

**RIGHT OF ACCESS TO SEA BY LANDLOCKED STATES AND CORRESPONDING RIGHTS OF TRANSIT STATES: A LOOK AT NEPAL-INDIA AND NIGERIA-NIGER/CHAD RELATIONSHIP\***

**Abstract**

*The right to access the sea for the enjoyment of its benefits is a right available to countries over the globe under international law. However, these rights are not absolute as the exercise of same has to be in consideration of the sovereignty of different States. Particularly, the landlocked States are by the nature of their geographical location denied a free access to the sea, this is because for landlocked States to exercise the rights to explore the sea within the confines of the available legal frame work, recourse need to made to their neighboring transit/coastal States perhaps for an agreement between them to ensure free access while preserving the sovereignty of the transit States and or the coastal state over as the case may be over their territories as recognized under international law. The necessity of such an agreement to a landlocked state cannot be overemphasized given the economic benefits to be derived from the exploration of the sea as can be evidently seen in the development of coastal States around the world when compared with the landlocked States. This paper therefore examines the rights of a State to explore the sea, the right of landlocked states to access the sea, the corresponding right of a transit/coastal state in exercise of its sovereignty under international law, instances of the exercise of such rights while looking into the relationship between Nepal – India on one hand and Nigeria – Niger/Chad on the other hand.*

**Keywords:** Access to sea, Right, Landlocked states, Transit states, Nepal-India, Nigeria-Niger/Chad

**1. Introduction**

Undoubtedly, States in the world are endowed with different potentials and this has in effect brought about economic imbalance among these States with many States having greater economic strength than the others. This fact is largely evident in the economic capacity of landlocked States vis a vis a coastal State.<sup>1</sup> By definition, the word ‘landlocked’ means a place completely surrounded by land and having no coast<sup>2</sup>, hence when used in relation to a country will mean ‘a country surrounded by the land of other countries and having no coast’.<sup>3</sup> In other words, landlocked States have no coast of their own and the only access to the sea is through a neighboring State or another coastal State which is the country or state next to the sea.<sup>4</sup> Generally, there are forty-nine landlocked territories in the world and these are; Afghanistan, Andorra, Armenia, Artsakh, Austria, Azerbaijan, Belarus, Bhutan, Bolivia, Botswana, Burkina Faso, Burundi, Central Africa Republic, Chad, Czech Republic, Eswatini (Swaziland), Ethiopia, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Laos, Lesotho, Liechtenstein, Luxembourg, Malawi, Mali, Moldova, Mongolia, Nepal, Niger, North Macedonia, Paraguay, Rwanda, San Marino, Serbia, Slovakia, South Ossetia, South Sudan, Switzerland, Tajikistan, Transnistria, Turkmenistan, Uganda, Uzbekistan, Vatican City, West Bank, Zambia and Zimbabwe.<sup>5</sup>

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<sup>1</sup>Two of the landlocked countries that have really succeeded are Austria and Switzerland, <https://wordpopulationreview.com> accessed on 25/04/2020.

<sup>2</sup> <https://dictionary.cambridge.org/dictionary/english/lanlocked> accessed on 25/04/2020.

<sup>3</sup> By Article 124 (1) (b) of the United Nations Convention on Law of Sea (UNCLOS) land-locked state for the purpose of the Convention means a State which has no sea-coast. See also <https://dictionary.cambridge.org/dictionary/english/lanlocked> accessed on 25/04/2020

<sup>4</sup> Ibid. See also Article 1 of 1965 Convention on Transit Trade of Landlocked States, the term landlocked state means contracting state which has no sea coast.

<sup>5</sup> Wikipedia.org accessed on 9/01/2020. Landlocked Wunkies 2020, <https://wordpopulationreview.com> accessed on 25/04/2020.

## 2. Right to the Usage of the Sea

Again, the above countries are economically disadvantaged and this will be more evident if the large economic benefits available to a coastal State by virtue of the opportunities available to the latter to explore the adjoining waters are considered<sup>6</sup>, even though all States generally have the right to the usage of the high sea. The right of all States to the usage of the sea and the higher advantage to coastal States was noted by the Supreme Court of Nigeria in the popular case of *A. G Federation v. A. G Abia & Ors*<sup>7</sup> where the Court held:

Another truism we must accept is that Nigeria is a Coastal or maritime nation – its Southern boundary is the Atlantic Ocean while it is recognized in customary international law that the sea is *res nullius* and it is, therefore available for enjoyment of all nations of the world, landlocked nations inclusive, it has come to be accepted that by the vulnerability of their proximity to the sea, maritime nations are entitled to some privileges not available to others to protect their security.

The decision recognizes that landlocked States just like any other State are entitled to the beneficial usage of the high sea. The provision for this entitlement is contained in Article 87 of the 1982 United Nations Convention on Law of Sea (UNCLOS) which states thus:

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
  - freedom of navigation;
  - freedom of overflight;
  - freedom to lay submarine cables and pipelines, subject to Part VI;<sup>8</sup>
  - freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;<sup>9</sup>
  - freedom of fishing, subject to the conditions laid down in section 2;
  - freedom of scientific research, subject to Parts VI<sup>10</sup> and XIII.<sup>11</sup>
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.<sup>12</sup>

## 3. Right to Access the Sea

To enjoy the above entitlement on the sea, a landlocked state will need to access the sea through surrounding coastal state which will involve transportation through the territory of that coastal State. Hence, a landlocked state is naturally hindered from this entitlement except it goes through the territory of coastal state. The access to the sea by landlocked territory is a guaranteed right under international law as the provisions of UNCLOS clearly stipulate the right of access to and from the sea in Article 125 of the Convention as follow:

<sup>6</sup> The available waters which a coastal State can exploit for its economic benefits will include; internal waters, territorial waters and exclusive economic zone. By Article 3 of UNCLOS, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles measured from the baseline and by Article 5 the baseline low water line along the coast, also by Article 8(1) waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State and Article 57 states that the exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

<sup>7</sup> (2002) FWLR (Pt 102) 1.

<sup>8</sup> See generally part VI UNCLOS which provides for the sovereign rights of coastal State to explore and exploit natural resources in the continental shelf and defines continental shelf in Article 76(1) as comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

<sup>9</sup> *ibid*

<sup>10</sup> *ibid*

<sup>11</sup> See generally part XIII UNCLOS which provides for rights of States to conduct marine research.

<sup>12</sup> Article 90 of the UNCLOS specifically states that, 'Every State, whether Coastal or land-locked has the right to sail ships flying its flag on the high seas'

Land-locked States shall have the right of access to and from the sea for the purposes of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

The terms and modalities for exercising freedom of transit shall be agreed between the landlocked States and transit States concerned through bilateral, subregional or regional agreements.

Transit States in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that rights, and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.<sup>13</sup>

A community reading of the above reveals that a landlocked State has right under international law to transport its good or persons to the sea through territory of a State (either Coastal or otherwise) that is in between it and the sea in order to access and enjoy the rights afforded in relation to the high sea. Since, the landlocked States will exercise their right of access by going through another sovereign territory, the latter may need to protect its interest against any infringement that may occur while a landlocked state is exercising his right; hence the provision of Article 125 (3) of UNCLOS above, therefore the right of landlocked States in that regard is not absolute. In other words, the enjoyment of the right of transit or access to sea through a coastal State is conditioned upon negotiations between landlocked State and the coastal State<sup>14</sup> that will result in agreement between them specifying the modalities and terms for exercise of freedom of transit.

#### **4. Nepal - India**

Over the years States have entered into such negotiations and agreement with transit or coastal States in a bid to solve the challenge of access to the sea faced by the landlocked States even before the UNCLOS in 1982 and one of these countries is Federal Democratic Republic of Nepal ('hereinafter Nepal'). Nepal, a landlocked State in South Asia (which borders China in the North, India in south, east and west and Bangladesh at southern tip (separated from it by India) entered into a treaty with India in 1971 which was periodically reviewed. This treaty enables Nepal to transport goods to and from abroad through India and to promote trade between Nepal and Bangladesh (which is only separated from Nepal by a narrow piece of India territory). The treaty was reviewed by 1978 treaty and 1991 Transit Treaty, for instance, by Article 1 of the 1991 Transit Treaty the Nepal agreed with India that: 'The Contracting Parties shall accord to 'traffic in transit' freedom of transit across their respective territories through routes mutually agreed upon. No distinction shall be made which is based on flag of vessels, the places of origin, departure, entry, exit, destination, ownership of goods or vessels.' Article IV of that treaty exempted traffic in transit from customs duties and from all transits duties or charges except reasonable charges for transportation and other charges for services rendered in respect of transit and by Article VII merchants ships sailing under the flag of Nepal shall be accorded treatment not less favourable than

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<sup>13</sup> By Article 124(b) of the UNCLOS 'transit state' means a state, with or without a sea-coast, situated between a land-locked state and sea, through whose territory traffic in transit passes. Also, by Article 124 (c) 'traffic in transit' means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is the only a portion of a complete journey which begins or terminates within the territory of the land-locked State. The means of transport includes railway rolling stock, sea, lake and river craft and road vehicles, porter and pack animals where local conditions so require – See Article 124 (d). In addition to this Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and other means of transport – See Article 124 (2).

<sup>14</sup> Endalcachew Bayel, *The Right of Land-locked States in the International Law: The Role of Bilateral/Multilateral Agreements*. Social Sciences. Vol. 4, No. 2, 2015, pp. 27-30. Also <https://www.researchgate.net>.

accorded to ships of any other country though subject to Indian laws and regulations<sup>15</sup>, the protocol to the treaty allows traffic in transit to port to pass through one route connecting 15 entry and exit points<sup>16</sup>

It must be emphasized that notwithstanding the right vested in a landlocked state under UNCLOS, a treaty of this nature is needed for a landlocked State to freely exercise that right to access the sea. The Nepal treaty clearly identified this purpose when it states in its preamble thus;

His Majesty's Government of Nepal and The Government of India (hereinafter also referred to as Contracting Parties) Animated by the desire to maintain, develop and strengthen the existing friendly relations and co-operation between the two countries, Recognising that Nepal as a land-locked country needs freedom of transit, including permanent access to and from the sea, to promote its international trade, And recognizing the need to facilitate the traffic-in-transit through their territories, Have resolved to extend the validity of the existing treaty of transit, with modifications mutually agreed upon...

It is important to note that 'traffic-in-transit' in the Nepal treaty means passage of goods including unaccompanied baggage, across the territory of a Contracting party when the passage is a portion of a complete journey which begins or terminates within the territory of the other Contracting Party.<sup>17</sup> It is however observed that though traffic in transit terminates in the territory of 'a Contracting party' under the treaty which therefore applies to Nepal and India, it is unlikely that traffic in transit will commence from India and terminate in Nepal for the purpose of the treaty since the purpose is to grant Nepal access through India to the sea as can be deduced from the preamble and not vice versa.

### 5. Nigeria-Niger/Chad

In Africa, one legal framework which allows the landlocked countries bordering Nigeria an access through its territory to the sea is the Act Regarding Navigation and Economic Co-operation between the States of the Niger Basin done at Niamey on 26<sup>th</sup> October 1963 (hereafter 'Niamey Act') entered into by Cameroon, Chad, Dahomey (now Republic of Benin), Republic of Guinea, Cote d'Ivoire (now Ivory Coast), Mali, Niger, Nigeria and Upper Volta (now Burkina Faso).<sup>18</sup> Article 3 of the Act provides that Navigation on the River Niger shall be entirely free for merchant vessels and pleasure craft and for transportation of goods and passengers and that the ships and boats of all nations shall be treated in all respects on a basis of complete equality. In 1964 an agreement was made further to the Act, this agreement established an Inter-Governmental Organisation referred to as River Niger Commission.<sup>19</sup> The roles of the Commission were *inter alia* to prepare General Regulation which will permit the full application of the principles set forth in the Niamey Act and to ensure most effective use of the waters and resources of the River Niger Basin, draw up General Regulations regarding all forms of navigation on the River, examine complaints and to promote the settlement of disputes and the resolution of differences and generally to supervise the implementation of provisions of the Niamey Act and the Agreement.<sup>20</sup> Specifically, the Agreement gives the Commission the power to establish general regulations to ensure the safety and control of navigation on the understanding that such regulations shall be designed to facilitate, as much as possible, the movement of vessels and boats.<sup>21</sup>

<sup>15</sup>See Nepal – India Transit Treaty 1991, [nicci.org/resources/nepal-india-transit 1991](https://www.nicci.org/resources/nepal-india-transit-1991) accessed on 08/04/2020. The treaty was revalidated on 5th January 1999 and this revalidation came into force on 6th January 1999, the revalidation was to be in force to 2006 but was further extended for a period of 7 years from 2006 until 5th January 2013. See also Treaty of Trade, Treaty of Transit and Related Agreements between Government of Nepal and Neighbouring Countries; Publish by Nepal Transit and Warehousing Company Limited, July 2010.

<sup>16</sup> Ibid.

<sup>17</sup> Article III of Nepal Treaty.

<sup>18</sup> See Act Regarding Navigation and Economic Co-operation Between the States of Niger Basin, Niamey 1963, [www.fao.org](https://www.fao.org) accessed on 27/04/2020.

<sup>19</sup> This Commission was replaced with the Niger Basin Authority by the Convention Creating the Niger Basin Authority which was signed at Faranah on 21<sup>st</sup> November 1980.

<sup>20</sup> See Article 2 of the Agreement concerning the Niger River Commission And The Navigation And Transport On The River Niger, <https://iea.uoregon.edu>, accessed on 27/04/2020.

<sup>21</sup> Ibid, Article 15

It must be pointed out that prior to this, treaty was signed between Great Britain and Portugal on November 14, 1890 for their colonies for free access to the sea which guaranteed free navigation on the Zambezi. Similarly, treaty was signed between Great Britain and Belgium to facilitate Belgian trade in the East African territories by allowing access to British ports on the Indian Ocean. Ethiopia also concluded an agreement with Italy in 1929 which dealt with construction of route linking Assad to Dessia. Italy granted Ethiopia a free zone in the port of Assab where Ethiopia could construct warehouses. Another agreement, signed on May 15, 1902 in Addis Ababa and concerning the demarcation of boundaries between Ethiopia and Sudan, had granted Great Britain right to construct a railway through Ethiopia territory to link Sudan (a coastal State) and Uganda. Also, 1950 Convention between Great Britain and the Republic of Portugal concerned the port of Beira (now in Mozambique) ensured access to the sea for the British colonies of Northern Rhodesia (Zambia), Bechuanaland (Botswana), Swaziland and Basutoland (Lesotho), however, after decolonization began, the African landlocked States began signing their own agreement with their transit neighbours.<sup>22</sup>

It must be noted that in Nigeria provisions of the local laws exist which allow the transit of vessels belonging to the Nigeria's landlocked neighbours through the country via River Niger to the sea and in case of goods partly through the river and partly through the land, however this is subject to regulation made by minister in charge of transport.<sup>23</sup> The effectiveness of River Niger as access to sea for the Nigeria landlocked neighbours is hampered by the low inflow of the water from Niger through Nigeria, an attempt to improve on this inflow was made by the Nigerian government in 2009 when the government awarded contract for the dredging of a navigation channel in River Niger, contract was awarded to four contractors for the dredging of total length of the project i.e 550km and the project was to (if completed) allow vessel to sail from Atlantic Ocean to neighbouring Niger Republic.<sup>24</sup>

Before 2006, the two Nigerian landlocked neighbours viz; Niger and Chad moved their cargoes through the Nigerian ports to their countries because of Nigeria's proximity to them.<sup>25</sup> However, the two countries pulled out of using Nigeria's transit corridor in 2006, following the difficulties experienced in the wake of the port concession<sup>26</sup> and now preferred to transit through neighbouring Ghana, Togo and Ivory Coast. Particularly, some of the factors identified as occasioning the pulling out for Niger include delay in clearing, insecurity<sup>27</sup>, lack of hinterland connectivity to Chad and Niger Republic<sup>28</sup> and rising port cost, the attendant loss on this pullout to Nigeria was put at N137 billion.<sup>29</sup>

Although, as pointed out above, the international law recognizes the right of landlocked state to access the sea in order to enjoy the benefits of the exploration of the sea as may be done by any other State, the right will only be practically and actively exercised where the adjoining coastal State or transit State agrees to and allows such access through its territory, this is in no doubt in line with Article 125 (2) and recognition of the Sovereignty of the transit Country.

As noted by Brownlie 'Sovereignty and equality of States represents the basic constitutional doctrine of the law of nations and also indicates that this basic doctrine is contextualized by three corollaries; (1) jurisdiction exercised by States over territories and permanent population (2) the duty not to intervene in the exclusive jurisdiction of other States and (3) the dependence of obligations which emerge from the sources of international law.<sup>30</sup> Sovereignty in relations between States has also been described as

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<sup>22</sup> Kishor Uprety; *The Transit Regime for Landlocked States*, 2006 at page 121. Also, *The Transit Regime for Landlocked States*- <https://books.google.com.ng>. accessed on 22/04/2020.

<sup>23</sup> River Niger Transit Act. Cap R10 LFN 2004.

<sup>24</sup> <https://www.vanord.com/news/2009-boosting-economy-nigeria-deepening-river-niger>, accessed on 30/04/2020, maintenance and dredging of River Niger: Another wasteful venture? by ships and ports – <https://shipsandports.com.ng> visited on 10/04/2020.

<sup>25</sup> [nigeriamaritime360.com/lack-of-hinterland-connectivity-cost-nigeria-transit-cargoes-to-chad-niger-nga-md/](https://nigeriamaritime360.com/lack-of-hinterland-connectivity-cost-nigeria-transit-cargoes-to-chad-niger-nga-md/)

<sup>26</sup> [mmsplusng.com/blog/niger-chad-list-transit-trade-conditions-to-nigeria](https://mmsplusng.com/blog/niger-chad-list-transit-trade-conditions-to-nigeria).

<sup>27</sup> <http://punchng.com/niger-republic-dumps-nigeria-opts-for-ghana-cotonou-ports/> accessed on 30/04/2020.

<sup>28</sup> [nigeriamaritime360.com/lack-of-hinterland-connectivity-cost-nigeria-transit-cargoes-to-chad-niger-nga-md/](https://nigeriamaritime360.com/lack-of-hinterland-connectivity-cost-nigeria-transit-cargoes-to-chad-niger-nga-md/)

<sup>29</sup> [Nigerianmaritime360.com/high-cost-pushes-n137bn-chad-niger-republics-transit-cargoes-to-republic-of-benin](https://nigeriamaritime360.com/high-cost-pushes-n137bn-chad-niger-republics-transit-cargoes-to-republic-of-benin).

<sup>30</sup> Father Robert Araujo; *Sovereignty, Human Rights and Self-Determination: The meaning of International law*, Fordham International Law Journal vol. 24: 1477 at 1488

signifying independence; independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State the functions of a state. The development of the national organization of States during the last few centuries and as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relation.<sup>31</sup> Considering the above, a State may in exercise of its sovereignty deny a landlocked State an access to the sea through its territory, especially if terms of proposed bilateral agreement on same are against its legitimate interest.<sup>32</sup> Therefore, where a coastal State decides to exercise its sovereignty in that regard, a landlocked State seeking access to the sea through it cannot do so forcibly or without its consent either through the land, air or waters. To so do, will amount to the violation of the sovereign right of such a transit or coastal State under international law. Hence, the Court in the *Nicaragua/United States of America's* case stated thus:

Similarly, the mining operations in the Nicaraguan ports not only constitute breaches of the principles of the non-use of force, but also affect Nicaragua's sovereignty over certain maritime expanses. The Court has in fact found that these operations were carried on in Nicaragua's territory or internal waters or both and accordingly they constitute a violation of Nicaragua's sovereignty. The principle of respect for territorial sovereignty is also directly infringed by the unauthorized overflight of a state's territory by aircraft belonging to or under the control of the government of another state. The Court has found above that such overflight were in fact made...<sup>33</sup>

It is apt to point out that this principle of State sovereignty extends to the territorial waters of a coastal state and its air space as put in the *Nicaragua/United States of America* case that the basic legal concept of State sovereignty in customary international law, expressed in, inter alia Article 2 part 1 of United Nation Charter extends to the internal waters and territorial sea of every State and to the air space above its territory.<sup>34</sup>

Based on the above, the transit state may exercise its sovereign right recognized by the UNCLOS even beyond transit on land but also transit on its internal and territorial waters. For instance, in the absence of any agreement for access of transit to the sea, coastal state may exercise its right to close its ports against a vessel belonging to a landlocked state for security of navigation, maintaining good order and its vital interest, more so that the closure in this sense can be discriminatory.<sup>35</sup> Further, although a landlocked State has right of innocent passage<sup>36</sup> on the international waters of a coastal State<sup>37</sup>, a coastal State may suspend foreign vessels provided that the suspension is temporary, is in specific zone of its territorial sea, is without discrimination, for national security necessity and with prior notification.<sup>38</sup>

Again, a coastal State can also exercise its right of hot pursuit against such unpermitted vessel of a landlocked State for violation of the laws and regulations of such coastal State provided such vessel is

<sup>31</sup>Island of Palmas Case (Netherlands, USA) 1928.

<sup>32</sup> See Article 125 (3) of UNCLOS.

<sup>33</sup> (*Nicaragua/United States of America*) I.C.J Reports 1986 p.14 at 128.

<sup>34</sup> Ibid.

<sup>35</sup> Anne Bardin, Coastal States Jurisdiction over foreign vessels, *Pace Int'l Law Review* 27 (2002), Vol 14 pages 32 to 33.

<sup>36</sup> A passage is innocent so long as it is not prejudicial to the peace and good order or security of the coastal State. See Article 19(1) UNCLOS. Passage of foreign ship will not be innocent if engages on the territory of coastal State, (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (b) any exercise or practice with weapons of any kind; (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State; (d) any act of propaganda aimed at affecting the defence or security of coastal State; (e) the launching, landing or taking on board of aircraft; (f) the launching, landing or taking on board of any military device (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; (h) any act of willful and serious pollution contrary to this Convention; (i) any fishing activities (j) the carrying out of research or survey activities; (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State; (l) any other activity not having a direct bearing on passage. See Article 19(2) UNCLOS

<sup>37</sup> See Article 17 and 24 of UNCLOS

<sup>38</sup> See 25(3) UNCLOS

within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing state provided also that a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.<sup>39</sup> In addition, since a coastal state has full sovereignty in its internal water and no right for foreign vessel to enter the internal waters<sup>40</sup> an unpermitted vessel of a landlocked state that intrudes can be asked to leave and if it refuses, use of force may be engaged if necessary especially where there is need for protection of security interests, though the use of force is limited by the necessity of counteractions that must be proportionate to threat and have the removal of threat as an end.<sup>41</sup>

## **6. Conclusion and Recommendation**

Although, the international laws recognize and make provision for the right of landlocked State to access the sea, a development which is a way of resolving and the problems faced by these naturally disadvantaged countries, particularly the economic challenges which placed most of these states below coastal States,<sup>42</sup> the exercise of this right in actual fact remains subject to the doctrine of State sovereignty under international law. Access to the sea, is granted based on terms agreed by landlocked state and the coastal State which agreement must protect the legitimate interests of the coastal State or transit state.<sup>43</sup> The implication of this will be that where the terms brought forth by a landlocked State does not take care of or will infringe these legitimate interests, the coastal State may refuse such agreement and assert its sovereignty to deny a landlocked State the required access. In that regard, any attempt to access the sea without the consent of the coastal State or transit State can trigger the exercise of right by the coastal State as highlighted above in its territory (which for a coastal State will cover territorial water). It is observed here, that both landlocked State and its transit State(s) can greatly benefit economically from an agreement made for access to the sea by a landlocked country, especially a developing transit State. For instance as noted above Nigeria losses N137billion annually as consequence of the withdrawal of Niger and Chad from transit through and usage of the country's port,<sup>44</sup> hence there is need for transit country, in addition to its legitimate interest consider economic benefits it will derive when approached by a landlocked state for an agreement on access. The Nigeria-Niger/Chad situation should be addressed in order to stop the economic loss by resolving the issues or challenges faced by these countries which occasioned their pulling out. No doubt, if this is attained, these countries will be disposed to agreement on access through Nigeria as it will be economically prudent for them to access the sea through Nigeria than it will be through another country. Finally, the country is enjoined to assemble best of its legal experts in detailing in the agreement; the terms of transit, commitments and mechanism for resolution of issues/dispute that may arise on one hand and private port operators (since the ports are privatized) in order to pave way for smooth operations of the landlocked states at the Nigerian ports.

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<sup>39</sup> Anne Barden, Coastal State Jurisdiction over foreign vessels, *Pace Int'l Law Review* 27 (2002), Vol 14 page 52

<sup>40</sup> *Ibid*, page 63 - 64

<sup>41</sup> *Ibid*

<sup>42</sup> Two landlocked countries that manage to sustain success despite their lack of water borders are Austria and Switzerland though the two countries have an obvious advantage that make their flourishing economy possible, this is their location in Europe – a continent that has been described as one of the most most affluent and well-developed continents on the globe. <https://wordpopulationreview.com> accessed on 10/08/2020

<sup>43</sup> See Article 125 (3) UNCLOS.

<sup>44</sup> [Nigerianmaritime360.com/high-cost-pushes-n137bn-chad-niger-republics-transit-cargoes-to-republic-of-benin](https://nigerianmaritime360.com/high-cost-pushes-n137bn-chad-niger-republics-transit-cargoes-to-republic-of-benin).