put its stamp on the ancient lands of Asia and

were many factors behind the amalgamation of feudal regimes or other forms of regional combination, one driving force was certainly the elimination of geographical disadvantage or land-locked status. Often this process of fusion stretches far back into the past, although if pursued to its end it occasionally leads to a previous fissioned. Spain provides one such example. In 750 A.D., most of the Iberian peninsula was under the Caliphate except for part of the Pyrenees and a northern coastal strip which formed Asturias.¹²¹ Under Charlemagne the Franks retook all of the Spanish March and the Kingdom of Asturias expanded, resulting in certain geographical disadvantage for the Ommiad Emirate of Cordova.¹²² By 1000 A.D. the Navarre section of the Spanish March had become a separate Kingdom;¹²³ by 1097 the March had further fissured into Catalonia and landlocked Aragon.¹²⁴ Within a century, Leon and Castile, occupying the lands of Asturias, had expanded inland at the expense of the Almohad moors; Portugal was established on the Atlantic coast, and Aragon had enlarged to swallow Catalonia and thereby gain access to the sea.¹²⁵ During the next three hundred years, Portugal expanded south along the coast (causing a geographic disadvantage to Spain which still remains), Aragon did likewise along the Mediterranean, while Navarre lost its coastline to Castile and Leon, and the latter kingdom pushed the remaining Spanish moors into the Kingdom of Granada in the peninsula's extreme south. The landlocked kingdoms of Cordova and Jaen fell to Castile in 1236 and 1241 while their coastal neighbors, the states of Seville and Murcia held out only marginally longer.¹²⁶ Castile and Leon finally removed its last barrier to the south where Granada fell in 1492;¹²⁷ the year Columbus helped usher in the age of discovery. Landlocked Navarre became part of Aragon in 1512,¹²⁸ and subsequently Aragon and Castile merged to create the nation-state of today.

Similar combinations can be traced for countries such as Italy, which evolved from the Kingdom of Sardina. This state's initial expansions were at the expense of landlocked neighbors—Lombardy in 1859, Parma in 1860 as well as geographically disadvantaged Modena, and then (better situated) Tuscany, the Papal States, and the Kingdom of the Two Sicilies in the same year. Venetia and Rome, both areas which caused geographic disadvantage

Africa.

Id. at 145-46.

121. See SHEPHERD, *supra* note 33, at 53.

122. See *id.* at 54 (c. 814 A.D.)

123. See *id.* at 58.

124. See *id.* at 66.

125. See *id.* at 83, 82.

126. They fell in 1242 and 1253, respectively. See *id.* at 83.

127. See *id.*

128. See *id.* at 118.

to the new Italian state, were absorbed in 1866 and 1870.¹²⁹ Other national examples—such as the more complex pattern of Germany¹³⁰—could also be cited.

Even such well-known history as the United States' own westward expansion, with its theme of "manifest destiny," takes on new meaning when viewed in terms of geographical disadvantage. Glassner notes that the 1795 treaty of San Lorenzo el Real, negotiated by Thomas Jefferson "gave Americans the right to navigate the Mississippi River and other Spanish rivers to the sea, conceding in fact if not in principle Jefferson's claim that 'the Ocean is free to all men, and their rivers to all their inhabitants.'"¹³¹ The 1803 Louisiana Purchase assured the new Republic of a coastline on the Gulf of Mexico,¹³² while subsequent nibblings at Spanish Florida (in 1810, 1813, and finally resulting in the cession of 1819) removed any geographical disadvantage in this region.¹³³ From then on the thrust was west, toward the Pacific. The Oregon Territory, jointly occupied by the United States and Great Britain from 1818, was finally divided between the powers in 1846. It is perhaps significant that acquisition of the California frontage in 1848, as a result of the Mexican War, was the last major continental addition to the country—the United States was (arguably) no longer geographically disadvantaged.¹³⁴ Not so fortunate is the plight of Russia; rather than achieving her seaward goals in under a century, she has sought the sea for over a millennium!

CASE STUDY: RUSSIA, A NATION SEEKING THE SEA

Surely one of the longest and most persistent quests for the sea has been Imperial Russia's search for her own warm water port.¹³⁵ The early Kingdom of Hermanarich (375 A.D.) and Attila's Hunnic Empire (c. 450)

129. *See id.* at 161.

130. *See id.* at 86-87 (c. 1477), 114-15 (c. 1547), 122-23 (c. 1648), 134-35 (c. 1786), 154-55 (1812), 157 (1814, 1815), 158-59 (1815-66), 161 (1866-1919). To fully realize the complicated nature of geographical disadvantage in this area, *see id.* at 142-43, for an in-depth view of territorial changes to the landlocked states of Baden and Wurtemberg.

131. GLASSNER, *supra* note 5, at 18.

132. *Id.*

133. *Id.*

134. *See* SHEPHERD, *supra* note 33, at 198-99. The only possible remaining areas of geographical disadvantage are the southern tip of Vancouver Island and the lack of any frontage on the Gulf of California. In the case of the latter it is interesting that at least one American filibustering expedition was directed toward this area.

135. Mitchell, however, offers an interesting perspective on this quest, stating that "[a]part from certain exceptional periods of maritime activity . . . the sea, as the ultimate objective, remained with the Russians a dream rather than an element of substance which at all costs must be reached and used as a means to progress. MAIRIN MITCHELL, *THE MARITIME HISTORY OF RUSSIA: 848-1948*, 43 (1949). Further, "[w]hen she did reach the seas, it was unfortunate for her that they were enclosed ones." *Id.* (which goes on to list a series of geographic disadvantages leaving no doubt as to why Russia desired a warm water port).

both stretched from the Baltic to the Black Sea.¹³⁶ R.J. Kerner makes the case for the expansion from a central core area down various rivers to the sea.

It was the Vladai Hills region . . . that the Scandinavian Varangians, usually known as the Vikings, utilized in order to trade from the Baltic to the Black and Caspian seas. . . . It was the nerve center of the first Russian state based on Kiev and Novgorod, which never released its grip on this portage system until the Kievan state went to pieces. It was this region that held the key to the empire built up by Novgorod the Great after the fall of Kiev. It controlled Novgorod's access to food in the south and the southeast, and her fur empire to the north and northeast, without which the empire could not exist. It was this region that Moscow wrested from Novgorod late in the fifteenth century in its drive for markets and natural resources. The acquisition at that time of the necessary part of this portage region for a Baltic-Caspian trade route, and of the rest of it in the sixteenth and seventeenth centuries, made it possible for Moscow to dominate the whole of the eastern European plain and to expand to the five seas: westward to the Baltic, southward to the Black and the Caspian, northward to the Arctic and eastward to the Pacific.¹³⁷

The fifteenth century saw the rise of Moscow, which had interests in both the Baltic and Caspian trade. "It was this Baltic-Volga-Caspian trade route that was to form the axis of the new Muscovite state. Landlocked Moscow's future on the middle course of this route was either suffocation or domination of the rivers and portages from sea to sea."¹³⁸ It was not until the reign

136. See SHEPHERD, *supra* note 33, at 48, 50.

137. ROBERT J. KERNER, *THE URGE TO THE SEA: THE COURSE OF RUSSIAN HISTORY 3-4* (1942). Kerner goes on to argue that the "mastery of eastern Europe" was gained by "domination of river systems and the control of portages between them by means of ostrogs (blockhouses) or of fortified monasteries." *Id.* at 5. See also Paul Milyukov, X. [the Editors], *Russia* [V: History], in 19 *ENCYCLOPAEDIA BRITANNICA* 691, 692 (1964) [hereinafter *Russia*], noting the presence of Viking tumuli "in the very tableland where four chief waterways of Russia, the Neva basin, Volga, Disieper and Dvina, converge and form outlets to the Baltic, the Caspian and the Black seas and thus determine the direction of ancient trade routes." Kerner notes the importance of the portages or *voloki* as territorial and state boundaries; as sources of dispute they were often divided between the states involved. See KERNER, *supra*, at 15. It is important in this context to view such "dragging paths" for the vessels as potential chokepoints for navigation, and thus as having a bearing on geographically disadvantaged states. Novgorod, for example, was dependent upon certain portages for their supply of bread. "[T]he Novgorodians made it a fundamental policy to dominate the above-mentioned portages or at least to secure free passage for their traders and merchants over them and the trade routes leading from them. This was historically the substance of their relations with other Russian principalities." *Id.* at 28. The breakdown of the Kievan state in the thirteenth century resulted in a fission into some dozen separate dukedoms which fought among themselves; it seems likely that some of these quarrels may have had to do with trade and geographical disadvantage. See *Russia, supra*, at 693.

138. KERNER, *supra* note 137, at 33. See also *id.* at 41 ("Barred from the Caspian by Kazan and from the Baltic by Novgorod, Moscow . . . was faced with the alternative of suffocation or of forging her way out to both seas."). In 1417 (under Ivan III)

Moscow first starved Novgorod (by seizing Torzhok) and then with lightning strokes subdued her. . . . A rising of the Novgorod population followed the cutting off of grain supplies and completed the military victory. With one stroke Moscow won access to the Baltic and White seas and the entire fur empire to the north and east.

of Ivan the Terrible (1553-84), however, that Russia gained footholds on the Caspian Sea and the Sea of Azov.¹³⁹ That the importance of the Baltic to Russia was recognized by other regional powers is shown in a 1617 address by Gustavus Adolphus, King of Sweden:

Thus our position has made things more difficult for the Russians, in this, that they have been cut off from the shores of the Baltic. Henceforth they are forbidden entrance to the Baltic at any point, and cannot use it for their ships for their own accommodations, either for war purposes or for trade, without our special permission. . . .¹⁴⁰

Indeed, this geographical disadvantage was not reversed by the Russians until Peter the Great's Northern Coalition.¹⁴¹ A push eastward which was to have lasting implications for Russian geography, ended with fur traders obtaining access to the Pacific in the mid-seventeenth century.¹⁴² Nonetheless, the bulk of Russian interest still seems to have been focused on the Baltic, Black, and Caspian Seas. Peter the Great (1682-1725), for example, came to power largely as a result of Prince Vasily Golitsyn's failed expeditions to the Crimea in 1687 and 1689. Peter made peace with the Porte ten years later, and held the district around Azov from 1696-1711 and a beachhead across the Caspian Sea (in present day Iran) from 1723.¹⁴³ Empress Anna returned this in 1732, but regained Azov in 1739,¹⁴⁴ while a small stretch of coast on the opposite side of the Sea of Azov was added during the reign of Elizabeth (1741-62).¹⁴⁵ The most serious Black Sea expansion took place during the reign of Catherine the Great (1762-96). Catherine's plan was to drive the Turks from Europe, founding a series of states in the Balkans and crowning her grandson (appropriately named Constantine) as ruler of a new Greek empire based in Constantinople. Her two Turkish Wars (1768-74 and 1789-91) brought her the Crimea and part of the northern Black Sea shoreline, but no major breakthrough.¹⁴⁶ Alexander I clashed with Turkey in 1806-12, and gained Bessarabia, a district bordering the Black Sea on the north.¹⁴⁷ During the reign of Nicholas I there was another war with Turkey (1827-29). This resulted in

Id. at 43.

139. William H. Chamberlin, *Union of Soviet Socialist Republics* [History and Foreign Affairs], 27 THE ENCYCLOPEDIA AMERICANA 293t, 293u (1954) [hereinafter *Union of Soviet Socialist Republics*]; SHEPHERD, *supra* note 33, at 138-39.

140. KERNER, *supra* note 137, at 49.

141. *See id.* at 52-53; *Union of Soviet Socialist Republics*, *supra* note 139, at 293w.

142. *See* KERNER, *supra* note 137, at 66-88.

143. *See Russia*, *supra* note 137, at 697; SHEPHERD, *supra* note 33, at 138-39. *See also* CHRISTOS L. ROZAKIS & PETROS N. STAGOS, THE TURKISH STRAITS 17 (1987).

144. *See* SHEPHERD, *supra* note 33, at 138-39.

145. *See id.*

146. *See id.*; *Russia*, *supra* note 137, at 697; *see also* ROZAKIS & STAGOS, *supra* note 143, at 19-22.

147. *Russia*, *supra* note 137, at 698; *see also* ROZAKIS & STAGOS, *supra* note 143, at 23.

the liberation of Greece, increased freedom for the Danubian principalities and the opening of the Dardanelles and the Black Sea by the Treaty of Adrianople.¹⁴⁸ In 1844 and again in 1852, Nicholas urged a partition of Turkey with the Balkan States to be autonomous under Russian suzerainty and Constantinople to be a free city.¹⁴⁹ European countries, however, did not accept the bait. Indeed, the Crimean War (1854-56) forced Russia to cede that part of Bessarabia nearest the Black Sea to the Danubian principalities.¹⁵⁰ In 1876 Russia hoped to benefit from Balkan revolts against the Turks, but Austria and England conditioned their neutrality on Russia's promise not to attack Constantinople and to strictly limit her territorial acquisitions. The major fruit of Russian victory was the return of the ceded portion of Bessarabia.¹⁵¹ In 1908 there was again talk of Turkish partition between Austria and Russia, with the straits to be in the Russian zone and Bulgaria under Russian influence.¹⁵² During World War I Russia conquered Trebizond, on the southern coast of the Black Sea, and proposed partitions of the Ottoman Empire in 1915 and 1916 would also have given Russia control of Constantinople and the Dardanelles.¹⁵³ The Communist Revolution, however, intervened and the new Soviet state relinquished all its southern gains since 1877.¹⁵⁴ In 1940 Stalin again turned Russian interest toward the south. Rumania was forced to cede Bessarabia, and Russia attempted (unsuccessfully) to gain holdings in the Balkans and the Black Sea straits from Nazi Germany during World War II.¹⁵⁵ In 1945 the Russians applied pressure directly on Turkey for a return of Kars and Ardahan and for joint USSR-Turkish defense of the straits.¹⁵⁶ This was successfully rejected by Turkey, with Western support, and a Soviet note of 1953 announced that "the Soviet Union had no territorial claims whatsoever on Turkey."¹⁵⁷ Is Russia's "search for a warm water port" over? Some pundits saw events in Afghanistan as merely the prelude to the undermining of Pakistan and eventual Soviet penetration to the Indian Ocean. Even since the breakup of the Soviet Union, the squabbles between Russia and the

148. *Id.* at 699.

149. A.A. Adnan & Geoffrey L. Lewis, *Turkey* [History], 22 ENCLYCLOPEDIA BRITANNICA 590, 61-02 (1964) [hereinafter *Turkey*].

150. *Russia*, *supra* note 137, at 702; *see also* SHEPARD, *supra* note 33, at 164; *Turkey*, *supra* note 149, at 602.

151. *Russia*, *supra* note 137, at 702; *see also* *Turkey*, *supra* note 149, at 603.

152. *Turkey*, *supra* note 149, at 604.

153. *See id.*, 606; SHEPARD, *supra* note 33, at 168; ROZAKIS & STAGOS, *supra* note 143, at 26.

154. *Turkey*, *supra* note 149, at 606; *see also* ROZAKIS & STAGOS, *supra* note 143, at 26 (noting that "[t]he Soviet Union expressing abandoned all claims to territorial expansion in the area of the straits" by the Treaty of Brest-Litovsk).

155. *Russia* [World War II], *supra* note 137, at 719; ROZAKIS & STAGOS, *supra* note 143, at 43-44.

156. *See Russia* [World War II], *supra* note 155, at 721; ROZAKIS & STAGOS, *supra* note 143, at 48; *Turkey*, *supra* note 149, at 611.

157. *See* ROZAKIS & STAGOS, *supra* note 143, at 48-49; *Turkey*, *supra* note 149, at 611-12.

Ukraine over the Black Sea fleet might be viewed by alarmists as indications of continuing interest. . . .

“SICK MEN OF EUROPE”: COLONIALISM AND ITS BREAKUP

Colonialism, which followed in the wake of maritime exploration was driven by trade. The Venetians, the Portuguese, the Spanish, English, and French all depended on the sea to connect their factories, forts, and settlements, with the mother country; by definition, therefore, their initial outposts caused geographical disadvantage to the natives and kingdoms of the areas so developed.¹⁵⁸ Later, as control over various areas was consolidated and the riches and resources of continental interiors opened up, it is arguable that political units which were formerly landlocked or disadvantaged geographically may have gained increased access to the sea with their increased access to or incorporation into colonial structures. In Africa, for example, as colonial divisions replaced indigenous regimes, many natural patterns of trade and commerce were disrupted. Thus it was that peoples such as the Tuareg found themselves owing allegiance to different states (Niger and Mali),¹⁵⁹ that (at least for a time) the products of (pre-Zimbabwe) Rhodesia were transported to the sea through South African territory rather than by the shorter Mozambique route, and that European combinations of diverse tribes into unified entities led to instability, and occasionally

158. This is not to suggest that pre-colonial geographical disadvantage did not feature in many of these areas. See, for example, the description of the Foutha Yalloo in West Africa c. 1826, as given in the account of slaver Theophilus Conneau:

This privilege [heading a caravan to the seaboard] is only granted as a great favor by the Ali-Mamy to his favorite sons and immediate relations, on condition that half of the products of this lucrative office shall be paid to him. The privileged son or relation departs . . . at the first beginning of the dry season with full power of life and death, and squats himself and his party in one of the most frequented paths to the seaside, often sending small squads . . . to the different paths and blockading all passages to the beach. This blockade is sometimes kept up for a month or more. . . . [T]he object . . . is . . . not only to collect a large caravan and give the Chief himself the more importance, but to sequester a certain tribute due to the Ali-Mamy by small tribes. . . .

Traders resort to all manner of subterfuge to evade these roads' interceptions, as it . . . is often the case that the intention of their purpose is totally frustrated. When seized by one of these blockading Chiefs, they are made to go to a town or factory they perhaps never intended to visit, and when such a seizure lasts any time, it causes them to expend all their provisions, diminishing their profits and capital.

CAPT. THEOPHILUS CONNEAU, A SLAVER'S LOG BOOK OR 20 YEARS' RESIDENCE IN AFRICA 66 (1976). See also *id.* at 99 (“Small traders frequent those rivers to escape the blockades of the Foulah Chiefs.”); *id.* at 127 (noting at least one instance of a Mandingo chief expecting “a heavy duty for . . . passage through his territory” to the interior).

159. CULTURAL ATLAS OF AFRICA 151, 153 (Jocelyn Murray, ed. 1981). Other examples include the Sotho (Lesotho and the Republic of South Africa), *id.* at 206, 212, and the Ndebele (Zimbabwe and the Republic of South Africa), *id.* at 196, 206. The Ewe tribe indeed was split between different Great Powers (Britain and France) and today is found resident in two separate countries, Ghana and Togo. See *id.* at 145.

armed conflict.¹⁶⁰ At the same time, the development of road and rail systems within the colonies of a single power enhanced transportation capacities and in part offset dislocations. Additionally, the occasionally friendly relationships of the colonial powers allowed for the resolution of landlocked problems which might otherwise have proved insoluble. One particularly noteworthy solution was the granting of a narrow corridor to the sea (or a navigable river) to a state which would otherwise have been thoroughly landlocked. This occurred on several occasions in Africa in the late 19th century, with one obvious surviving example being Zaire's exit to the Atlantic.¹⁶¹ Finally, many landlocked states were destroyed in the colonial scramble—two ironic examples being the Boer South African Republic and the Orange Free State.¹⁶²

Decline, when it set in, often alleviated the problems of geographically disadvantaged states which survived. Thus the loss of Venice's colonies eventually resulted in the opening up of the related littoral.¹⁶³ Where deeper penetration of land masses had occurred, however, the breakup of colonial systems might cause as many problems as it solved. One prime 19th century example—Bolivia—will be discussed below. Even in the present century, however, many landlocked states suffer from a post-colonial legacy.

CASE STUDY: BOLIVIA'S SEARCH FOR THE SEA

A prime example of the problem of landlocked states is Bolivia's search for an outlet to the Pacific, a quest with nineteenth century roots and contemporary ramifications. Created out of unorganized territory in 1825 when Spain's American Empire crumbled, Bolivia served as a buffer state between Argentina, Chile, and Peru.¹⁶⁴ Popularly described as "a beggar sitting on a throne of gold," Bolivia has never been able to fulfill the promise of its natural resources.¹⁶⁵ Initially, the country was able to claim part of the Atacama Desert as well as the Pacific coast part of Cobija.¹⁶⁶ In the 1830's, Bolivia entered into a Confederation with North and South Peru, effectively expanding its seacoast, but a threatened Chile successfully attacked these allies and the Confederation was dissolved in 1839.¹⁶⁷ At about this time, the guano deposits of the Atacama Desert were being

160. One prime example of this was the Nigerian Civil War of the late 1960's. See Samuel P. Menefee, *Any Port in a Storm: The Worldwide Threat to Port Security*, in PORTS IN PERIL (Eric Ellen, ed., forthcoming) for a discussion of this conflict's effect on local ports.

161. See GLASSNER, *supra* note 6, at 19.

162. See MURRAY, *supra* note 159, at 59.

163. See SHEPHERD, *supra* note 33, at 90, 104, 118-19, 124, 157.

164. George McCutchen McBride, et al., *Bolivia* [IV. History], in 3 ENCYCLOPEDIA BRITANNICA 880 (1964) [hereinafter *Bolivia*].

165. GLASSNER, *supra* note 6, at 88.

166. *Id.* at 96.

167. *Id.*, see also Victor Andrade, *Bolivia*, 4 THE ENCYCLOPEDIA AMERICANA 183, 189 (1954); *Bolivia*, *supra* note 164, at 880-81.

increasingly sought in European markets as a rich fertilizer.¹⁶⁸ In 1842, a Chilean claim that its northern boundary extended to 23°S produced the first definite overlap with Bolivia's claim (a southern boundary of 25°S).¹⁶⁹ For the next quarter century, the two countries quarreled over the southern Atacama, until the treaty of 1866 set a common boundary at 24°S and provided for joint exploitation of the nitrate resources.¹⁷⁰ During the next ten years, Chile shouldered the task of developing the Atacama, but Bolivia for a number of reasons was unable to effectively invest its capital or citizenry in the effort. By the mid-1870's therefore, 93-95% of the population of Bolivia's littoral were Chilean nationals.¹⁷¹ Resulting economic and political rivalries led to a Secret Treaty of mutual protection between Peru and Bolivia in 1873.¹⁷² Six years later, Chile sent troops to protect her nationals and their business; these forces occupied several Bolivian ports.¹⁷³ Bolivia declared war on Chile, and the Peruvians offered to mediate, perhaps in an attempt to gain time. After calmly overrunning all Bolivian territory west of the Andes, Chile declared war on both Bolivia and Peru, using the now not-so-Secret Treaty as a pretext.¹⁷⁴ This War of the Pacific¹⁷⁵ lasted until 1883 when Peru, with its capitol occupied, signed the Treaty of Ancón, ceding the province of Tarapaca to Chile, and allowing the future of two more northerly provinces (Tacna and Arica) to be determined by plebiscite.¹⁷⁶ In 1884, Bolivia signed its own provisional Pact of Truce, allowing Chile's continued occupation of the Bolivian littoral, but free transit of Bolivian goods through the port of Antofagasta.¹⁷⁷ Bolivia was now landlocked!

At this point the situation begins to become complicated.

On May 18, 1895, a treaty was signed at Santiago between Chile and Bolivia "with a view to strengthening the bonds of friendship which unite

168. GLASSNER, *supra* note 6, at 96-97.

169. *See id.* at 97.

170. *Id.*, *see also* *Bolivia*, *supra* note 164, at 881.

171. GLASSNER, *supra* note 6, at 97-98.

172. *Id.* at 98; *see also* *Bolivia*, *supra* note 164, at 881 (noting that "the ostensible object" of the treaty "was the preservation of their territorial integrity and their mutual defense against exterior aggression. There can be no doubt that the aggression contemplated as possible by both countries was a further encroachment on the part of Chile.").

173. Including Antofagasta, Tocopilla and Cobija. *See* GLASSNER, *supra* note 6, at 98. This was in response to a Bolivian threat to tax nitrate exports and to seize those for which the tax was not paid. *See* *Bolivia*, *supra* note 164, at 881.

174. *See* GLASSNER, *supra* note 6, at 98. This is discussed at greater length in *Bolivia*, *supra* note 164, at 881.

175. Alternatively known as the "Nitrate War." *See* Andrade, *supra* note 167, at 189.

176. *See* GLASSNER, *supra* note 6, at 98; *Bolivia*, *supra* note 164, at 881.

177. GLASSNER, *supra* note 6, at 98-99; Martin I. Glassner, *The Transit Problems of Landlocked States: The Cases of Bolivia and Paraguay* in OCEAN YEARBOOK 4, 366, 372 (Elisabeth M. Burgese & Norton Ginsburg, eds. 1983).

the two countries" and "in accord with the higher necessity that the future development and commercial prosperity of Bolivia require her free access to the sea." By this treaty Chile declared that if, in consequence of the plebiscite (to take place under the treaty of Ancón with Peru) or by virtue of direct arrangement, it should "acquire dominion and permanent sovereignty over the territories of Tacna and Arica, she undertakes to transfer them to Bolivia in the same form and to the same extent as she may acquire them"; the republic of Bolivia paying as an indemnity for that transfer \$5,000,000 silver. If this cession should be effected, Chile should advance its own frontier north of Camerones to Vitor, from the sea up to the frontier which actually separates that district from Bolivia. Chile also pledged itself to use its utmost endeavor, either separately or jointly with Bolivia, to obtain possession of Tacna and Arica. If it failed, it bound itself to cede to Bolivia the roadstead (*caleta*) of Vitor, or another analogous one, and \$5,000,000 silver. Supplementary protocols to this treaty stipulated that the port to be ceded must "fully satisfy the present and future requirements" of the commerce of Bolivia.¹⁷⁸

So far so good. Unfortunately, Chile discovered that Bolivia had been secretly negotiating with Argentina, a state with whom Chile had another border dispute. Any chance of Bolivian-Chilean cooperation vanished, and worse, Chile and Argentina compromised their differences, depriving Bolivia of any hope of help from that quarter.¹⁷⁹ As a result, Bolivia was forced to settle as best as it could.

In 1904, Bolivia signed a formal Treaty of Peace Friendship and Commerce with Chile. In return for permanent possession of Bolivia's Pacific coast, Chile was to grant to Bolivia in perpetuity "the broadest and freest right of commercial transit through her territory and ports of the Pacific," build a railway for Bolivian cargoes to the coast, and allow Bolivia to maintain customs agents in certain Chilean ports.¹⁸⁰ Dissatisfaction in Bolivia with the treaty brought diplomatically-initiated attempts to change the terms in 1910 and 1919.¹⁸¹ In 1921, the country approached the First Assembly of the League of Nations, requesting a revision of all treaties resulting from the War of the Pacific. This question was referred to a Commission of Jurists, who reported that the demand was inadmissible as only the signatory states, not the League, had the power to modify a treaty.¹⁸² An exchange of notes with Chile in 1923 and an attempt to publicize the problem at the International Law Conference in 1925 both met

178. *Bolivia*, *supra* note 164, at 881-82.

179. *Id.* at 882.

180. The ports included Arica and Antofagasta. Disputes arising under the treaty were to be referred to the Emperor of Germany. GLASSNER, *supra* note 6, at 99. See also Glassner, *supra* note 177, at 372, 374. Andrade, *supra* note 167, at 189 gives the date of the treaty's signing as 1905.

181. GLASSNER, *supra* note 6, at 99, 101. Internally, Bolivian agitation over this issue was allegedly responsible for the resignation of President Guerra (who favored rapprochement with Chile) after popular demonstrations against him. See *Bolivia*, *supra* note 164, at 882.

182. See Glassner, *supra* note 177, at 374-75; GLASSNER, *supra* note 6, at 101.

with failure.¹⁸³ In the latter year too, an attempt by Chile and Peru to (finally) hold the plebiscite called for in the Treaty of Ancon foundered, but after arbitration by the United States, the Treaty of Santiago was signed between the two parties in 1929.¹⁸⁴ This split the provinces in question, returning Tacna to Peru, while Chile retained Arica. Peru was also given rights to a wharf, customs house, and railway station on Arica Bay. The Complimentary Protocol to the Treaty stipulated that Peru was to have absolutely free transit at Arica, and that neither party could cede to a third party any part of the territories they received under the Treaty.¹⁸⁵

A 1942 initiative at the Consultative Meeting of the Foreign Ministers of the American Republics and a 1945 speech in which Bolivia's President referred to his country's "permanent and inalienable right to aspire to her own port on the Pacific" raised the problem anew. Chile stood by the Treaty of 1904, but agreed to consider other concessions.¹⁸⁶ Bolivia on her part unsuccessfully raised the issue at both the San Francisco Conference establishing the United Nations (1945) and the Bogota Conference of 1948 which founded the Organization of American States (OAS).¹⁸⁷ In 1950, success seemed in hand when Bolivia and Chile exchanged notes agreeing to a conference "to seek the formula which could make it possible to give to Bolivia her own sovereign outlet to the Pacific Ocean, and to obtain for Chile compensations that would not have territorial character and which effectively take into account her interests." The conference, however, was never held. When President Truman revealed that the "compensation" might consist of water from Lakes Titicaca and Poopo for irrigation purposes, Peru ended the discussion by invoking the Protocol to the Treaty of Santiago.¹⁸⁸

In 1962, at the 17th session of the U.N. General Assembly, Bolivia again unsuccessfully raised the issue of its access to the coast.¹⁸⁹ (This was the Assembly session, however, that set in motion consideration of the general question of transit rights for landlocked states.)¹⁹⁰ The dispute during this period was embittered by Chile's diversion of the Lauca River for an irrigation project, and ultimately resulted in Bolivia's withdrawal from the OAS.¹⁹¹ In addition to Bolivia's "Day of the Sea" (March 23), a historical celebration used as the annual zenith of the country's campaign against its

183. GLASSNER, *supra* note 6, at 101; Glassner, *supra* note 177, at 375.

184. GLASSNER, *supra* note 6, at 102.

185. *Id.*

186. *See id.* at 103; Glassner, *supra* note 154, at 375.

187. GLASSNER, *supra* note 6, at 103; Glassner, *supra* note 177, at 375.

188. GLASSNER, *supra* note 6, at 103-04.

189. *Id.* at 105-06. The Bolivian Foreign Minister claimed during debate that "Bolivia is the only country in the world that was deprived of its coastline . . . because of an unjust war. In each Bolivian, without exception, there is an unshakable desire to return to the sea." *Id.* at 105.

190. *Id.* at 106.

191. *Id.* at 104-06.

landlocked status,¹⁹² Bolivia has resorted to "*Salida al Mar*" ("Outlet to the Sea") postmarks—Chile returned the offending letters or blotted out the slogan—and the chalking of anti-Chilean graffiti on boxcars being returned to that country.¹⁹³ Diplomatic representatives of both countries made broadcasts concerning the problem. In a *New York Times* interview, the Bolivian foreign minister suggested the ceding to Bolivia of an enclave around the port of Mejillones rather than the creation of a formal corridor and offered diversion of five small rivers to Chile for irrigation purposes.¹⁹⁴ In the mid-1970's Bolivia again appeared close to success. In the Charana Declaration of 1975, Bolivia and Chile resumed diplomatic relations, broken in 1962, and agreed to work for solutions to mutual problems, including Bolivia's opening to the sea.¹⁹⁵ Bolivia subsequently proposed the cession of a corridor between Arica and Chile's border with Peru (including the Arica-La Paz railroad) and another coastal area near Pisagua, Iquique, or Antofagasta. Chile responded with a proposal to cede a demilitarized northern corridor (but not the railroad) in return for an equivalent amount of Bolivian territory and the exclusive use of the Rio Lauca waters. Bolivia agreed, and Chile then consulted Peru as required under the terms of the Complimentary Protocol to the Treaty of Santiago. Peru responded with its own counterproposal—cession of a corridor to Bolivia which would stretch only as far as the Pan American highway. The remaining area between the highway and the sea (along with Arica) would become an international zone under tri-partite administration, but Bolivia would be allowed to build a sovereign port within this area. Chile rejected the Peruvian idea and efforts to revive the negotiation failed.¹⁹⁶ Today slightly over a century after signing its provisional Pact of Truce with Chile, Bolivia still remains landlocked.

WORLD WAR I'S AFTERMATH AND THE *TREATY OF VERSAILLES*

Of equal importance to the growth and decline of colonial empires in its ramifications for landlocked and geographically disadvantaged areas was the shifting balance of power between the major European states. One early example of this was the Final Act of the 1815 Congress of Vienna, following the collapse of Napoleon's Empire. Many of the treaty provisions, although framed in terms of river navigability, directly related to problems of geographical disadvantage. Thus the question of navigation on the Meuse was of interest not only to the augmented Kingdom of the Netherlands, but also to France while articles on the Rhine potentially affected the landlocked

192. *Id.* at 108.

193. *Id.* at 107-08.

194. *Id.* at 110 (This took place on October 4, 1963).

195. Glassner, *supra* note 177, at 377.

196. *Id.* at 377-78.

states of Switzerland, Baden and Hessen, as well as a geographically disadvantaged segment of Prussia.¹⁹⁷

The most obvious example of the effect of Europolitics on this problem, however, is the aftermath of World War I. From the ashes of this "war to end all wars," it was hoped, would arise a reconstituted, fairer Europe. In this new order, problems of geographic disadvantage would be minimized. In a message of January 22, 1917 to the United States Senate, President Wilson "declared that all States, especially countries with no access to the sea, should be provided with the means of communicating freely with the seashore towards which they appear to have a natural outlet."¹⁹⁸ Indeed two of the President's Fourteen Points specifically guaranteed free and secure access to the sea for Serbia (Point 11) and Poland (Point 13).¹⁹⁹ Switzerland apparently felt the time was opportune to request recognition of their right to a flag. In a memorandum communicated to the President of the Paris Peace Conference, they noted:

Although the right of flying the national flag as an emblem of sovereignty must be considered as a part of the fundamental rights of every independent State, the Swiss Confederation would attach great value to formal recognition of this right by the Powers, all the more so since Switzerland, in spite of her land-locked situation in the heart of the continent, has a considerable share in the world's commerce. At the present time, when the Powers are about to place all international relations on the basis of Right, the Swiss Government feels particularly justified in expressing this wish for an international confirmation of their unquestionable rights

...²⁰⁰

197. See SHEPHERD, *supra* note 33, at 157; GLASSNER, *supra* note 6, at 18 (noting: "Of particular concern at that time were the Scheldt, the Meuse and the Rhine.").

198. See also GLASSNER, *supra* note 6, at 18.

199. See GLASSNER, *supra* note 6, at 19; *The Fourteen Points*, 9 ENCYCLOPAEDIA BRITANNICA 670, 671 (1964) ("Serbia accorded free and secure access to the sea" and "An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea"). Glassner goes on to note that while Serbia gained its seacoast through incorporation into Yugoslavia,

Poland became the beneficiary of a relatively new concept, the actual annexation of territory intervening between an inland state and the sea. Such a corridor to the sea would, supposedly, provide greater security for the land-locked state because any attempt to interfere with commerce there by another state would be a violation of natural sovereignty and thus more serious than a violation of freedom of transit. Corridors became fashionable during the territorial reorganizations following the First World War, with Finland, Iraq, Trasjordan, Palestine and Colombia receiving very short shorelines on the open sea or a navigable river. The scramble for African land produced similar corridors in the late nineteenth century, but the most important—and contentious—was undoubtedly the Polish Corridor.

GLASSNER, *supra*, at 19.

200. "Memorandum on the Claim of Switzerland to a Maritime Flag Communicated to the President of the Paris Peace Conference (1919)." U.N. Doc. A/Conf. 13/C.5/L.1, Appendix I [hereinafter "Memorandum on the Claim of Switzerland"].

"[U]nrestricted navigation upon the open sea," argued the Swiss, was a right possessed by every state.²⁰¹ As a flag "is the symbol of a State's sovereignty over the ship" its recognition by others is "an international duty, resulting from the fundamental right of respect to which every State may lay claim."²⁰² "[T]he right of inland countries to navigating remained, on principle, undisputed and whenever objections were raised, it was generally not a question of right but of practical difficulties which opposed themselves to the exercise of this right on the part of States, that are deprived of any access to the sea."²⁰³ To exclude landlocked countries from this right would be to violate "the principle of equality of States . . ." and would be inconsistent with equity and international right.²⁰⁴ Finally, Switzerland noted, there were economic arguments in support of her claim.

The desire of Switzerland to create a commercial fleet of her own, enjoying the same rights and being subject to the same duties as the fleets of other countries, is not dictated by reasons of international policy, as might be the case with a larger country, nor by the aspiration of making her navigation subservient to the purpose of economic conquest or colonial expansion. Undoubtedly Switzerland feels the inconvenience of being entirely dependent on foreign maritime trade for the transmission of her correspondence and for her intercourse with her representatives abroad. Nevertheless, when she sustains her claim to an ocean traffic under her own flag, she is mainly prompted by the needs of her economic life. These needs are the result of the special character of the Swiss industry, which by reason of the smallness of the inland market and of the scarcity of the raw materials is entirely dependent on importation and exportation; moreover, the existence of a comparatively dense population, which entails the necessity of revictualing the country from beyond the sea.²⁰⁵

This memorandum, a remarkable brief for access to the sea, closed by noting that "[t]he Swiss Government would be highly gratified if in stating these facts they had succeeded in convincing the Powers of the legitimacy of their claim as well as of the necessity for Switzerland to possess a recognized maritime navigation."²⁰⁶

201. *Id.* Rather ironically, according to Colombos,

Before the war of 1914-18, there was some doubt as to whether a State without a seaboard could claim the right to a maritime flag. The question was raised in Switzerland several times, but on each occasion the Swiss Federal Council declined to give permission to Swiss subjects to use the national flag at sea. They were consequently compelled to use the flag of some other State.

C. JOHN COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 293-94 (6th ed. 1967); *see also* 1 PAUL FAUCHILLE, *TRAITÉ DE DROIT INTERNATIONAL PUBLIC*, 904 (1925).

202. "Memorandum on the Claim of Switzerland," *supra* note 200.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

That Switzerland's appeal received attention in the Treaty of Versailles is suggested by Article 273, which reads in pertinent part:

[R]ecognition shall be accorded to the certificates and documents issued to their vessels by the Governments of new States, *whether they have a sea-coast or not*, provided that such certificates and documents shall be issued in conformity with the general practice observed in the principal maritime States.

The High Contracting Parties agree to recognise the flag flown by the vessels of an Allied or Associated Power *having no sea-coast* which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.²⁰⁷

Certainly the Treaty's internationalization of several European rivers²⁰⁸ and its concern with freedom of transit issues²⁰⁹ suggests an awareness of the problems faced by landlocked and geographically disadvantaged entities.

THE LEAGUE OF NATIONS, THE *BARCELONA CONVENTIONS*, AND THEIR AFTERMATH

The concept of free transit was enshrined in the Covenant of the League of Nations. Article 23 notes that:

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914 to 1918 shall be borne in mind.²¹⁰

207. Treaty of Versailles, Versailles, June 28, 1919, 2 BEVANS 43 (emphasis added).

208. These included:

- the Elbe [Labe] from its confluence with the Vltava [Moldau]
- the Vlatva [Moldau] (from Prague)
- the Oder [Odre] (from its confluence with the Oppa)
- the Nieman [Russtron-Memel-Nieman] (from Grodno)
- the Danube (from Ulm)

See Treaty of Versailles, *supra* note 207, art. 331. See also *id.*, arts. 332, 338 (the latter stating that the regime of arts. 332-37 would be superseded by provisions of a General Convention to be drawn up).

209. See *id.*, arts. 321-24. Again, a Convention on the subject was visualized. See *id.*, art. 379; 9 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1143 (1968).

210. Covenant of the League of Nations, Art. 23, reprinted in SECRETARIAT OF THE UNITED NATIONS, QUESTION OF FREE ACCESS TO THE SEA OF LANDLOCKED COUNTRIES, Jan. 14, 1958, Doc. A/CONF. 13/29 at 117 [hereinafter QUESTION OF FREE ACCESS].

This article is of interest in having what might be considered to be one of the earliest formal references to geographical disadvantage, in the form of devastation from the war.²¹¹ More importantly, however, Article 23 is considered a milestone in the development of multilateral support for freedom of transit; "[t]he development . . . resulting from this provision has been described in a great many works. . . ."²¹² To fulfill the provisions of 23(e), the Council of the League resolved on May 19, 1920 to invite members to attend a General Conference, which would also consider "conventions on the régime of ports, waterways and railways referred to in articles 338 and 379 of the Treaty of Versailles."²¹³

A Commission of Enquiry on Freedom of Communications and Transit was established under the resolution, and eventually submitted six documents to the General Conference:

- A draft convention on the right to a flag of States not possessing a sea coast.
- A draft convention on freedom of transit.
- A draft convention on the international régime of navigable waterways.
- A draft convention on the international régime of railways.
- A resolution relating to an international régime for ports.
- A general scheme to organize a General Communications and Transit Conference and a Permanent Communications and Transit Committee.²¹⁴

The first three of these found expression in the form of a declaration and two conventions (and accompanying statutes) covering these topics. While a convention had been suggested on the subject of the right of states not possessing a seacoast to nonetheless have their own flag vessels, the British delegate suggested that legal problems might result from this process. "It may be claimed that the right to a flag cannot be granted in a Convention which is open to denunciation. Legal difficulties might ensue. The vessels flying the flag of Switzerland, for example, might be considered as pirates."²¹⁵ This was overcome by recasting the draft convention's principle as a "Declaration," as follows:

211. While this criterion does not exactly match any of those given by Alexander, *see supra* text at notes 30-31, it is similar to "(7) Status as 'least developed state.'"

212. QUESTION OF FREE ACCESS, *supra* note 210, at 118. According to Povolny, "[b]efore World War I there was little positive international law concerning the transit rights of transit of goods across the states party to it was the Universal Postal Union created by the Berne Postal Congress on 9 October 1874." Povolny, *supra* note 8, at 2.

213. QUESTION OF FREE ACCESS, *supra* note 210, at 119.

214. *Id.* at 122. This last scheme was in response to a League proposal "to organize a Permanent Communications Committee to consider and propose 'measures calculated to assure freedom of communications and transit at all times. . . .'" *Id.* at 119.

215. *Id.* at 157.

The undersigned, duly authorised for the purpose, declare that the States which they represent recognise the flag flown by the vessels of any State having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.²¹⁶

The text of the Declaration, as has been pointed out, resembles that of the relevant article of the Treaty of Versailles.²¹⁷ The Convention and Statute on Freedom of Transit,²¹⁸ essentially codified the existing practices of bilateral treaties in a multilateral context.²¹⁹

The convention recognized the right of landlocked countries to transit their coastal neighbors with equality of treatment. This meant that the inland states had the right to have the same facilities for access to the sea as if the journey had taken place in the territory of a single state. Thus the transit state was obliged to assist the movement of goods across its territories, to levy no discriminatory tolls or taxes, and to fix only reasonable freight charges.²²⁰

While equality of freedom of transit was recognized, the interpretation of this concept was restricted, the general reason for this being the desire to reserve benefits to those who ratified or acceded to the convention, and had thus assumed its obligations.²²¹ Furthermore, the right of free transit was not absolute,²²² not overriding the rights and duties of belligerents and neutrals in time of war,²²³ not applying to passengers or goods excluded for reasons of health or public security,²²⁴ and not affecting provisions of conventions "relating to the transit, export or import of particular kinds of articles"²²⁵ ". . . or in pursuance of general Conventions intended to prevent any infringement of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition."²²⁶ While article 13 of the Statute provided for the settlement of dis-

216. Declaration recognising the Right to a Flag of States having no Sea-coast, Barcelona, April 20, 1921, 7 L.N.T.S. 73, at 74.

217. See QUESTION OF FREE ACCESS, *supra* note 208, at 156; *supra* note 207 and accompanying text.

218. Convention and Statute on Freedom of Transit, Barcelona, April 20, 1921, 7 L.N.T.S. 11.

219. See Povolny, *supra* note 8, at 3.

220. *Id.*

221. See QUESTION OF FREE ACCESS, *supra* note 210, at 135; see also *id.*, at 132.

222. See Povolny, *supra* note 8, at 3.

223. See Statute on Freedom of Transit, *supra* note 218, art. 8.

224. See *id.*, art. 5.

225. Including opium, dangerous drugs, arms, or the "produce of fisheries." *Id.*

226. *Id.* Additionally, article 12 of the Statute continued the special treatment accorded states damaged during World War I, allowing them "to be relieved temporarily of the obligations arising from the application . . . [of any provision of the Statute], it being understood that the principle of freedom of transit must be observed to the utmost possible extent." *Id.*, art. 12.

putes,²²⁷ it should be noted that the Convention and Statute were products of a divided international community, not only split between those who favored liberal and restrictive treatment toward non-signatories,²²⁸ but fractured along regional lines.²²⁹

The Convention and Statute on the Régime of Navigable Waterways of International Concern²³⁰ and an Additional Protocol²³¹ on the same subject also resulted from the Barcelona meeting. The former was viewed as a "Revised Act of Vienna,"²³² and required equality of treatment by states parties on "navigable waterways of international concern"²³³ to the extent that:

- no dues (except those intended to cover actual expenditures for maintenance and improvements) might be levied along the course of or at the mouth of such waterway
- persons and goods in transit would be exempted from customs formalities
- users of contracting States would be given treatment equal to that of nationals of the riparian State in the use of ports, port installations, etc.²³⁴

227. See *id.*, art. 13; QUESTION OF FREE ACCESS, *supra* note 210, at 137-40.

228. See QUESTION OF FREE ACCESS, *supra* note 210, at 182.

229. See *id.* at 146, which notes "that most of the Latin American representatives . . . 'took pains to point out that the drafts submitted to them were too exclusively European in character and did not take sufficient account of the special position, in fact and in law, of the States of the New World.'"

230. Convention and Statute on the Regime of Navigable Waterways of International Concern, Barcelona, April 20, 1921, 7 L.N.T.S. 35.

231. Additional Protocol to the Convention on the Regime of Navigable Waterways of International Concern, Barcelona, April 20, 1921, 7 L.N.T.S. 65.

232. See *supra* note 197 and accompanying text; QUESTION OF FREE ACCESS, *supra* note 210, at 149 (noting that "the document [the draft convention and statute] differs substantially from these earlier instruments").

233. Defined as those in which:

(1) All parts are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

(2) Waterways, or parts of waterways, whether natural or artificial, expressly declared to be placed under the regime of the General Convention regarding navigable waterways of international concern either in unilateral acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent, in particular, of such States.

See Statute on the Regime of Navigable Waterways of International Concern, *supra* note 230, art. 1.

234. See QUESTION OF FREE ACCESS, *supra* note 210, at 153.

The Additional Protocol provided that its signatories ("on condition of reciprocity . . . and in time of peace") conceded either on "all navigable waterways" or on "all naturally navigable waterways" not considered of international concern but accessible to ordinary commercial navigation to and from the sea, "perfect equality of treatment for the flags of any State signatory of this Protocol as regards the transport of imports and exports without transshipment."²³⁵

The Barcelona Conference also adopted recommendations on two other matters for which documents had been submitted by the Commission,²³⁶ international regimes for ports and railways.²³⁷ Subsequently, these were also made the subject of conventions at the Second General Conference on Communications and Transit, held at Geneva in 1923, giving effect to the "free transit" principles of the Barcelona Conference.²³⁸

*Case Relating to the Territorial Jurisdiction of the
International Commission of the River Oder*²³⁹

This early freedom of transit case has obvious ramifications for the development of international law dealing with landlocked and geographically disadvantaged nations. It initially arose out of Article 341 of the Versailles Treaty, establishing an International Commission for the Oder, one of whose duties was to define the parts of the river which would be liable to the General Convention to be drawn up under the terms of Article 338.²⁴⁰

[A]t the Fourth Session of the Commission, held at Swinemunde in July, 1922, the Polish delegate maintained that "the Warta should be internationalized from its confluence with the Oder up to the Polish frontier," . . . the delegate for Prussia, on the contrary, submitted that if the principle of the internationalization of tributaries was to be adapted, it must be integrally maintained, and the navigable portions of tributaries situated in Polish

235. Additional Protocol, *supra* note 231.

236. See *supra* text at note 214; The sixth matter, the scheme for a Permanent Communications and Transit Committee and a General Communications and Transit Conference, was also adopted. See QUESTION OF FREE ACCESS, *supra* note 210, at 140-43.

237. See QUESTION OF FREE ACCESS, *supra* note 210, at 160, 163.

238. See *id.* at 160-68; Convention and Statute on the International Régime of Railways, Geneva, December 9, 1923, 47 L.N.T.S. 55; Convention and Statute on the International Régime of Maritime Ports, Geneva, December 9, 1923, 58 L.N.T.S. 285. It is particularly noteworthy that paragraph (4) of the Signature of Protocol for the latter convention states that:

It is understood that the conditions of reciprocity laid down in article 2 of the Statute . . . shall not exclude from the benefit of the said Statute Contracting States which have no maritime ports and do not enjoy in any zone of a maritime port of another State the rights mentioned in article 15 of the said Statute.

See QUESTION OF FREE ACCESS, *supra*, at 168.

239. Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder, 1929 P.C.I.J., ser. A, no. 23 (Judgment of Aug. 15) [hereinafter *River Oder Case*].

240. *Id.* at 13.

territory should be not excluded from the international river system. The other delegates . . . more or less completely took the same view.²⁴¹

When a reconciliation proved impossible, the question was referred (under Article 376 of the Versailles Treaty) to an Advisory and Technical Committee, whose suggestion for conciliation was rejected by Poland (Germany reserved its opinion).²⁴² A Special Agreement was then drafted and signed in October 30, 1928 to bring the question before the Permanent Court of International Justice.²⁴³ As formulated, the controversy there presented was:

(1) Does the jurisdiction of the International Commission of the Oder extend to those portions of the Warthe (Warta) and the Netze (Notec), tributaries of the Oder, which are situated in Polish territory?

(2) If so, what is the law that should govern the determination of the upstream limits of this jurisdiction?²⁴⁴

As a preliminary matter, the Court noted that whether "Oder" in the Treaty of Versailles included *only* that river, or the Oder *and* its tributaries, in no way changed the terms of the controversy put before the Court under the Special Agreement.²⁴⁵ The second matter then considered was whether the Barcelona Convention might be invoked against Poland (a non-ratifying state) by means of Article 338 of the Treaty of Versailles, allowing some provisions of the treaty to be superseded by those of a future General Convention (agreed to be that held at Barcelona).²⁴⁶ Arguing that Article 4 of the Barcelona Convention itself required ratification, the Court concluded that this agreement had no role in the controversy, which should be solved "solely on the basis of the Treaty of Versailles."²⁴⁷

Turning to the principal matter at hand, the Court noted that the special clauses of the Treaty of Versailles "must not merely be read and interpreted in the light of the general clauses, but also that they find in the latter a natural complement."²⁴⁸ Article 341 of the Treaty, must thus be interpreted with reference to Article 331.²⁴⁹

It is true—and on this point the Polish representatives have insisted repeatedly and from different points of view—that what is called the "regime of internationalization" of rivers . . . is not necessarily bound up

241. *Id.* at 14.

242. *Id.* at 14-15.

243. *Id.* at 16.

244. *Id.* The court goes on to note that consideration of the second issue depends upon a positive determination of the first.

245. *Id.* at 17.

246. *Id.* at 18-29. *See also supra* note 208.

247. *Id.* at 22.

248. *Id.* at 23.

249. *Id.*

with the administration by an international commission. But it is nonetheless true that, when a Commission is set up, it is natural to suppose that the territorial limits of the "regime" and of the "administration" by the Commission . . . are coincident. Failing any contrary indication drawn from the context, it must therefore be understood that the competence of a river commission with such a function extends to all the internationalized portions of the river and river system.²⁵⁰

This, the Court held, was true in the present case.²⁵¹ "If the territorial limits of the régime . . . and those of the Commission's administration are the same . . . , it follows that the question before the Court must be determined according to the terms of Article 331" ²⁵² "[T]he only point at present in dispute is the meaning of the words 'all navigable parts of these river systems which naturally provide more than one State with access to the sea.'" ²⁵³

The navigability of the Warthe . . . and the Netze . . . in Polish territory being assumed, the Court has to deal only with . . . whether that part of the two tributaries which is above the German frontier may be regarded as providing more than one State with access to the sea, in the sense of Article 331 of the Treaty of Versailles.²⁵⁴

Rather than relying on textual arguments,²⁵⁵ the Court decided to consider "the principles governing international fluvial law in general and . . . what position was adopted by the Treaty of Versailles in regard to these principles."²⁵⁶

If the common legal right is based on the existence of a navigable waterway separating or traversing several States, it is evident that this common right extends to the whole navigable course of the river and does not stop short at the last frontier;

It therefore remains to consider what is the position adopted in this matter by the Treaty of Versailles. In contradistinction to most previous treaties which limit the common legal right to riparian States, the Treaty of Versailles . . . adopted the position of complete internationalization, that is to say, the free use of the river for all States, riparian or not. . . .²⁵⁷

Noting that "[t]he introduction of representatives of non-riparian Powers on the river commissions is not exclusively or mainly due to the desire to afford

250. *Id.*

251. *Id.* at 23-24 (noting positive evidence in that Article 344(b) of the Convention "defines the matters confided to the Commission's powers in a manner exactly corresponding to the régime set out in Articles 332 to 337 . . . which Article 332 in its turn expressly refers to Article 331").

252. *Id.* at 24.

253. *Id.* at 24-25.

254. *Id.* at 25.

255. *See id.* at 26.

256. *Id.*

257. *Id.* at 27-28.

a greater measure of protection to the interests of landlocked States," but is rather the result of general interest in freedom of navigation,²⁵⁸ the Court went on to note that "Article 331 must therefore be interpreted in the light of these principles, which leave no doubt that the internationalization of a waterway traversing or separating different states does not stop short at the last political frontier, but extends to the whole navigable river."²⁵⁹ Having answered the first question in the affirmative,²⁶⁰ the Court then quickly disposed of the second. "It follows that the jurisdiction of the Commission extends up to the points at which the Warthe . . . and the Netze . . . cease to be either naturally navigable or navigable by means of lateral channels or canals . . ." ²⁶¹

While the Court upheld transit rights in the *River Oder Case*, these were based on a specific treaty and, for all their importance, did not herald a general advance for landlocked and geographically disadvantaged states. Indeed another transit decision, *Railway Traffic Between Lithuania and Poland (Railway Sector Landwarow-Kaisiadorys)*,²⁶² could be cited as a setback for free transit. The question before the Court in this controversy was whether international engagements then in force required Lithuania to open the above-named railway sector for traffic (it was part of the line supplying the ports of Libau, Koningsberg, and Memel with traffic, and Lithuania wished to keep it closed until a border dispute was solved).²⁶³

In its reasoning the Court decided that Article 23(e) of the Covenant of the League of Nation did not imply any specific obligation for a member State "to open any *particular* lines of communication."²⁶⁴

Specific obligations can therefore only arise, as this text clearly states, from "international conventions existing or hereafter to be agreed upon," for instance from "general conventions to which other Powers may accede at a later date," as is stated in the Preamble to the Barcelona Convention on freedom of transit.²⁶⁵

The only applicable convention would be the Memel Convention between Lithuania, France, Italy, the British Empire, and Japan, establishing the regime of the territory and port of Memel.²⁶⁶ Article 3 of Annex III provided that the Lithuanian government "shall ensure the freedom of transit by sea, by water or *by rail*, of traffic coming from or destined for the Memel

258. *Id.* at 28.

259. *Id.* at 29.

260. *See supra* note 244 and accompanying text.

261. *River Oder Case*, *supra* note 239, at 31.

262. *Lithuania v. Poland*, 1931 P.C.I.J. 749, ser. A/B No. 34 (Advisory Opinion of Oct. 15) [hereinafter *Railway Traffic Case*].

263. *See id.* at 752.

264. *Id.* at 757 (emphasis added).

265. *Id.* at 758.

266. (May 8, 1924), 29 L.N.T.S. 85.

Territory or in transit . . .” and that, in this respect, it would conform with the rules laid down by the Barcelona Convention.²⁶⁷ While Article 2 of the Statute of Barcelona stated that contracting parties “shall facilitate free transiting by rail or waterway, on routes *in use convenient for international transit*,” this did not cover the railway or sector in dispute “since it only affords communication with Memel by means of a detour or by means of reloading on to barges at Kovno.”²⁶⁸

Because of this, neither the Memel Convention nor the Statute of Barcelona put Lithuania under an obligation to restore the Landwarow-Kaisiadorys railway sector and to open it to international traffic. Article 3 of the Memel Convention also specified that Lithuania would not apply the stipulation of Articles 7 and 8 of the Barcelona Statute to traffic on the river or to, from, or in the port of Memel “on the ground of the present political relations between Lithuania and Poland.”²⁶⁹ Here, the Court noted, railways were not mentioned; “it is clear . . . that . . . [Lithuania might invoke Article 7 of the Barcelona Statute] with regard to railways of importance to the Memel territory.”²⁷⁰ Therefore, the Court unanimously concluded, “the international engagements in force do not oblige Lithuania in the present circumstances to take the necessary steps to open for traffic or for certain categories of traffic the Landwarow-Kaisiadorys railway sector.”²⁷¹

POST WORLD WAR II DEVELOPMENTS

The General Agreement on Tariffs and Trade (GATT) was an attempt to reduce tariffs and other trading barriers. Adopted on October 30, 1947, it generally reaffirmed the principles of the Barcelona Convention.²⁷² At the same time that this agreement was prepared, however, a Charter of World Trade was also drafted for submission to a conference in Havana. This conference, which began in November 1947, had as its purpose the establishment of an International Trade Organization (ITO) which was to supervise a global trading system founded on free trade and private enterprise. (In the event the charter was only ratified by one country and never went into effect.)²⁷³ Article 33 of the Havana Charter was in fact very similar to Article V of GATT, with a major difference. A new paragraph 6 read:

267. See *Railway Traffic Case*, *supra* note 262, at 758.

268. *Id.* at 758-59.

269. *Id.* at 759.

270. *Id.*

271. *Id.* at 760.

272. See Povolny, *supra* note 8, at 3; GLASSNER, *supra* note 6, at 22-23.

273. See GLASSNER, *supra* note 6, at 23.

The Organization may undertake studies, make recommendations and promote international agreement relating to the simplification of custom regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article. Members shall cooperate with each other directly and through the Organization to this end.²⁷⁴

Commentary on this paragraph relates specifically to landlocked states:

If, as a result of negotiations in accordance with paragraph 6, a Member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs of article 33, such special facilities may be limited to the land-locked country concerned unless the Organization finds, on the complaint of any other Member, that the withholding of the special facilities from the complaining Member contravenes the most favoured nation Provisions of this Charter.²⁷⁵

This raised for the first time the Most Favoured Nation controversy which was to prove one factor in the debates of the Fifth Committee at UNCLOS I.²⁷⁶

The next post-war development resulted from friction between landlocked Afghanistan and Pakistan, whose borders were closed to transit in 1950 and again in 1955 due to a dispute over the status of Pushtunistan.²⁷⁷ This led indirectly to the consideration of the status of certain Asian landlocked states—Afghanistan, Nepal, and Laos—at the 12th session of the Economic Commission for Asia and the Far East in February, 1956.²⁷⁸ ECAFE approved a resolution "that the needs of land-locked Member States and Members having no easy access to the sea in the matter of transit trade be given full recognition by all Member States and that adequate facilities therefore be accorded in terms of international law and practice in this regard."²⁷⁹ Glassner notes "[t]his was the first time that a major international body gave special consideration to the 'needs' of land-locked states as such. The word 'needs' is prominent here, and not 'rights,' but there is no indication of a necessity for new rules or procedures. . . ."²⁸⁰ A series of recommendations followed in an ECAFE report on *Problems of trade of land-locked countries in Asia and the Far East*:

(1) That countries who have so far not acceded to the Barcelona Statute of [sic] Freedom of Transit be urged to do so at an early date. . . . It may

274. See *id.* at 23-24; QUESTION OF FREE ACCESS, *supra* note 210, at 24.

275. 9 WHITEMAN, *supra* note 209, at 1146; QUESTION OF FREE ACCESS, *supra* note 210, at 24.

276. See GLASSNER, *supra* note 6, at 23-24.

277. See GLASSNER, *supra* note 6, at 51-54. *But see id.* at 25 (giving 1949 and 1953 as the years of closure).

278. See GLASSNER, *supra* note 6, at 25.

279. See *id.*; QUESTION OF FREE ACCESS, *supra* note 187, at 27.

280. GLASSNER, *supra* note 6, at 25.

also be hoped that all the countries of the region would eventually join the General Agreement on Tariffs and Trade and thereby also accede to the principles and articles relevant to the transit trade.

(2) That countries be urged to negotiate and conclude bilateral agreements in conformity with the principles of the Barcelona Statute, the Havana Charter and the GATT . . . [and] bear in mind . . . also the necessity for adopting concrete administrative procedures and practices . . . to facilitate the implementation of the basic principles of freedom of transit.

(3) . . . that the officials and personnel handling or dealing with the various phases of transit trade should receive proper training, not only in the principles of transit trade but also in the relevant administrative aspects.

(4) . . . the countries should include in their economic development plans, plans for improvement of transport, development of new routes . . . which will facilitate the transit trade between neighbouring and contiguous countries and which will particularly provide additional transport for the trade of land-locked countries.²⁸¹

ECAFE served as the stimulus for the UN's consideration of free access, and its eventual inclusion in the agenda of UNCLOS I.²⁸² At the same time, however, another regional body, the Organization of American States, was considering this topic. At its Economic Conference in Buenos Aires in August-September, 1957, two resolutions dealt with the status of landlocked states. Resolution No. 23 on the Utilization of River Systems and Facilities for Landlocked States noted:

WHEREAS:

. . . .
Landlocked countries require, for the normal development of their economic activities, suitable treatment that is designed to lessen the drawbacks of their geographical position;

. . . .
The Economic Conference of the Organization of American States

RESOLVES:

1. To recommend to the member states through which the rivers of a system flow, that, in order to facilitate international traffic and stimulate the economic development of such states, they enter into agreements to arrange for a study of the international rivers under their jurisdiction, to cover the technical aspects involved in their navigability and their industrial and agricultural utilization, as well as the improvement of the transportation systems.

2. The adoption by the member states, with respect to land-locked countries, of measures that will envisage:

a. The fullest freedom of transit, without taxes or limitations, for commodities imported or exported by the said countries; and

b. Nondiscrimination in the matter of domestic transportation rules for goods in transit, except in those cases in which the governments give special subsidies, no matter what their

281. *Id.* at 25-26; see also QUESTION OF FREE ACCESS, *supra* note 210, at 29; 9 WHITEMAN, *supra* note 209, at 1148.

282. See GLASSNER, *supra* note 6, at 26.

form, to such transportation. The measures referring to this subparagraph do not include air transportation.²⁸³

Resolution No. 38, adopted at the same Conference, dealt with Free Transit for Landlocked Countries. Because "[t]he landlocked countries by utilizing free-transit facilities, will be able to expand their foreign trade," it was resolved "[t]o recommend to the governments of the member states that they grant the greatest possible facilities to permit free transit in behalf of the trade of the landlocked countries."²⁸⁴

UNCLOS I AND THE FIFTH COMMITTEE

While the draft articles submitted by the International Law Commission (which formed the basis for the First United Nations Conference on the Law of the Sea) to the United Nations General Assembly had no references to landlocked states, an amendment to Resolution 1105 (XI) concerning the convening of a Conference "included the specific recommendation that the conference should study the question of free access to the sea of land-locked countries, as established by international practice or treaties."²⁸⁵ In due course a preliminary meeting of several landlocked states formulated a set of principles concerning free access to the sea, referred to by some as the *Magna Carta* of landlocked states. These included seven major points which dealt with:

- right of free access to the sea
- right to fly a maritime flag
- right of navigation
- right to be applied in ports
- right of free transit
- right of states of transit
- existing and future agreements²⁸⁶

While only a few of these points were fully accepted by the 1958 Conference, they served as useful aspirational goals and provided discussion points for the Fifth Committee, which considered landlocked issues.²⁸⁷

Meetings of this Committee took place during February, March, and April of 1958.²⁸⁸ As Mr. Zourek of Czechoslovakia, the Committee

283. 9 WHITEMAN, *supra* note 209, at 1148-49.

284. *Id.* at 1149.

285. QUESTION OF FREE ACCESS, *supra* note 210, at 1; *see also id.* at 5-19.

286. *See* Caflisch, *supra* note 25, at 80; 9 WHITEMAN, *supra* note 209, at 1150-51 (giving a full version of all seven points).

287. *See* Caflisch, *supra* note 25, at 80-81.

288. 7 UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA: OFFICIAL RECORDS [FIFTH COMMITTEE (QUESTION OF FREE ACCESS TO THE SEA OF LAND-LOCKED COUNTRIES)], U.N. Doc. A/CONF. 13/40 (24 February-27 April 1958), at iii-iv.

Chairman, noted in his opening address, the Fifth Committee was the only group at UNCLOS I which did not base its work on an International Law Commission Draft, and did not have the benefit of prior thorough study by the General Assembly. In addition to the work of the Preliminary Conference of Land-locked States, however, the Committee did have before it a written statement from Afghanistan's mission to the U.N., a January 1958 memorandum by the Swiss Government to UNCLOS I, and a series of draft articles on the subject prepared by Czechoslovakia. Organizationally, the Chairman suggested that a general debate should be allowed to air the views of landlocked and coastal states, this to be followed by more specific proposals to frame draft articles similar to those offered on other subjects by the International Law Commission.²⁸⁹

After the general debate the Fifth Committee found itself roughly split into three factions. One group made up of coastal states (largely, but not exclusively European) favored the status quo—more accessions to the Barcelona and Geneva Conventions, the use of bilateral treaties governing access to the sea, and perhaps a general declaration of principles. At the other pole were those landlocked countries, many of them (but not all) Third World, who wished a separate convention on free access to the sea. In between was an amorphous group of compromisers.²⁹⁰

On March 26 and 27, two different proposals were submitted to the Fifth Committee. The first was known as the Nineteen Power Proposal. It was sponsored by Afghanistan, Albania, Austria, Bolivia, Bulgaria, the Byelo-russian Soviet Socialist Republic, Czechoslovakia, Ghana, Hungary, Iceland, Indonesia, Laos, Luxembourg, Nepal, Paraguay, Saudi Arabia, Switzerland, Tunisia, and the United Arab Republic.²⁹¹ The second, or Three Power Proposal, was the joint work of Italy, the Netherlands, and the United Kingdom.²⁹² The Nineteen Power Proposal was generally based on the draft articles previously submitted by Czechoslovakia. Sections on Free Zones in ports, settlement of international disputes and the effect of armed conflicts which were present in the draft articles were, however, omitted, while a section was added on landlocked states' rights in the territorial sea and internal waters of a coastal state.²⁹³ The Three Power Proposal was a radical departure from this framework. It recommended that the main convention note specifically that landlocked states were included in its terms, and that they had a right to flag vessels in the high seas concurrent with that of other coastal states. Additionally, the Proposal recommended a resolution on "Free Access to the Sea of Land-Locked Countries," which reiterated the

289. *See id.* at 2-4 (at 1-29).

290. *See id.* at 4-28 (at 1-29 (4th mtg.); 1-36 (5th mtg.); 1-25 (6th mtg.); 1-48 (7th mtg.); 1-36 (8th mtg.); 1-23 (9th mtg.), 1-38 (10th mtg.)).

291. U.N. Doc. A/CONF. 13/C. 5/L. 6.

292. U.N. Doc. A/CONF. 13/C. 5/L. 7.

293. *See* U.N. Doc. A/CONF. 13/C. 5/L. 6, *supra* note 291; U.N. Doc. A/CONF. 13/C. 5/L. 1 (Annexe 6).

rights to be granted in the Convention, urging all states to sign the Barcelona and Geneva conventions, and calling for bilateral agreements on the subject.²⁹⁴

This set the stage for a showdown at the next Committee meeting. Some claimed that the Nineteen Power Proposal was not in fact a proposal, but a working paper.²⁹⁵ Supporters argued that on the basis of "prior in time, prior in right," the Nineteen Power Proposal should be discussed first.²⁹⁶ Finally a compromise was proposed and adopted that both proposals should be introduced and discussed together point by point. A working party of landlocked, maritime, and maritime countries bordering on landlocked neighbours was set up "on the principle of equitable geographic distribution" to prepare a draft for the Committee to review.²⁹⁷ During discussions, the United States offered an amendment liberalizing the Three Power Proposal resolution by substituting phraseology recognizing the needs of landlocked states and stating that they should be accorded adequate facilities for access to the sea.²⁹⁸ This sparked a move to reconcile the two Proposals, with Mr. Muller, the Swiss delegate offering a compromise.²⁹⁹ The first part specifically made the provisions of the Convention applicable to landlocked states. The second, which was key to the compromise, included the seven principles by the Preliminary conference "in a flexible, condensed form; they were in no sense demands." These would serve as "outline-law" for the drawing up of necessary agreements.³⁰⁰ With support from the United States, Canada, and others it was decided to give priority to the study of the Swiss proposal, over the Nineteen and Three Power Proposals and the Report of the Working Party,³⁰¹ which involved a combination of parts of the Nineteen and Three Power Proposals along with the United States' and other amendments.³⁰² The Three Power Proposal was subsequently withdrawn by its sponsors in favor of the Swiss compromise.³⁰³ Subsequently a Five Power Amendment was offered by Bolivia, France, the Federal Republic of Germany, the Netherlands, and the United States, embodying certain changes to the Swiss compromise.³⁰⁴ Both this and the compromise were adopted by the Fifth Committee as a whole, and served

294. See U.N. Doc. A/CONF. 13/C. 5/L. 7, *supra* note 292.

295. See U.N. Doc. A/CONF. 13/40, *supra* note 288, at 28-30 (at 1-32 (11th mtg.)).

296. See *id.*

297. See *id.* at 31 (at 1 (12th mtg.)).

298. See *id.* at 41 (at 2-3 (16th mtg.)).

299. See U.N. Doc. A/CONF. 13/C. 5/L. 15; U.N. Doc. A/CONF. 13/40, *supra* note 288, at 45 (at 1-4 (18th mtg.)).

300. U.N. Doc. A/CONF. 13/40, *supra* note 288, at 45.

301. See A/CONF. 13/C. 5/L. 16.

302. See A/CONF. 13/40, *supra* note 288, at 48-51 (at 1-46 (20th mtg.)).

303. See *id.* at 51 (at 41 (20th mtg.)).

304. See U.N. Doc. A/CONF. 13/C. 5/L. 26; U.N. Doc. A/CONF. 13/40, *supra* note 288, at 55 (at 5 (23d mtg.)).

as the basis for those articles concerning landlocked states embodied in the UNCLOS I Conventions.³⁰⁵

Two conventions resulting from UNCLOS I included promises relating to landlocked countries. Article 14 of the Convention on the Territorial Sea and the Contiguous Zone noted that: "Subject to the provisions in these articles, ships of all States, *whether coastal or not*, shall enjoy the right of innocent passage through the territorial sea."³⁰⁶ The Convention on the High Seas produced three articles on the subject—Article 2 (noting that high seas freedoms applied "both for coastal and *non-coastal* States"),³⁰⁷ Article 4 ("every state *whether coastal or not*, has the right to sail ships under its flag on the high seas"),³⁰⁸ and Article 3. This reads in full:

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 convention 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 seaports 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 rights 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.³⁰⁹

In retrospect it is clear that Glassner is correct in noting the "inherently conservative approach" of UNCLOS I to the problem of landlocked states.³¹⁰ This appears to have been due to several factors. First, "discussions in the conference . . . revealed that there was no unanimous agreement relating to these principles, especially the right of free transit."³¹¹ There was not only a difference in theories on this latter point,³¹² but also on the

305. See U.N. Doc. A/CONF. 13/40, *supra* note 288, at 58 (at 58-59 (23d mtg.)).

306. Geneva, April 29, 1958, 516 U.N.T.S. 205; 15 U.S.T. 1606; T.I.A.S. No. 5639 (emphasis added).

307. Geneva, April 29, 1958, 450 U.N.T.S. 82; 13 U.S.T. 2312; T.I.A.S. No. 5200 (emphasis added).

308. *Id.* (emphasis added).

309. *Id.*

310. See GLASSNER, *supra* note 6, at 31.

311. Makil, *supra* note 8, at 44.

312. According to Mr. Thierry, the French representative:

Czechoslovakia maintained that the principle of freedom of transit was a simple corollary of the freedom of the high seas, whereas the Swiss representative regarded freedom of transit as a principle deriving from conventional international law—from treaties relating to transit. For others . . . [it] was an autonomous rule, distinct from

way the committee should treat any law thus systemized—by convention, by a statement of principles, or in some other manner.³¹³ Finally it appears that the concept may occasionally have been "held hostage" to extraneous issues. Israel voiced concern with coastal or transit states which might refuse to enter into necessary agreements. "That might happen when a State attempted to exploit its geographical situation as means of exerting pressure on a neighbouring State or of subjecting it to political blackmail."³¹⁴ Similarly, Pakistan's Zulfikar Ali Bhutto noted that if landlocked countries claimed the right of transit to the sea across the territory of a coastal state they must admit that the same right should be granted "to countries which were geographically divided and whose ports were separated by alien territories."³¹⁵

Case Concerning Right of Passage Over Indian Territory (Portugal v. India)

In 1497 Vasco da Gama crowned years of Portuguese efforts by circumnavigating the Cape of Good Hope and opened a new trade route to India.³¹⁶ From the early 16th century onward, it became Portuguese policy to build fortresses at strategic coastal locations to control and protect this trade.³¹⁷ Although Portuguese fortunes declined with the arrival of the Dutch and the English in the early 17th century, the Portuguese retained their Indian settlements, which included Goa, Diu, and Daman (Damao).³¹⁸ Daman, the subject of the International Court of Justice case, consisted of Damao, on the coast, and two enclaves; one small, Dadra, one larger, Nagar Aveli (Nagar Havili).³¹⁹ The coastal territory was conquered by the Portuguese in 1559 while their control over the internal districts resulted from the Marathas' (Mahrattas) indemnifications for piracy in 1779.³²⁰

that of freedom of the high seas, but nevertheless forming part of international law. One could also consider what place there was in international law for the controversial notion of international servitude held by certain authorities.

U.N. Doc. A/CONF. 13/40, *supra* note 288, at 13 (at 15 (6th mtg.)).

313. *See id.* (at 16 (6th mtg.)).

314. *Id.* at 25 (pg. 11 (10th mtg.)).

315. *Id.* at 26 (at 21 (10th mtg.)).

316. *See* RICHARD HUMBLE, *THE EXPLORERS* 86-104 (1979).

317. *See id.* at 105-07.

318. *See Case Concerning Right of Passage over Indian Territory (Portugal v. India)*, [1960] I.C.J. Rep. 6, at 27 (Judgment of Apr. 12) [hereinafter *Right of Passage Case*].

319. *See id.* at 27.

320. *See* L.D.S. [Laurence Duoley Stamp], *Damao*, in 7 *ENCYCLOPAEDIA BRITANNICA* 21 (1964); *India: Daman and Diu and :Goa*, in 21 *THE NEW ENCYCLOPAEDIA BRITANNICA* 152 (1991); *Right of Passage Case*, *supra* note 318, at 37-38; 78 (Armand-Ugon, J., dissenting). *See also* Judge Koo and Judge Armand-Ugon's mention of inconclusive negotiations between the Portuguese and the British for an exchange of land which would have allowed the uniting of Nagar-Aveli with Daman. *Id.* at 65 (Koo, J. separate opinion); at 81 (Armand-Ugon, J. dissenting).

Daman, as part of the larger overseas province of Estado da India, was subject to the governor general of Goa.³²¹

On August 15, 1947, India became independent, and on January 26, 1950, took its place as a federal republic within the British Commonwealth.³²² As early as 1948 and 1949, the new nation made clear that it laid claim to that part of the Portuguese overseas empire which lay on the Indian subcontinent.³²³ In 1950, a further approach by India sought acceptance of the principle of integration, allowing for discussion as to ways and means. Portugal refused to consider any transfer and India in turn noted that it could not accept this refusal as a final disposition of the question.³²⁴ In January of 1953 India again raised the issue, stating that a direct transfer was necessary, to be followed by a *de facto* transfer of the administration. In the absence of a Portuguese reply, India notified Portugal in May that it intended to close its Lisbon Legation and again stressed its views on the future of Portugal's Indian possessions.³²⁵ A Portuguese reply refused to discuss any transfer of authority, but requested India to reconsider its intention to close the Legation. India then notified Portugal that its Legation would be closed from June 11th, 1953.³²⁶ Four months later, India prohibited the transit of armed Portuguese personnel across India's territory, effectively starting the isolation of the Dadra and Nagar Aveli enclaves.³²⁷ By November 26, the pressure had increased; the governor of Daman, European officials and the car of the Portuguese police were not allowed access to Nagar Aveli without passports and Indian visas. Portugal noted that this would hamper administration and that the measure was considered to be unfriendly.³²⁸ India in turn noted that it had been required to review its policy because of Portugal's unfriendly attitude and the misuse of concessions by Portuguese officials. India did, however, offer to grant transit visas "as a very special case" to permanent Portuguese European officials.³²⁹ Amid further protest notes from the Portuguese, India on February 3rd, 1954 forbade most trans-shipments of arms and ammunition to Portuguese territories through India.³³⁰ On June 13 vehicular transit between Damao and the enclaves was interrupted by Indian authorities.³³¹

321. See *India: Daman and Diu*, *supra* note 320, at 152. See also *Right of Passage Case*, *supra* note 318, at 55 (Koo, J. separate opinion); L.D.S., *supra* note 320, at 21.

322. C.C.D. [Cuthbert Collin Davies] and X [the Editors], *India [Indian Independence]* in 12 *ENCYCLOPAEDIA BRITANNICA* 150, at 178 (1964).

323. See *India: Goa*, *supra* note 320, at 152.

324. See *Right of Passage Case*, *supra* note 318, at 110-11 (Spender, J. dissenting). See also *id.* at 65 (Koo, J. separate opinion).

325. *Id.* at 111 (Spender, J. dissenting). See also *id.* at 65-66 (Koo, J., separate opinion).

326. *Id.* at 111 (Spender, J., dissenting).

327. *Id.* (Spender, J., dissenting); see also *id.* at 141 (Fernandes, J., dissenting).

328. *Id.* at 111 (Spender, J., dissenting).

329. *Id.* at 112 (Spender, J., dissenting).

330. *Id.* (Spender, J., dissenting).

331. *Id.* (Spender, J., dissenting); see also *id.* at 141 (Fernandes, J. dissenting).

Some two weeks later imminent action was threatened in a manifesto by anti-Portuguese groups which was reproduced in the Indian press.³³² On July 17 India announced that it had "decided to make certain changes in the concessions hitherto granted to the Portuguese administration at Daman and Nagar-Aveli." Among other restrictions, this prohibited "the transport of firearms, and ammunition and military stores by a Portuguese officer, or intended for the Portuguese Indian Government, passing through Indian territory."³³³ On July 20 the Governor of Daman was not allowed to proceed to Dadra and a regularly scheduled bus was forced to turn back from the enclave.³³⁴ On July 21, the Governor was allowed to pass through to Dadra; according to India, the refusal of the previous day being attributed to visa problems.³³⁵ On the evening of the 21, a band of men entered Dadra from India to take over the administration. Two Portuguese officers were killed in the resulting melee and Portuguese resistance in this smaller enclave was overcome.³³⁶ India subsequently refused to grant any visas to Portuguese Europeans or Indians in the service of the Portuguese government seeking to travel to either Dadra or Nagar Aveli.³³⁷ On July 23 the President of the United Front of Goans, who had led the Dadra expedition, announced that similar action would be undertaken against Nagar Aveli.³³⁸ On July 24, Portugal requested transit facilities for the dispatch of reinforcements to Dadra,³³⁹ and on the 26 also requested that (as few as three) delegates of the Governor be allowed to proceed to Nagar Aveli to enter into contact with the population, examine the situation, and take necessary measures. (If possible this delegation was also to visit Dadra.) India refused both requests in a note of July 28.³⁴⁰ On July 29, the United Front's expedition against Nagar Aveli commenced, although that enclave was not completely subdued until August.³⁴¹ Portugal subsequently brought its case to the International Court of Justice in December, 1955.³⁴²

In its decision on the merits, the International Court of Justice summarized the matter before it as follows:

332. *Id.* at 13.

333. *Id.* at 112-13 (Spender, J., dissenting); *see also id.* at 13, 85 Armand-Ugon, J., dissenting); at 141 (Fernandes, J. dissenting).

334. *Id.* at 113 (Spender, J., dissenting); *see also id.* at 141 (Fernandes, J., dissenting).

335. *Id.* at 113 (Spender, J., dissenting).

336. *Id.* at 112 (Spender, J., dissenting); *see also id.* at 13, 141 (Fernandes, J. dissenting).

337. *Id.* at 113 (Spender, J., dissenting); *see also id.* at 141 (Fernandes, J., dissenting).

338. *Id.* at 13.

339. *Id.* at 14. *See also id.* at 141 (Fernandes, J., dissenting).

340. *Id.* at 14.

341. *Id.* at 114 (Spender, J., dissenting); *see also id.* at 13, 141 (Fernandes, J., dissenting).

342. *Id.* at 8-9. Viewing India's action (or lack of action) in a larger context, it is interesting to note that in November, 1954 a vote of the elected representatives of the French Indian municipalities transferred the administration of Pondicherry, a former French colony, to India. This ended a long dispute over the territories' status. *See India: Pondicherry*, 21 THE NEW ENCYCLOPAEDIA BRITANNICA, *supra* note 320, at 156, 157.

- (1) The existence in 1954 of a right of passage in Portugal's favour to the extent necessary for the exercise of its sovereignty over the enclaves [of Dadra and Nagar Aveli], exercise of that right being regulated and controlled by India;
- (2) Failure by India in 1954 to fulfill its obligation in regard to that right of passage;
- (3) In the event of a finding of such failure, the remedy for the resulting unlawful situation.³⁴³

While granting that "the day-to-day exercise of the right of passage as formulated by Portugal, with correlative obligation upon India, may give rise to delicate questions of application," the Court nonetheless found that the right "has, in the circumstances, been defined with sufficient precision to enable the Court to pass upon it."³⁴⁴

Reviewing this question, the Court first determined that Portugal could not claim sovereignty or a resultant right of passage based on the 1779 Treaty of Poona or on the *sanads* (decrees) issued by the Maratha ruler in 1783 and 1785. "The fact that the Portuguese had access to the villages for the purpose of collecting revenue and in pursuit of that purpose exercised such authority as had been delegated to them by the Marathas cannot, in the view of the Court, be equated to a right of passage for the exercise of sovereignty."³⁴⁵ At the time of the British takeover, however,

[t]hey [the British] accepted the situation as they found it and left the Portuguese in occupation of, and in exercise of exclusive authority over, the villages. The Portuguese held themselves out as sovereign over the villages. The British did not, as successors of the Marathas, themselves claim sovereignty, nor did they accord express recognition of Portuguese sovereignty, over them Portuguese sovereignty over the villages was recognized by the British in fact and by implication and was subsequently tacitly recognized by India. As a consequence the villages comprised in the Maratha grant acquired the character of Portuguese enclaves within Indian territory.

For the purpose of determining whether Portugal has established the right of passage claimed by it, the Court must have regard to what happened during the British and post-British periods. During these periods, there had developed between the Portuguese and the territorial sovereign with regard to passage to the enclaves a practice upon which Portugal relies for the purpose of establishing the right of passage claimed by it.³⁴⁶

Examining practices during these periods, the Court concluded that "with regard to private persons, civil officials and goods in general there existed . . . a constant and uniform practice allowing free passage between Daman

343. Right of Passage Case, *supra* note 318, at 36.

344. *Id.* at 37.

345. *Id.* at 37-39.

346. *Id.* at 39.

and the enclaves." As this had extended over a period of time, unaffected by change of regime, the Court was "satisfied that the practice was accepted as law by the Parties and has given rise to a right and a correlative obligation."³⁴⁷ This, however, was not the case with armed forces, police, and arms and ammunition.

[These] did not pass between Daman and the enclaves as of right and . . . after 1878, such passage could only take place with previous authorization . . . accorded either under a reciprocal arrangement already agreed to, or in individual cases. Having regard to the special circumstances of the case, this necessarily for authorization before passage could take place constitutes, in the view of the Court, a negation of passage as of right. The practice predicates that the territorial sovereign had the discretionary power to withdraw or to refuse permission. It is argued that permission was always granted, but this does not, in the opinion of the Court, affect the legal position.³⁴⁸

The Court refused to examine either of these conclusions in the light of customary international law; "[w]hen . . . the Court finds a practice clearly established between two States which was accepted by the Parties as governing the relations between them, the Court must attribute decisive effect to that practice for the purpose of determining their specific rights and obligations" and it "must prevail over any general rules."³⁴⁹

Having found the existence of a (restricted) right of passage, the Court then turned to the question of whether India had failed in her obligations regarding that right. In a surprisingly abbreviated argument, the Court found that,

In view of the tension then prevailing in intervening Indian territory, the Court is unable to hold that India's refusal of passage to the proposed delegation and its refusal of visas to Portuguese nationals of European origin and to native Indian Portuguese in the employ of the Portuguese Government was action contrary to its obligation resulting from Portugal's right of passage. Portugal's claim of a right is subject to full recognition and exercise of Indian sovereignty over the intervening territory and without any immunity in favour of Portugal . . . India's refusal of passage in those cases was, in the circumstances, covered by its power of regulation and control of the right of passage of Portugal.³⁵⁰

Because of this decision, the third question was not reached.³⁵¹ The Court's vote was 11-4 in favor of a right of passage for private persons, civil officials, and goods, 8-7 *against* a similar right of passage for armed forces,

347. *Id.* at 39-40.

348. *Id.* at 40-43.

349. *Id.* at 44.

350. *Id.* at 44-45.

351. *See supra* text at note 343.

police, arms, and ammunition, and 9-6 that India had not acted contrary to its obligations.³⁵²

As should be evident from the voting record, the Court in the *Right of Passage Case* was a fragmented one. Five judges filed declarations, one filed a separate opinion, seven dissented. A perusal of these individual statements gives further insights into the problem. Judge Spiropoulos (Greece), for example, claimed that the setting up of a new autonomous authority in the overrun enclaves put an end to the Portuguese right of passage.³⁵³ Judge V. K. Wellington Koo (Republic of China) felt that the right of passage applied to Portuguese armed forces, armed police, and arms and ammunition.³⁵⁴ "It appears clear to me that the basic element in the policy of control and regulation of passage by the intervening territorial State in the past was consideration in good faith of its own national interest." This resulted in a common policy of control and regulation for all categories of passage.³⁵⁵ Judge Koo thus believed that "Portugal's right of passage between the enclaves between them and coastal Daman embraces all the six categories, to the extent necessary for the exercise of Portuguese sovereignty over the enclaves and subject to control and regulation by India."³⁵⁶

Judge Armond-Ugon (Uruguay), dissenting, noted that "the effectiveness of the fact of passage should be regarded from the standpoint of its duration and of its acceptance by the two Governments concerned. This effective exercise of passage to the enclaves, regularly kept up, contributes towards the establishment of a right."³⁵⁷

If the principle of international freedom of transit scarcely encounters any longer any prohibition of passage on the basis of territorial sovereignty, still less can that sovereignty be adduced as a reason for withdrawing a long practiced right of transit to an enclave. The right of passage derived from the 1779 Treaty and from more than a century of practice has its foundation in local custom; there is therefore no need to consider whether it finds support in other sources such as general custom or the general principles of law recognized by civilized nations.³⁵⁸

The changes of circumstances in the enclaves, however, "affect the causes which gave rise to the right of passage and must naturally have their effect on the right of passage itself or on the ways in which it may be exercised." The right had thus either been suspended or extinguished.³⁵⁹

352. *Right of Passage Case*, *supra* note 318, at 45-46.

353. *Id.* at 53 (Spiropoulos, J. declaration).

354. *Id.* at 54-63 (Koo, J., separate opinion).

355. *Id.* at 63 (Koo, J., separate opinion).

356. *Id.* at 68 (Koo, J., separate opinion).

357. *Id.* at 82 (Armond-Ugon, J., dissenting).

358. *Id.* at 84 (Armond-Ugon, J., dissenting).

359. *Id.* at 87 (Armond-Ugon, J., dissenting).

Judge Quintana (Argentina) also dissented, refusing to accept the implication "that territorial sovereignty can be acquired by prescription."³⁶⁰ "[T]he applicant fails to supply a firm and conclusive basis for its right when it relies at one time upon a treaty, at another on custom, on a principle or, alternatively, on legal doctrine."³⁶¹ "To support the Portuguese claim in this case, which implies survival of the colonial system, without categorical and conclusive proof is to fly in the face of the United Nations Charter."³⁶² Judge Quintana would therefore have dismissed the Portuguese claim. Judge Percy Spender (Australia) felt "unable . . . to agree that no right of passage had been acquired . . . in respect of armed forces or armed police or arms and ammunition, or that India did not act contrary to its obligation resulting from the right of passage. . . ."³⁶³ Sir Percy held that the record established that a right of passage existed during the British and post-British period. "A right of passage having been established, there was a correlative obligation on India not to prevent the exercise of that passage; it could regulate and control it; it could not prevent it or render it nugatory or illusive."³⁶⁴

An examination of the evidence forces me to the conclusion that the dominant purpose of India immediately after the events at Dadra, to which all other considerations were subordinated, was to exclude the Portuguese thenceforth from any further access to the enclaves. For reasons unconnected with any question of regulation or control of passage as such or of any right of passage, it was not prepared to permit civil officials or any organ of Government to pass to the enclaves under any circumstances and acted accordingly. . . .

The qualification of Portugal's right making it in its exercise subject to India's control and regulation affords in the circumstances no protection to India. Breach of its international obligation has been established. In my opinion the Court should have so found and should then have proceeded to consider the resulting situation, and the contentions advanced by India to the effect that any obligations with regard to passage binding on it in July, 1954 should be regarded as having lapsed or become unenforceable against it as a result of events and circumstances which have since occurred.³⁶⁵

Judge Chaga (ad hoc, India) in his dissent noted that if the Court ruled in favor of Portugal, "the dispute . . . will not be determined by its . . . decision. The Court will only be sowing seeds for future disputes and discords."³⁶⁶ He felt it was impossible for the Court to declare a right which might be exercised not by any Court-mandated criteria, but "according

360. *Id.* at 88 (Quintana, J., dissenting).

361. *Id.* at 90 (Quintana, J., dissenting).

362. *Id.* at 95 (Quintana, J., dissenting).

363. *Id.* at 97 (Spender, J., dissenting).

364. *Id.* at 110 (Spender, J., dissenting).

365. *Id.* at 114-15 (Spender, J., dissenting).

366. *Id.* at 120 (Chaga, J., dissenting).

to the subjective determination of Portugal.”³⁶⁷ Distinguishing custom from mere practice or usage requires a sense of obligation; the action or forbearance must have “the same force as law.”³⁶⁸ Such a sense of custom did not exist here.

The Barcelona Conference is important for the fact that, under Article 14 of the Convention, it was implicit that separate and special provisions with regard to enclaves, including the enclave we are considering in this case, were to be made by the countries concerned. There was no suggestion at this Conference, by Portugal, that she had any right of transit.³⁶⁹

While Portugal might have faced the necessity of maintaining contact with her enclave, there was no sense “on the other side of an obligation to respect this necessity.”³⁷⁰ Thus Portugal was not entitled to any relief.

Finally, there is the dissent of Judge Fernandes (ad hoc, Portugal):

In the present case, the requirement at certain times of authorization for the passage of elements of the police and armed forces was dictated by precisely those “considerations of security” referred to in the Judgment in connection with certain restrictions imposed on the transit of goods. It is difficult to see why restrictions based on such considerations should be compatible with a right of transit in respect of goods and not in respect of other categories of transit.

I
 I am unable to accept the view that there can be no right where there is reciprocity. Most of the rights recognized between nations rest on a basis of reciprocity; they do not thereby lose their real character of rights. Not only is reciprocity not incompatible with such rights; it is the very condition for their effectiveness. The right which Portugal is claiming for itself is exactly the same as the right Portugal recognized India to possess for the purposes of communicating with its enclave of Meghwal situated inside Portuguese territory.³⁷¹

To prevent essential communications was a failure to respect the sovereignty depending on them; “[t]here is not much difference, it was said at the hearings, between shooting a man dead and causing his death by strangulation.”³⁷² Fernandes argued that India’s obligation arose from a legal necessity imposed by geography, and cited the *Anglo-Norwegian Fisheries Case* (1951) as “recognizing the legal implications of geographical facts.”³⁷³ Noting that “the state of tension existing in Indian territory at the time . . . was a result of . . . [India’s] own fault and, in particular, of the negligence of its authorities in the face of the preparation on its own territory

367. *Id.* (Chagla, J., dissenting).
 368. *Id.* (Chagla, J., dissenting).
 369. *Id.* at 121 (Chagla, J., dissenting).
 370. *Id.* at 121-22 (Chagla, J., dissenting).
 371. *Id.* at 133-34 (Fernandes, J., dissenting).
 372. *Id.* at 137 (Fernandes, J., dissenting).
 373. *Id.* at 138 (Fernandes, J., dissenting).

of acts of aggression directed against Portuguese territory,³⁷⁴ the Judge concluded that Portugal did possess a right of transit, that this included a right of passage for arms and forces necessary to exercise police functions, and that India's actions were contrary to the legal obligations it owed Portugal.³⁷⁵

In 1955, *satyagrahis* (non-violent resisters) from India attempted to continue the assimilation of Portugal's remaining Indian territories. Initially these intruders were merely deported, but later the Portuguese responded with force and casualties resulted.³⁷⁶ On August 18, 1955 (before the presentation of the *Right of Passage Case* to the International Court of Justice), relations between the two nations were severed.³⁷⁷ The Court's decision was rendered in April, 1960.³⁷⁸ On December 18, 1961, India's armed forces invaded and occupied Damão, Diu, and Goa.³⁷⁹ It is open to argument what role the Court's divided opinion played in this subsequent development.

THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT AND THE CONVENTION ON TRANSIT TRADE OF LANDLOCKED STATES

Professor Glassner traces the UNCTAD initiative and the Convention on Transit Trade of Landlocked States to a post-1958 increase in the number of landlocked notions and to continuing "interference with and threats to free transit . . ."³⁸⁰ The 1963 ECAFE Ministerial Conference "recognized the right of free transit for land-locked countries,"³⁸¹ while a meeting the following year "strongly recommend[ed] . . . that the subject be given urgent and sympathetic consideration at the forthcoming United Nations Conference on Trade and Development . . ." because of the critical importance of access to the sea for economic development.³⁸²

This was done by a subcommittee of UNCTAD I in 1964, which resulted in the adopting of eight principles relating to the transit trade of

374. *Id.* at 142 (Fernandes, J., dissenting).

375. *Id.* at 143-44 (Fernandes, J., dissenting).

376. *See India: Goa, supra* note 320, at 152.

377. *Id.*

378. *See Right of Passage Case, supra* note 318, at 6.

379. *See India: Goa, supra* note 320, at 153. Portuguese India was officially incorporated into India by a constitutional amendment in 1962. *Id.*

380. *See GLASSNER, supra* note 6, at 32.

381. Makil, *supra* note 8, at 44.

382. GLASSNER, *supra* note 6, at 32.

landlocked countries.³⁸³ This credo, subsequently appeared in the preamble of the Convention on Transit Trade of Landlocked states:

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.

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.

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.

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.

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 rights of free and unrestricted transit shall in no way infringe its legitimate interests of any kind.

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.

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-favored-nation clause.

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 conclusion of such agreements in the future, provided that the latter do not establish a regime which is less favourable than or opposed to the above-mentioned provisions.³⁸⁴

Along with the Eight Principles the subcommittee unanimously adopted a recommendation that a committee of twenty-four members be appointed by

383. Povolny notes that these improved on the "Landlocked *Magna Carta*," *supra* text at 286, in two main ways, "first, that landlocked and coastal countries should be encouraged to conclude regional agreements; and second, that facilities . . . and special rights granted to landlocked countries should be excluded from the operation of the most-favored-nation clause." Povolny, *supra* note 8, at 3. See also GLASSNER, *supra* note 6, at 33-34.

384. Makil, *supra* note 8, at 45. See also 9 WHITEMAN, *supra* note 209, at 1154-55.

the Secretary-General to prepare a new draft convention.³⁸⁵ This appears to have been a compromise between approaches favored by different sections of the subcommittee. While agreed that the Barcelona Conventions needed modification, "Bolivia, Paraguay, the African land-locked states and others wanted a convention completed by the Conference."³⁸⁶ Chile, Peru, the European states and other felt that the Conference was not equipped with legal experts and background information . . . and wanted [a convention] . . . prepared by a commission of international jurists and other legal experts."³⁸⁷

Taking the Afro-Asian draft treaty as a starting point (itself based on the Barcelona Convention) and factoring in "the principles of international law included in the 1958 Convention on the High Seas as well as conventions and agreement regarding transit trade currently in force and submissions by Governments,"³⁸⁸ a draft convention on Transit Trade was prepared in October and November of 1964.³⁸⁹ On June 7, 1965, the United Nations Conference on Transit Trade of Land-locked Countries was convened.³⁹⁰ The operation of the conference is well-described by Prof. Glassner, who notes that assignment to committees and other functions was not by region, but rather by landlocked, transit, or "other" status.³⁹¹

There were vigorous debates . . . on everything from whether free access to the sea was an inherent right . . . or whether the task of the Conference was merely to resolve technical problems of transit traffic, to whether the Convention should specify the procedures for clearing in-transit goods through customs. While all speakers gave lip-service to the necessity for the freest possible transit for land-locked countries, it was evident that few delegates were willing to surrender much of their own "sovereignty" in order to achieve this. Moreover, not even the land-locked states agreed among themselves on the urgency for and scope of a new Convention. Broadly speaking, the European land-locked states had few complaints, while those of Africa, Asia and South America were most vigorous in seeking broader rights and guarantees for the land-locked states. Likewise, some transit states were more understanding and cooperative than others.³⁹²

385. GLASSNER, *supra* note 6, at 34.

386. A draft convention, originally prepared by Nepal, Laos, and Afghanistan with the help of the ECAFE Secretariat, had subsequently been co-sponsored by eight landlocked African nations. *See id.* at 32-33.

387. *Id.* at 33, who notes the difference in approach between Chile and Bolivia. *See supra* notes 164-96 and accompanying text.

388. GLASSNER, *supra* note 6, at 34.

389. Makil, *supra* note 8, at 46.

390. GLASSNER, *supra* note 6, at 35.

391. *Id.* at 37. He goes on to note that "[t]his division was blurred, however, by the fact that some of the land-locked states were also transit states, as were some of the 'other' states." *Id.*

392. *Id.* at 36-37 (notes omitted).

The resulting Convention,³⁹³ while based on the Barcelona models, is more limited in scope, dealing with land-locked countries and their access to the sea.³⁹⁴ Because of this it served to highlight the problems of geographically disadvantaged states,³⁹⁵ indicating a greater awareness of the plight of such countries along with the counter of a stiffened resolution from some transit states.³⁹⁶ It enshrines the exclusion from operation of the "most-favoured-nation" clause,³⁹⁷ but according to others "contains little which is new, and no radical innovations or breakthroughs."³⁹⁸ Noting that "the developing land-locked states were far from completely satisfied with it," Glassner labeled the Convention (in 1970) as "the latest, but not the last, word on the subject."³⁹⁹

THE SEABED COMMITTEE AND UNCLOS III: THE EVOLUTION OF AN INTEREST GROUP

This leads to the Third United Nations Conference on the Law of the Sea, and the resulting 1982 Convention, which form the *terminus post quem* of this study. Before concluding this historical survey, however, something might usefully be said about the origins of the group of landlocked and geographically disadvantaged states which were destined to play a major role at UNCLOS III. A major problem in defining the composition of this group, both at sessions of the Seabed Committee and UNCLOS III results from differing perceptions of what constitutes a "geographically disadvantaged" state. Estimates of potential qualifiers during the negotiations range from 60 to almost 100, but it is generally agreed that even the working number of 42-52 or 53 members, voting together, would have been sufficient to block any decision made at the Conference, as this constituted over 1/3 of the voting membership.⁴⁰⁰ While landlocked and geographically disadvantaged states had worked together as early as the Seabed Committee, it was not until the 1974 Caracas session of the Conference that a distinct interest group of forty-two members evolved. It grew to forty-nine in Geneva, and topped fifty in New York, despite having rejected or pended the application of

393. See Convention on Transit Trade of Land-Locked States, New York, July 8, 1965, 597 U.N.T.S. 42, 19 U.S.T. 7383, T.I.A.S. No. 6592.

394. Makil, *supra* note 8, at 48.

395. See *id.*; GLASSNER, *supra* note 6, at 37.

396. See GLASSNER, *supra* note 6, at 37.

397. See Makil, *supra* note 8, at 48.

398. See GLASSNER, *supra* note 6, at 37.

399. *Id.* at 38.

400. See Janusz Symonides, *Geographically Disadvantaged States and the New Law of the Sea*, 8 POLISH Y.B. INT'L L. [55]-57 (1976); S. Jayakumar, *The Issue of the Rights of Landlocked and Geographically Disadvantaged States in the Living Resources of the Economic Zone*, 18 VA. J. INT'L L. [69], at 70 (1978-79); Caflisch, *supra* note 8, at 346-50; Povolny, *supra* note 8, at 4.

certain political players (Israel and Iran).⁴⁰¹ Of the total, about 2/3 of the membership were developing countries, 1/3 developed.⁴⁰²

Certainly one source of this grouping can be traced to disappointment with the 1965 Convention on Transit Trade of Landlocked States, which despite (or perhaps because of) its favorable provisions for landlocked states, attracted fewer coastal state signatories than had been anticipated.⁴⁰³ Work on access problems continued in 1968-70, with a Working Group reporting to UNCTAD.⁴⁰⁴ Increasingly, however, affected states saw the evolving Seabed Committee negotiations as an alternate international forum in which they could usefully present their problems.⁴⁰⁵

U.N. Resolution 2750 B (XXV), proposed in December of 1970 by twelve landlocked nations, called for an up to date study of free access to the sea and a report on the special problems of landlocked states in the exploration and exploitation of deep ocean resources.⁴⁰⁶ This report was prepared in June of 1971 and presented to the summer session of the Seabed Committee.⁴⁰⁷ At the same time, a group of seven landlocked and shelf-locked states were responsible for submitting a joint proposal on the deep seabed; all feared that the idea of a broad, legally recognized continental shelf (favored by some coastal states) would drastically reduce the economic significance of the international seabed area.⁴⁰⁸

By 1973 further developments had occurred among this group. Several draft articles, proposed by landlocked countries, disadvantaged states, or sympathizers dealt with fishing and the use of the economic zones of coastal states by their less fortunate brethren. Particularly popular was the concept of regional arrangements allowing for a "sharing of the wealth" in discrete geographical areas.⁴⁰⁹ The 1973 Seabed Committee session also saw the first raising of free access, with two major draft article proposals being offered on this subject. A Bolivian proposal was summarized by Oda as follows:

. . . (i) the right of land-locked States to free access to the sea is one of the basic principles of the law of the sea and forms an integral part of international law. (ii) the right of land-locked States to free access to the sea derives from the principles of the freedom of the sea and the designa-

401. Symonides, *supra* note 400, at 59.

402. *Id.* at 59-69.

403. See Makil, *supra* note 8, at 50.

404. See R.T. McKinnell, *Land-locked Countries: A Test for UNCTAD III?* 6 J. WORLD TRADE L. 227 at 230 (1972).

405. See Childs, *supra* note 8, at 702-02; Jayakumar, *supra* note 398, at [69]-71.

406. SHIGERU ODA, THE LAW OF THE SEA IN OUR TIME—I: NEW DEVELOPMENTS, 1966-1975, at 82-83 (1977); SHIGERU ODA, THE LAW OF THE SEA IN OUR TIME—II: THE UNITED NATIONS SEABED COMMITTEE 1968-1973, at 139-40 (1977) [hereinafter 1977b].

407. ODA (1977b), *supra* note 406, at 161.

408. See A/AC.138/37. See also ODA (1977b), *supra* note 406, at 164-65.

409. ODA (1977b), *supra* note 406, at 276-78.

tion of the deep ocean floor and its resources as well, as the common heritage of mankind, and its validity and application do not depend exclusively on the unilateral will of States situated between the sea and land-locked States, but concern the community of nations as a whole. However, its exercise should be governed by agreement between the land-locked States and the States situated between them and the sea. (iii) States situated between the sea and land-locked countries should guarantee: (a) free and unrestricted transit through their territory; (b) for vessels of the land-locked State, the same treatment as that given to their own vessels or vessels of any other State in respect of entry into and departure from seaports; (c) the use of such ports and equipment as may be appropriate for the movement of traffic, under the same conditions as for themselves; (d) alternatively, free zones in the ports in which land-locked States may erect warehouses, and other necessary facilities; (e) the right to appoint, in the ports of transit or free zones, national customs officials who may authorize the docking of vessels whose cargo is destined for, or originates primarily in, the land-locked country, and organize such services as may be necessary; and (f) the use of the means of transport and communication existing in their territory, under the same conditions as for themselves. Goods and passengers in transit to or from the land-locked State should not be subject to the judicial authorities of the coastal transit State. (iv) In connection with the rights and interests of land-locked States, the reciprocity of free transit is not an essential principle but may be agreed among the parties. (v) With regard to the use of the deep ocean floor, the interests and needs of the developing countries, especially those which are land-locked, are stressed. (vi) The land-locked (developing) countries should have the same obligations and rights as contiguous (developing) coastal States with regard to the living resources of the seas adjacent to the region, and the natural resources of the continental shelf and of the seabed within the limits of the jurisdictional sea (exclusive economic zone).⁴¹⁰

A later proposal was the joint product of Bolivia and six other land-locked countries--Afghanistan, Czechoslovakia, Hungary, Mali, Nepal, and Zambia. This provided:

... (i) the right of free access to the sea is one of the essential principles of the law of the sea and forms an integral part of international law, which derives from the fundamental principles of freedom of the high seas and has further been strengthened by the principle of the area as the common heritage of mankind. (ii) On the high seas, in the territorial sea and in internal waters, vessels flying the flag of land-locked States should have identical rights and enjoy treatment equal to that enjoyed by vessels of coastal States. Vessels of a land-locked State should have the right to use maritime ports and are entitled to the most favored treatment, and should under no circumstances receive treatment less favorable than that accorded to vessels of coastal States as regards access to the maritime ports and the use of facilities, installations and equipment. (iii) With respect to customs duties and other charges, free zones and the right to appoint customs officials, more detailed provisions are made in line with the Bolivian proposal. (iv) The right of access to the sea through rivers is provided for. (v) The transit State should have the right to take measures to ensure that the right of free transit does not infringe its legitimate interests. The principle of freedom of transit must be observed to the utmost possible

410. *Id.* at 294-96. See also A/AC. 138/92.

extent. With regard to the reciprocity of free transit, the relevant provision is the same as in the Bolivian proposal. (vi) Land-locked States should have free access to the seabed in order to enable them to participate in its exploitation and for this purpose the land-locked States should have the right to use all means and facilities with regard to traffic in transit. In any organ of the international seabed machinery, in particular in its Council, there should be a proportionate number of land-locked States, both developing and developed. Moreover, in any organ of the machinery, decisions on questions of substance should be made with regard to the special needs and problems of land-locked States. (vii) Settlement of disputes is compulsory⁴¹¹

When UNCLOS III officially opened, a committee group of landlocked states was prepared to argue for an expansion of their rights, and to preach the gospel of geographical disadvantage to a larger group of similarly-situated nations.

CONCLUSION

The *contemporary* problem of landlocked and geographically disadvantaged states, which has played a role in the UNCLOS III negotiations and in the resulting 1982 Convention has been shown to be more than a 20th century phenomenon, having deep roots in the world's political and economic history. Geographic factors inhibiting access to the sea have been shown as key to both "successes" and "failures" relating to actual development; countries such as Bactria appear to have fallen because of their landlocked status, others, like San Marino have thrived, Russia's expansion was predicated in part on the impulse to the sea, while Bolivia has survived even though a similar push has been thwarted. Bilateral and multilateral conventions, while important, have been shown to play only a partial role in this intricate process. Treaties such as that of Versailles have both helped and harmed. One aspect which it is hoped has come through is the sheer *variety* and *complexity* of landlocked and geographically disadvantaged states and their reactions with transit nations, and the consequent likelihood that no single treaty or group of treaties will solve all the related problems. With the recent disintegration of the Soviet Union and the collapse of Yugoslavia, the number of landlocked states has been increased and the potential that friction will develop, enhanced. The time is ripe, therefore, for more work—both practical and academic—so that a future Odysseus will nowhere find a place which does not recognize, and appreciate, his oar.

411. ODA (1977b), *supra* note 406, at 296-97; see also A/AC. 138/93.

