RIGHTS OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES IN INTERNATIONAL LAW OF THE SEA: AN APPRAISAL OF THE EVOLUTION OF CONTESTED RIGHTS*

Abstract

From a historical and legal perspective, this contribution addresses the issue of the rights of landlocked and geographically disadvantaged states in international law. In particular, it focuses on the contested effort of these states to secure the right for their vessels to navigate through the sea, to participate in the exploitation of the abundant marine resources and generally gain the right to access the sea. This paper provides an in-depth analysis of the development of these rights and concessions under treaty law particularly in line the maritime zones established in the United Nations Law of the Sea Convention (UNCLOS 3) 1982. The work exposes the fact that the rights as provided under the different multilateral treaties and customary international law are not absolute but largely depend on the existence of bilateral and regional agreements between concerned states. Some of such agreements are highlighted in this study. Yet, even with the making of the agreements, many landlocked and geographically disadvantaged states cannot shout 'uhuru' due to some other peculiar socio-political and economic issues. In the light of this, the paper enjoins the states involved to politic cordially and for the creation of some means to compensate transit states for losses and any inconvenience which they may experience from the implementation of the treaty provisions.

Keywords: *Landlocked states, geographically disadvantage state, transit rights, navigation rights, treaties, conventions, sea*

1. Introduction

The area of the earth's surface covered by the sea is very vast and has remained a significant object of human interest in a variety of ways; as an integral part of the universal biosphere, as a distinctive water body, as a habitat for some organisms not found elsewhere and also as the zone for diverse human activities.[1] Beneath this opaque mass of salt water and waves called the ocean rest astonishing geological features of the earth some of which are still unfamiliar to oceanic researchers. According to Shaw, the seas serve two main functions. Firstly, it is a medium of communication and secondly it holds enormous living and non-living resources all of which are of immense value to mankind.[2] Besides, the sea is also a veritable area for scientific, technological and military research and experimentation. Also the social and spiritual lives of some peoples and communities in many developing countries are connected to the waters.[3] Due to the importance of the sea to man some rules have been evolved to determine the maritime rights of states, the cardinal idea behind the rules being the doctrine that the land dominates the sea.[4] Many nations and countries in the world are strategically located in a way which gives them direct access to the sea. Yet, there are some others which are in the belly of the continents and have no sea coast or may have one that is of insignificant value. In fact, out of about 190 states in the world, some forty two (42) suffer this deficiency.[5] There are two in Latin America, twelve in Asia, thirteen in Europe and fifteen such states in Africa.[6]

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[1] The ocean extends over 361 million square kilometres or approximately 71 percent of the earth's surface. See Miranda Wecker, "The Future of the World's Oceans: The World's Oceans in 2020," *Multi-Faceted Nature of Ocean Development and Management,* Council on Ocean Law (1986).

[2] Malcom N. Shaw, *International Law* (Sixth Edition, Cambridge University Press, Cambridge, 2008) 553

[3] Mostly in Africa

[4] *Qater v. Bahrain,* ICJ Reports, 2001, 40; *North Sea Continental Shelf cases*, ICJ Reports, 1969, 3; See M. N. Shaw *op. cit.*, note 2

[5] R. R. Churchill and A. V. Lowe, *The Law of the Sea* (Manchester University Press, Manchester, 1999), 433

[6] These are: Bolivia and Paraguay (Latin America); Afghanistan, Armenia, Azerbaijan, Bhutan, Kazakhstan, Kyrgyzstan, Laos, Mongolia, Nepal, Tajikistan, Turkmenistan, and Uzbekistan (Asia); Andorra, Austria, Belarus, Czech Republic, Holy See (Vatican-city), Hungary, Liechtenstein, Luxembourg, Macedonia, Moldova, San Marino, Slovakia and

Basically, these states have no maritime coast. To compound the problem, some of them are also deficient in natural land resources and hence are economically very poor.[7] In order to boost their condition, these states need to access the sea and participate in some maritime and international commercial ventures. They can reach the sea only through the ports of neighbouring coastal territories. This is why there is interest in the elaboration of international legal rules and standards that would effectively give access to all states in the world to the exploration and exploitation of God's heritage to mankind. The main theme of this paper is to examine the rights of landlocked and geographically disadvantaged states as granted by relevant conventions and treaties and determine their value. This study is not focused on any particular country (though some examples shall be cited) nor will its analyze any particular treaty, but intends to determine the issues generally particularly as they are stipulated in the United Nations Law of the Sea Convention, 1982 hereinafter called UNCLOS 3 and other relevant international legal instruments.

2. Conceptual Clarifications

The two main concepts in this work are landlocked and geographically disadvantaged states. They have ben appropriately defined by the relevant laws. Article 124 (1) (a) of UNCLOS 3 defines a land-locked state as 'a state which has no sea-coast.' The term has also been used to refer to those 'states which do not border open, enclosed or semi-enclosed seas.'[8] A peculiar category of land locked states called 'enclaves' also exist. According to Raton,[9] an enclave is 'a state entirely surrounded by the territory of another state.' Though they may be confused with land locked states, the difference between the two lies in the fact that most landlocked states are contiguous to other states while an enclave is embedded in the territory of a specific state. Presently, there are two notable enclaves: Lesotho within the Republic of South Africa and The Vatican in Italy. The matters of enclaves are more serious and delicate than those of landlocked countries as to a large extent their existence depends on the benevolence of their surrounding state.[10] All land locked states and enclaves depend on a neighbouring or surrounding state for access to the sea. Such neighbouring or surrounding state called a transit state is a state with or without a sea-coast, situated between a land-locked state and the sea, through whose territory traffic in transit passes.[11] Thus any import or export trade by a land-locked state must necessarily be facilitated through a transit state if it must go by sea. For instance, Senegal is a transit state for Mali, India and Bangladesh are transit states for Nepal and Bolivia uses the ports of Argentina and other South American states.[12] Nigeria, Cameroon and Benin Republic serve as transit states for Chad and Niger Republics. Geographically disadvantaged states refer to those 'coastal states … whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones (EEZs) of other states in the sub region or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal states which can claim no EEZ of their own.[13] A state is classified as geographically disadvantaged in relation to the sea by reason of shortness of their coastline in proportion to the size of their land territory;[14] or due to the existence of neighbouring states which impedes and forestall the creation of maritime zones like a continental shelf and EEZ, that is commensurate with the extent of its coastline and expanse of their land mass,[15] or due to the paucity of resources within their EEZ.[16]

Switzerland (Europe); Botswana, Burkina-Faso, Burundi, Central African Republic, Swaziland, Uganda, Zambia and Zimbabwe (Africa).

[7] R. R Churchill and A. V. Lowe, *op. cit.* note 2

[8] L. B. Sohn and K. Gustafson, *The Law of the Sea in a Nutshell* (1984) 129

[9] Pierre Raton, "Les Enclaves," in *Annuaire Francais De Droit International*, (1958) 186

[10] Kishor Uprety, "Landlocked States and Access to the Sea: An Evolutionary study of a contested Right." *Penn State International Law review*, vol. 12, No. 3, Article 2 (1994) 404-405. Available at http://elibrary.law.psu.edu/PsiLr/Vol12/1553/2 Accessed 9/6/2007. Note that the matter of the Vatican may be different because of the special status of the enclave as the 'Holy see' the base of the Universal Catholic church and seat of the pope.

[11] Article 124 (1) (b), UNCLOS 3

[12] Endalcachew Bayeh, "The Rights of Land Locked States in the International Law: The role of Bilateral/Multilateral Agreements," *Social Sciences*, (Vol. 4, No. 2, 2015) 27-30. Available at http://www.sciencepublishinggroup.com/j/ss retrieved on 11/7/2017

[13] Article 70 (2) UNCLOS 3

[14] Iraq and the Democratic Republic of Congo (formerly Zaire and Jordan)

[15] Germany, Singapore and Togo

Despite the political and dogmatic differences in the developmental standards of these states they all share some common interests and being conscious of their peculiar geostructural encumbrance, which distinguishes them from coastal states, are resolve to overcome such hindrance by some cooperative effort within the international system.[17] Yet, it is important for them to also maintain cordial relations with those neighbours through which territory their people, products and goods will traverse in their overall economic interest.

3. Evolution of the Rights

Early Agreements

The quest by landlocked and geographically disadvantaged states to pursue independent maritime ventures is an old one which can be traced to the adoption of the principle of freedom of the high seas in the nineteenth century.[18] For the landlocked states, the recognition of their right to a maritime flag was a task to be overcome as they felt that the security of the supply of their population was at risk. Countries like Switzerland felt the great disadvantage of not having ships under their own flag in order to safeguard supplies for their population. The right of landlocked states to fly their flag on the sea was first recognized by the Paris peace treaties.[19] Article 5 of the Paris Treaty on the Rhine stressed the principle of free access to the sea and provided that 'the navigation of the Rhine from the point it becomes navigable and vice-versa shall be free in such a way that it shall be prohibited to none.'[20] The Treaty Versailles of 1919 introduced a clause on the regulation of transit on freedom on navigable waterways.[21] Subsequently in 1921, the First General Conference on Freedom of Communication and Transit took place in Barcelona, Spain. At that conference, the term 'international river' was substituted with 'water ways of international concern and the principle of freedom of access was introduced through the assimilation of riparian and non-riparian divisions.[22] These early agreements suffered their own deficiencies particularly arising from the limited number of ratification.[23] These notwithstanding, the states involved continued to press for viable working concessions. During the process of decolonization in the middle part of the twentieth century, there was an increase in the number of land-locked states among the emergent and newly independent, developing and underdeveloped states. They too made legitimate demands in pursuance of their economic interests. More multilateral agreements on different aspects of transit were drawn up.[24] In addition bilateral agreements were also made between concerned states.[25] At UNCLOS 1 which was held in Geneva in 1958, the parties made an important contribution to the establishment of basic standards to guide freedom of transit for land locked states. By Article 3 (1) of the Convention on the High Seas, the conference provided that 'in order to enjoy the freedom of the sea on equal terms with a coastal states, states having no sea coast shall have free access to the sea.' This provision was made to depend on a contingent agreement between the land-locked state and the concerned coastal state.[26] In 1965, the continued demands of the landlocked states led to further development of the rule within the framework of the Convention on Transit Trade of Landlocked states. A number of principles were enunciated in that convention

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[16] Jamaica, Nauru and Tanzania, See generally R. R. Churchill and A. V. Lowe, *op. cit.*

[17] At different international forum where these issues are likely to be raised, the concerned states usually move to work together even to the detriment of their regional bloc.

[18] E. P. Andreyer and I. P. Blishchenko (Eds.), *The International Law of the Sea* (Progress Publishers, Moscow, 1988) 139

[19] In 1804, the Paris Convention on the Concession to Navigation of the Rhine, adopted the principle of the freedom of navigation on the River Rhine and provided for the co-administration of riparian access. By the Paris Treaty of Peace that was signed on May 30, 1814, emphasis was placed on free access to the sea.

[20] See generally Bela Vitanyi, *The International Regime of River Navigation* (1979) 21-23

[21] Treaty of Versailles, June 28, 1919, 225.

[22] See Kishor Uprety, *op. cit.*, note 9 at 428

[23] H. Tuerk and G. Hafner, "Law of the Sea," in H. Caminos (ed.) *The Library of Essays in International Law* (The Cromwell Press, Hugo, 2001)357

[24] These include the Convention and Statute on Freedom of Transit; the Convention, Statute and Additional Protocol on the Regime of Navigable Waterways of International Concern; the Convention and Statute on the International Regime of Railways; and the Convention and Statute on the International Regime for Ports. See E. P. Andreyov and I. P. Blishchenko, *op. cit.* note 17 at 140

[25] Notable of these include the treaties on communications between Poland and Czechoslovakia (1947), the India-Nepal Treaty (1950), the 1955 Afghanistan-USSR agreement and the agreement signed in 1956 between Austria and Italy on the utilization of the port of Trieste.

[26] The 1958 Convention of the High Seas further prescribed that a state 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, grant "ships flying the flag of that state treatment equal to that accorded to their own ships, or to the ships of any other states, as regards access to sea ports and the use of such ports." (Art. 3 (1) (b))

including *inter alia*, free access to sea, identical treatment of vessels flying the flag of landlocked states to those of coastal states; and free and unrestricted transit across states (on the basis of reciprocity).[27] Some of the affected states were not satisfied with that regime so the pressure for reviews and more concession continued. The issues of concern to the landlocked and geographically disadvantaged states are mainly the right of vessels to navigate through the sea, the right to access the sea and the right to exploit and share in marine resources.[28]

Navigation and Access Rights

At the early stage, the cardinal goal of the law of rivers was to guarantee the freedom of navigation to the sea for riparian and non-riparian states.[29] This countered the position of some coastal states which denied land locked states such right on the basis of difficulty in verifying the identities of vessels from countries that had no maritime ports or warships. The early law of rivers regulated the right of free access to sea by imposing some duties upon coastal states. Under the 1919 Treaty of Versailles, the contracting parties agreed to recognize the flags of landlocked state vessels which was validly registered.[30] This right was later adopted at the 1921 League of Nations Conference on Communications and Transit.[31]At that conference, the statute on freedom of transit was adopted. It included a provision which requires al contracting state parties to ensure freedom of transit by rail or through internal navigable waters and particularly through those routes that are convenient for international transit.[32] The statute established the position that both landlocked/geographically disadvantaged states and coastal states have similar navigational rights.[33] But the statute in the attempt to balance the principles of freedom of transport and state sovereignty was deficient in other areas and provided avenues for the transit state to depart from the principle on grounds of security and national interests.[34] Another important international agreement which supports the transit rights of landlocked states is the General Agreement on Tariffs and trade (GATT) which came into effect on January 1, 1948. Article 5 of this document deals generally with 'freedom of transit.'[35] However, the GATT provision is incomplete and restricted in the sense that it does not deal with the transit of persons since essentially it was adopted for the purpose of promoting international trade and commercial activities.

The first UN conference on the Law of the Sea (UNCLOS 1)[36] was significant in the laying of broad standards on freedom of transit for landlocked states. Article 3 (1) of the Convention on the High Seas provided that 'in order to enjoy freedom of the seas on equal terms with coastal states, states having no sea coast should have free access to the sea.' It went on to stipulate that states having no sea coast should have a common agreement with the latter in conformity with existing international conventions.[37] Therefore, this convention did not give non-coastal states free navigation rights but only guaranteed the likelihood of access leaving the matter partially resolved.[38] Likewise, the

[27] H. Tuerk and G. Hafner, *Op. cit.*
[28] See R. R. Churchill and A. V. Lowe, *Op. cit.* 433
[29] Kishor Uprety, *Op. cit.,* 429
[30] Art. 273
[31] 7 LNTS 14, see R. R. Churchill and A. V. Lowe, *Op. cit.,* 434
[32]Art. 2, Statute on Freedom of Transit (Convention of Barcelona, April 20, 1921) 7 LNTS II
[33] R. R. Churchill and A. V. Lowe, *Op. cit.,* 434
[34] It created room for transit state to refuse transit for public health, public security or under general international conventions or decisions of the League of Nations. See Kishor Uprety, *Op. cit.,* 432
[35] The principal provisions of Article 5 of GATT dealing with "freedom of transit" has been summarized as follows by the UN Secretariat: (a) Goods including baggage and also vessels and other means of transport shall be deemed to be in transit when the passage across the territory of one of the contracting parties constitutes only one portion of the complete itinerary starting and terminating beyond the borders of the said country.(b) There shall be freedom of transit throughout the territories of contracting parties for goods going to or originating from the other contracting party. The principle of non-discrimination is clearly established. (c) Although a declaration at the customs for goods in transit may be asked for, these properties shall be exempt from customs duties and all other transit rights or duties except the transportation charges corresponding to the administrative expenditure made by the transport or to the cost of services rendered. (d) The duties and the regulation applied on transit traffic must be equitable. (e) The contracting parties mutually guarantee MFN treatment on transit traffic and applicable tariffs. (f) Without being applicable for aircraft in transit, the above mentioned rules shall be applicable for goods transiting by air including baggages.
See Memorandum concerning The Question of the Free Access to the Sea of landlocked countries, U.N. Doc. A/Conf.13/29 (1958); see also kishor Uprety, *op. cit.,* 434
[36] The UN Conference on the Law of the Sea, held at Geneva, Switzerland from February 24 – April 27, 1958. It produced the Geneva Convention in the High Seas, 1958
[37] See Art. 3 91) (2), *Ibid.*
[38] Kishor Uprety, *op. cit.,* 441

second Geneva Conference (UNCLOS 2) in 1960 and the Convention of New York[39] did not resolve the vexed transit questions concerning the landlocked entities satisfactorily. In 1982, the Third United Nations Convention on the Law of the Sea (UNCLOS 2) which has been approximately tagged 'A Constitution for the Oceans,'[40]decidedly settled the issues. The 1982 Convention reviewed the four earlier conventions on the subject and produced a viable workable and acceptable agreement.[41] The commitment of the convention to the interests of landlocked states is evident in the devotion of an entire section of the convention to this right.[42] The access rights of states and freedom of transit, has been approximately captured in Article 125 of the convention as follows:

1. Land-locked states shall have the right of access to and from the sea for the purpose 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.
2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked states and the transit state concerned through bilateral, sub-regional or regional agreements.
3. Transit states, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provide for in this Part for land-locked states shall in no way infringe their legitimate interests

The provision of Art 125 (1) clearly gives the right of access to the sea to the land-locked states unlike the provision of Article 3 of the Convention on the High Seas which merely recognizes that right in principle.[43] Such right is a necessary condition for the actualization by the land-locked states of the rights granted them in the law of the Sea Convention.[44] The land-locked states right of access has further been affirmed by the General Assembly of the United Nations.[45]

4. Rights of land-locked and Geographically Disadvantaged States along maritime Zones

In order to clearly elucidate on the extent of the access rights of landlocked and geographically disadvantaged states and their right to share in marine resources, it is imperative to discuss them according to the maritime zones established in the Law of the Sea Convention (UNCLOS 3) viz: the Territorial Sea, Exclusive Economic Zone (EEZ), Continental shelf, the High Seas and the Area.

Territorial Sea

The territorial sea of a coastal state extends up to a limit not exceeding 12 nautical miles from the baselines.[46] Article 17 of the UNCLOS 3 gives all states whether coastal or landlocked, the right of innocent passage through the territorial sea. Such passage shall be continuous and expeditious.[47] Innocent passage in this context refers to one which is not prejudicial to the peace, good order or security of the coastal state.[48] Land locked states are also entitled to freedom of navigation in the waters beyond the territorial sea.[49] This right is established both by customary law and convention. In the *Nicaragua case,*[50] the ICJ stated that 'in order to enjoy access to ports,

[39] Convention on transit trade of landlocked states, New York, July 8, 1965, 597 U.N.T.S 42. The main purpose of the Convention was to bring into treaty law the rights and obligations of landlocked states and their neighbours relating to the movement of goods in international transit. The conference resolution recognized the 'right' instead of the "needs" of these state as in previous conference resolutions.

[40] See remarks by Tommy T. B. Koh, President of the third United Nations Conference on the Law of the Sea, (United Nations, New York, 1983) xxxiii

[41] The Conventions are: The 1958 Convention on the Territorial Sea and Contiguous Zone; 1958 Convention on the High Sea; 1958 convention on Fishing and Conservation of Living resources of the High Sea; and 1958 convention on the Continental Shelf.

[42] Part X of UNCLOS III is titled "Right of Access of Landlocked States to and from the Sea and Freedom of Transit.

[43] Rene-Jean Dupuy and Daniel Vignes, *A handbook on the New Law of the Sea* (Martinus Nijhoff Publishers, Dordrecht, 1991) 517

[44] See particularly Arts. 87 and 141

[45] See Res. 46/212 of December 20, 1991. See also Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (Seventh Edition, New York, Routledge, 1997).

[46] Art. 3 (UNCLOS 3)

[47] Art. 18

[48] Art. 19

[49] Art. 38 (1)

[50] I.C.J Rep. 1986, p. 14 at 111. According to the court, Art. 18 (1) (b) "does no more than codify customary international law."

foreign vessels possess a customary right of innocent passage in territorial waters for the purposes of entering or leaving internal waters.[51]

Executive Economic Zone (EEZ)

Economic Zone (EEZ), was and still remains one of the innovative creations of the Law of the sea convention to facilitate the realization of conventions objective of establishing a just and equitable international economic order to cater for all mankind and interests.[52] The EEZ is the area beyond and adjacent to the territorial sea extending up to 200 nautical miles from the baselines from which the breath of the territorial sea is measured.[53] In the EEZ coastal states have primary sovereign rights and jurisdiction.[54] This apart, all states, whether coastal or land-locked are granted other rights such as freedom of navigation and over flight and of the laying of submarine cables and pipeline, and other international lawful uses of the sea related to these freedoms, such as those concerned with the operation of ships, aircraft and sub-marine cables and pipelines.[55] The EEZ is rich in living resources particularly fisheries. UNCLOS 3 gives the land-locked and geographically disadvantaged states the right to participate or an equitable basis in the exploitation of an appropriate part of the surplus of the living resources of the EEZs of coastal states of the same sub-region or region.[56] This right is not absolute but depends on the lack of capacity by a coastal state to harvest the allowable catch, and also taking into consideration the significance of the living resources of the area to the economy of the concerned coastal states and its other national interests.[57] The terms and modalities for such participation is expected to be established by the concerned state parties through bilateral, sub-regional and regional agreements, taking into consideration a range of factors including the need to avoid effects detrimental to fishing communities or fishing industries of the coastal state and the nutritional needs of the respective states.[58] It is important to note that a landlocked and geographically disadvantaged country may be barred from participation in the exploitation of surplus living resources of a coastal state even though an agreement exist where it is established that the coastal state's economy is overwhelmingly dependent on the living resources of her EEZ.[59]

Continental Shelf

Another important area of the sea is the continental shelf.[60] This part of the waters is a gently sloping undersea plain between the above-water portion of the landmass and the deep ocean.[61] It extends to reach the continental slope. This is the point at which the land descends further and the body of waters of the ocean begins. The continental shelf host a rich and varied forms of plant and animal life and is very vital in energy generation, through its vast holding of offshore oil and gas reserves and other renewable energy forms.[62] Article 77 (1) of UNCLOS gives coastal states exclusive sovereign rights to explore and exploit the natural resources in the continental shelf. All the states[63] are not allowed to get involved in the exploration and exploitation of resources in this section except by the express permission of the coastal state in whose territory the activities shall take place.[64] However, they are entitled to lay submarine cables and pipelines on the continental shelf.[65] No coastal state may take steps to impede

[51] See the *Corfu channel case, U.K v. Albania (Merits)* I.C.J. Rep. 91949), where the ICJ recognized that at customary International Law, the right of innocent passage cannot be suspended on grounds of security in a part of the territorial sea that is an international strait used for navigation from one part of the high seas to another, as in other parts of the territorial sea.

[52] See the Preamble to UNCLOS 3

[53] Art. 57

[54] Arts. 55 and 56

[55] Article 58

[56] Art. 69 (1) and Art. 70 (1)

[57] Art. 62 (1) (2)

[58] Art. 69 (2) and70 (2)

[59] Art. 71

[60] The continental shelf of a coastal state comprises the sea-bed 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 to a distance of 200 nautical miles from the baselines from which the breath of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance, see Article 76 of UNCLOS III

[61] Hollis, D., United Nations Convention on Law of the Sea (UNCLOS), 1982, http:// www.eoearth.org/view/article/156775. Accessed 13/4/2017

[62] OCS Alternative Energy and Alternative programmatic ELS, The outer Continental Shelf, available at http://ocsenergy.anl.gov/guide/ocs/index.cfm. Accessed13/4/2017; Department of the Navy Office of Naval Research, Ocean Regions: Ocean Floor-Continental Margin & Rise, Available at http://www.onr.navy.mil/focus/ocean/regions/oceanfloor2.htm. Accessed 13/4/2017

[63] This certainly includes land-locked and geographically disadvantaged states.

[64] Article 77 (2)

[65] Article 79 (1)

the exercise of this right except such action is reasonably desired for the exploration and exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines.[66]

High Seas

In Article 86 of UNCLOS 3 the high seas refer to all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a state, or in the archipelagic waters of an archipelagic state. These parts of the sea are open to all states irrespective of their status and peculiarities. The freedoms enjoyed by states in the high sea include: freedom of navigation, freedom of over flight, freedom to lay sub-marine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law, freedom of fishing and freedom of scientific research.[67] The conferment of these freedoms on all states implies that they are considered as equals in so far as the high seas and its resources are concerned. Land-locked and geographically disadvantages states can engage equally with the coastal states in beneficial uses of the high seas area and also exploit the resources embedded therein. Article 90 of UNCLOS 3 further recognizes the right of all states, whether coastal or land-locked to sail ships flying its flag on the high Seas. The high seas is reserved for peaceful uses[68] and no state can lay exclusive claim over any part of it. All states are expected to exercise effective jurisdiction and control in the administrative, technical and social matters over ships flying its flag.[69]

Deep Sea Bed (Area)

The 'Area' refers to the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.[70] This part of the sea which is situated off the continental margin[71] constitutes the common heritage of mankind.[72] No state is allowed to claim sovereign rights over any part of the Area and its resources.[73] By Article 140 of UNCLOS 3, all activities in the Area shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states, whether coastal or land-locked and taking into particular consideration the needs and interests of developing states. The uses of the Area shall be for peaceful purposes and by all states whether coastal or land-locked, without discrimination.[74] Additionally, many of the land-locked and geographically disadvantaged states are developing and/or poor states. The law of the sea convention provides for the promotion of their effective participation, in the activities in the Area with due regard to their special interests and need.[75] Land locked and geographically disadvantaged states are also represented in the Council of the International Sea-Bed Authority. Also, though there are no special provisions concerning these states on the sharing of the Authority revenues, Article 82 (4) of UNCLOS 3 enjoins the Authority to consider the interests and needs of developing states, particularly the least developed and the land-locked among them when sharing the resources of the continental shelf beyond the 200 nautical mile limit. These provisions are quite lofty and show the concern and commitment of the favoured and well located states to the plight of the others. The overall aims of these provisions being to foster the healthy development of the universal economy, the balanced growth of international trade and the promotion of international cooperation for the development and good of all countries and mankind.[76]

5. Marine Scientific Research

Apart from the rights of access, and the exploration and exploitation of resources of the seas, there are provisions for the land-locked and geographically disadvantaged states to participate equally with coastal states in the conduct of marine scientific research.[77] The objectives of such research shall be peaceful and the methods and means adopted shall not unjustifiably interfere with other legitimate uses of the sea and shall also protect and preserve the marine environment.[78] During the course of such marine scientific research, neighbouring land-locked and geographically disadvantaged shall be given due notice and all other relevant information on the proposed research project by states and competent international organizations that have submitted to a coastal state a research proposal. Where a neighbouring land-locked or geographically disadvantaged state becomes interested in joining

[66] Article 79 (2)
[67] Article 87
[68] Article 88
[69] Article 94
[70] Section 1 (1)
[71] D. J. Harris, *Cases and Materials on International Law*, (Sweet and Maxwell, London, 2004) 440
[72] Article 136
[73] Article 137
[74] Article 141
[75] Article 148
[76] Article 150
[77] Article 238
[78] Article 240

the research team, they shall be allowed to participate through their qualified experts as much as it is feasible.[79] It is expressly provided that in the Area, and the water column beyond the EEZ, all states irrespective of their status have a right to conduct marine scientific research.[80]

6. Significance of Bilateral and Multilateral Agreements

Land-locked and geographically disadvantaged states require access to the sea not only for passage of persons and goods but also to share in the bountiful reserves lying in the sea area and perhaps make their contribution to development through research activities. Securing access to the sea is the key to the enjoyment of the other rights on the sea.[81] Indeed, passage through the territory of persons and goods originating from or heading for a land-locked country raises many problems of a technical, administrative and financial nature.[82] These issues are settled through special agreements. With regard to the transit rights, Shaw stresses that 'there is no absolute right of transit, but rather that transit depends upon arrangements to be made between the land-locked and transit states.'[83] Through such agreements the terms and modalities of the exercise of freedom of transit are defined. There are many provisions in the relevant international laws and conventions for the making of bilateral agreements on transit between states.[84] In order to participate in the exploitation of the surplus resources in the EEZ, land-locked states also have to reach an understanding with the coastal state through bilateral, sub-regional or regional agreement.[85] The same condition also applies to their use of the high seas[86] and also the conduct of marine scientific research.[87]

Perhaps it is only in the 'Area' that agreements may not be necessary, since this part of the sea is open to use by all states and no state is allowed to proclaim sovereign authority over any part of the Area and its resources. However, land-locked states that need to use the Area for any purpose must necessarily access it through a transit state and this inevitably raises the issue of bilateral, sub-regional and regional agreements. Indeed the low level of development of most land-locked states as compared to their coastal neighbours is an indication of their dependence on transit states for all import and export services.[88] The nature of political relationship between land-locked states and transit states greatly affects the enforcement of transit rights of land-locked states, the provisions of the relevant conventions notwithstanding. In effect, political interests of states makes existing freedom of transit granted to land-locked and geographically disadvantaged states notional and uncertain. This is why further multilateral and bilateral negotiations for agreements are conducted to give practical effects to the rights. The main multilateral agreements in the above regard are the Barcelona convention on Freedom of Transit of 1921, the General Agreement on Tariffs and Trade (GATT, 1947, 1994), the Convention on the High Seas (1958), the New York Convention on Transit Trade of Land-locked countries (1965) and the Law of the Sea Convention (UNCLOS 3, 1982). The related provisions of these agreements have already been discussed. In case of transit by air, there are also a number of multilateral agreements on civil aviation which give aircraft diverse rights of transit.[89] Prominent among which are, the 1944 Convention on International Civil Aviation,[90] the International Air Services Transit Agreement (1944) and the International Air Transport Agreement of 1944.

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[79] Articles 245 and 246

[80] Article 256 and 257

[81] Endalcachew Bayah, "The Rights of Land-locked states under the International Law: The Role of Bilateral/Multilateral Agreements, *Social Sciences*, (Vol. 4, No. 2, 2015) 27-30, available at http://www.sciencepublishinggroup.com/j/ss. Retrieved on 11/7/2017 op. cit. note 11

[82] Rene- Jean Dupuy and Daniel Vignes, *op. cit.*, note 44, 520

[83] Malcom N. Shaw, *op. cit.*, 607; See also Diba, Bahman Aghai, "Iran and land-locked state available at http://www.payvand.com/news. Retrieved 10/5/2017

[84] Article 2 of the 1921 Statute of Barcelona concerns agreements on transit by rail or waterway; under the 1965 New York Convention on Transit Trade of Land-locked states, transit by road is added and, where it is feasible depending on local circumstance, porters and pack animals, and any other means, (Art. 1 (d); in the 1982 LOS Convention, Art. 124 (1) (d) provides that transit by waterway may take place using any type of craft, whether for sea, lake or river navigation. Subsection 2 further provides that land-locked states and transit states, may agree to include pipelines and gas lines as means of transport and indeed any other convenient means. Air transport is not captured by the Barcelona Statute or the New York Convention or in UNCLOS 3. Article v of the GATT does not cover the operation of aircraft in transit, but relates to air transit of goods. Generally, air transport is still regulated by the 1944 Chicago Convention on International Civil Aviation and by other bilateral agreements. See Rene-Jean Dupuy and Daniel Vignes, *op. cit.*, note 44, 521

[85] See Article 69 (2) and 70 (2) of UNCLOS 3

[86] Article 125 (2), Ibid

[87] Article 242 and 243, ibid

[88] Faye, Michael L., McArthur, John W., Sachs, Jeffrey D. and Snow, Thomas, "The Challenges facing Land-Locked Developing Countries," *Journal of Human Development* (Vol. 5, No. 1) 31-68

[89] See R. R. Churchill and A. V. Lowe, *op. cit.*, 443

[90] See Convention on International Civil Aviation Article 5

As for bilateral agreements, a lot have been made between land-locked states and contiguous coastal states in their regions. It is important to mention some of them. One of the earliest of such agreements was concluded between Switzerland and its neighbour, the Kingdom of Sardinia in 1816.[91] In 1921 Germany, Poland and the Free City of Danzig signed a Convention on transit freedom between Eastern Prussia and the rest of Germany.[92] This agreement recognized the 'corridor of Danzig' which allowed Poland to access the sea, separated East Prussia from the rest of Germany and made it an enclave of Germany. The treaty granted the parties free transit across the territories.[93] Another significant one is the agreement between Nepal and India. In the Treaty of Trade and Commerce of October 1950, India accepted the right of Nepal to import and export goods through Indian territory and ports. As the power of India grew and Nepal became vulnerable to Indian influence the treaty was revised several times.[94] In the 1991 Indo-Nepal Treaty (which is similar to that of 1978), each country granted Most Favourable Nation (MFN) status to each other and India agreed to exempt imported Nepalese primary products from custom duties and other quantitative restrictions.[95] In Africa, the earliest bilateral agreements on access to the sea were concluded between the foreign colonial powers which ruled African territories. Independent land-locked Ethiopia was about the first African country to face this challenge. To circumvent the problem, Ethiopia signed an agreement with Italy in 1929. In the agreement, Italy granted Ethiopia access to the port of Asab (in modern Eritrea) and allowed Ethiopia to build warehouses in the area. Earlier in 1902, Great Britain and Ethiopia had signed an agreement on the boundaries between Ethiopia and Uganda. The agreement allowed Great Britain to construct railway across Ethiopia to link land-locked Uganda with Sudan.[96]

In 1963, Mali and Senegal signed a historic Agreement Concerning the Use of Senegal Port Facilities Designated for Transit Traffic to and from Mali. This agreement established separate free zones in the customs area of the ports in Dakar and Kaolack, Senegal. Concerning the River Niger, of the nine riparian states involved four countries namely, Burkina Faso (Upper Volta), Mali, Niger and Chad are land-locked. Earlier in 1885, European powers which controlled these West African territories had established a legal regime for the River Niger via the Treaty of Berlin. The agreement endorsed the principles of freedom of navigation for all the states riparian to the Niger and equal treatment for all the countries. In 1919 the Convention of Saint-German abrogated the Treaty of Berlin but maintained all the principles. After the independence of these countries, they met in 1963 in Niamey where they signed an 'Act' concerning Navigation and Economic Cooperation between the States of the Niger Basin'[97] which also adopted similar principles. The River Niger Commission was established in 1964 and by 1980 under the Faranah Convention, it became the Niger Basin Authority.[98] Another relevant post independent agreement in Africa is the Northern Corridor Transit Agreement signed in 1985 which gave the right of transit to the port in Mombassa, Kenya to Burundi, Rwanda and Uganda.[99] In view of the multiplicity of regional bilateral agreements on right of access, it is safe to assert that multilateral treaties laydown broad principles and aims while the bilateral agreements deals with the specifics and give the former the desired effect.

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[91] See Kishor Uprety, *op. cit.,* 451

[92] Convention Between Germany and Poland and the Free city of Danzig Concerning Freedom of Transit between East Prussia and the rest of Germany, signed at Paris, April, 21, 1921, 12 L.N.T.S 63

[93] Kishor uprety, *op. cit.*

[94] 1960, 1971, 1978 and 1991

[95] Kishor uprety, *op. cit.,* 461

[96] Other treaties signed by the colonial powers for African territories include: Treaty Regarding Navigation on the Zambezi (Great Britain and Portugal, 1890); Convention with a view to facilitating Belgian Traffic through the Territories of East Africa (Great Britain and Belgium, 1921) under which Britain undertook to take steps to move Belgian trade in the East African territories in exchange for access to ports under Belgian control in the Indian Ocean; and the Convention Regarding Port of Beira, Mozambique signed in 1950 between Great Britain and Portugal. By this agreement Britain gained access to the port and sea for her territories (Northern Rhodesia (Zambia) Swaziland, Bechuanaland (Botswana), Nyasaland (Malawi) and Basutoland (Lesotho) and it was also agreed that uniform tariffs will be applied across the territories. See generally, Kishor Uprety, *op. cit.,* 454-455

[97] Kishor Uprety, *op. cit.,* 429

[98] *Ibid*

[99] There are other agreements across the continents. These include the Transit agreement between Czechoslavakia and Italy (1921), Czecloslavakia and Hungary (1923); Anglo-Afghan Treaty and India (1921) Afghanistan and Pakistan Transit Agreement (1965); Bolivia –Chile Treaty of Peace and Friendship (1904); reaffirmed under the 1912 Treaty of Commerce and the 1937 Bolivia-Chile Convention Bolivia-Argentina Treaty of friendship, Commerce and Navigation, July, 9, 1868. Bolivia-Peru Treaty of Peace and friendship (1863) and Treaty of Commerce and Customs (1905) Bolivia-Brazil Treaty of friendship, Navigation and Extradition (1867).

Infact, to a large extent, though multilateral agreements exist, the possibility of transit states granting access to land-locked and geographically disadvantaged states is quite slim without some bilateral understanding.[100] This is due to the fact that no coastal state will just grant this right to a landlocked or geographically disadvantaged state as a matter of course and without getting other reciprocal concessions peculiar to their situation. Churchill and Lowe[101] have rightly asserted that in negotiating with a transit state, a land-locked state is usually in a weak bargaining position since it has little or nothing to give to the transit state in return for whatever favour it is seeking. What may strengthen their position will be the reference to an existing general right of transit in a multilateral treaty. It is our humble view that such general right is not sufficient as some transit states may still be swayed by their political interests and antecedents.[102] For enclaves, the situation is more difficult as the transit state may adopt all possible measures to dominate the state situated within its territory.[103] It is also expedient to consider the provisions of Article 127 (2) of UNCLOS 3. It provides: 'means of transport in transit and other facilities provided for and used by land-locked states shall not be subject to taxes and charges higher than those levied for the use of means of transport of the transit state.' This provision may have been adopted to protect the interest of the concerned states in the light of their weak economics, but it can also raise some issues in the transit states. The carriage by neighbouring land-locked states through a transit state obviously increases the volume of traffic in the later and this in turn will affect the existing transport infrastructure.

Yet, the primary responsibility for the maintenance of these systems and facilities rest with the transit state authorities. Most neighbouring land-locked and geographically disadvantaged states may not be economically buoyant to voluntarily support infrastructural development in neighbouring coastal states. For instance, the road and rail systems between northern and southern Nigeria which also serve Burkina Faso, Chad and Niger have nearly collapse due to heavy duty vehicular traffic without any foreign assistance. According to Nigeria's Minister of Transport,[104] with the collapse of the rail lines in the country, the neighbouring states which used to import goods through Nigeria diverted most of their import to Lome, Cotonou and Ghana. Nigeria will bear the burden of fixing thee rail network alone in the spirit of African brotherhood and the principles of the Niger Basin Authority. There are also associated problems of migration and influx of foreigners in coastal state. This is why it is necessary to reconsider some of the provisions of these agreements to include to impose a little additional duty against a land-locked state in favour of transit states or to provide for some other means of compensating the transit states.

7. Conclusion

A significant number of states in the world are either land-locked or geographically disadvantaged in terms of access to the sea. Without universal concern the peculiarities of these countries may compound their woes. This is why their natural condition have received some general attention. In this paper, the rights of these groups of states accorded them under International Law have been considered. In general the law has accorded these states access right to and from the seas and freedom of transit across coastal territories. Also, they have been granted some marginal right to participate and share in the living resources of the seas. These rights have largely been codified into conventions particularly (UNCLOS 3). However, they are not absolute but are contingent upon the negotiation and signing of bilateral agreements between the land-locked and geographically disadvantaged state concern and the contiguous coastal state. As highlighted in this work, a number of such agreements have actually been made. Some problems though still persist due to the political and socio economic concerns of some coastal states. This is why it is imperative for these 'closed' states to clearly assess their situation and strife at all times to maintain cordial relations with their coastal neighbours notwithstanding their sovereign status and the provisions of multilateral treaties. It may also be necessary for re-negotiation of some bilateral and regional agreements to cater for some contemporary desires of states in line with recent developments and political alignments as some provisions in these agreement are no longer feasible.

[100] Endalcachew Bayeh, *op. cit.*
[101] *Op. cit.* 445
[102] The experience of Nepal with India is relevant here.
[103] In the case of Lesotho and South Africa, during the era of apartheid in the 1960s, a conflict arose between South Africa and Britain over the latter's policies in Lesotho, an enclave in South Africa. South Africa refused to allow transit to Lesotho through its territory citing security lapses in Lesotho alleging that some of citizens have come under Chinese influence to the detriment of South Africa. As for the Vatican, its relationship with Italy is shaped largely by universal interest in the affairs of the Holy See.
[104] Rotimi Chibuike Amaechi, Interview, *The Guardian,* Saturday, Nov. 11, 2017, 13