ASSESSMENT OF INTERNATIONAL CONVENTIONS RELATING TO LAND TRANSIT OF LANDLOCKED STATES

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Abstract

Under the definition defined in Article 124 (1) of the United Nations Convention on the Law of the Sea 1982, landlocked state is a state having no sea coast. Under this definition itself, landlocked states have relied on the transit state for the outlet of the sea which is the cheapest transportation mode, and freedom of transit is most crucial for these states than other factors. Because of shipping is still playing a central role in global trade, geographic location also remains significant. As a result of their geographical disadvantage, landlocked states face specific challenges in their attempts to integrate into the global trading system. Mainly because of goods coming from or going to a landlocked state are subject to additional trade barriers such as lengthy border-crossing procedures, weak legal and institutional arrangements, poor infrastructure, a lack of information technology, an underdeveloped logistics sector and a lack of cooperation with neighbouring transit countries, they face the disadvantages which they can't solve themselves. These problems faced by landlocked states have over the years been addressed by the international community through, inter alia, the adoption of international legal instruments aimed at easing the economic burden suffered by them. In this study, it will be assessed the international conventions relating to land transit of landlocked states.

Key Words: landlocked states, transit, disadvantage, barriers, assess, international legal instruments

Introduction

The great oceans of the world; the Pacific, Atlantic, Indian and Arctic, constitute a single interconnected expanse, one continuous body of salt water. The oceans and their marginal seas which cover almost 71% of the Earth's surface and constitute a vast area of communication, a source of living and non-living resources, and an important object of scientific research, have long been an indispensable arena for intercourse between human communities.

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Before the onset of air traffic and instantaneous communication, people, goods, and ideas travelled the world by ship. Today, even with advances in technology, seaborne commerce remains the linchpin of the global economy, as more than 90% of global trade is carried by sea.

And today, due to globalization and the resulting economic integration, all countries of the world have become part of a "global village." This integration of world economies has proven to be a powerful means for countries to promote economic growth and development and to reduce poverty. However, since landlocked states are states without direct coastal access to the sea, they cannot enjoy the interests from the ocean and the Sea and face very specific challenges including maritime trade.

At present there are 43 states having no sea coast; 16 in Africa, 13 in Europe, 12 in Asia and 2 in Latin America. Compared with their coastal neighbouring countries, they start their trading "career" with numerous disadvantages from the outset. The situation is almost always aggravated when being landlocked coincides with other factors such as remoteness from major markets, tropical climates, considerable distance from the coast, poor infrastructure, or an inadequate policy, legal or institutional environment. In today's competitive world, landlocked countries generally face a difficult situation.

While some countries, including a few developed Landlocked States in Europe, have benefited from their central location, the majority of Landlocked Developing Countries, however, still face the constraints imposed by geography and remains on the periphery of major markets. So the 32 Landlocked Developing Countries are often characterized by lower per capita incomes when compared to their transit neighbors and 17 of them are classified as least developed.

For Landlocked States, free access to the sea, the key to international trade, is linked to the question of transit: goods originating in Landlocked States directed toward the coasts, or entering Landlocked States from the sea, must traverse the territories of bordering countries. In other words, their geographical location means that the access of these states to the principal maritime ways is always indirect; they are obliged to rely on transit through the territory of other states. As a result of their geographical disadvantage,

Landlocked States face specific challenges in their attempts to integrate into the global trading system. Mainly because of goods coming from or going to a landlocked country are subject to additional trade barriers such as lengthy border-crossing procedures, weak legal and institutional arrangements, poor infrastructure, a lack of information technology, an underdeveloped logistics sector and a lack of cooperation with neighbouring transit countries, they face disadvantages which they cannot solve themselves. This problem has for a long time, been of major concern to Landlocked States.

The principle objective of International law being to maintain relations among nations and its ultimate goal being to maintain peace, security and progress for all people, cooperation between them is a matter of common interest. Moreover, the progress in International Law, has guaranteed the same right of transit in relation to free access to and from the sea, since the sea has been accepted as the common heritage of all mankind and accessibility, equitable distribution and effective utilization of such common resources irrespective of the geographical construction whether costal or landlocked, is the spirit of the same.

As a consequence, the international community has, over the years, adopted several international legal instruments ensuring freedom of transit, thereby facilitating Landlocked States gain access to seaports via transit traffic through neighbouring countries. Although many multilateral, regional and bilateral treaties have been signed following the recognition of freedom of transit for the Landlocked States, in this study, it is only assessed the international conventions with multilateral character.

Access to and from the sea and passage rights across the territories of states have been the subject of various international conferences and several international conventions which form the basis for the principle of freedom of transit with multilateral character; commencing with the Barcelona Convention and Statute on Freedom of Transit 1921, Article V of the GATT 1947, the New York Convention on Transit Trade of Landlocked Countries 1965, and the United Nations Convention on the Law of the Sea 1982. The 1958 Convention on the High Seas is often considered a fifth major instrument dealing with the issues, but most of its relevant provisions have been incorporated into the Law of the Sea Convention.

Although some of these conventions do not solely provide for Landlocked States, the parties of these conventions, whether coastal or landlocked, may enjoy freedom of transit through other contracting States.

Aims and Objectives of this study are to study the main challenges and problems of Landlocked States, to assess the international conventions relating to landlocked states and to analyse the advantages and disadvantages of these international conventions. This research limits to the multilateral conventions and land transit of the Landlocked State only.

In this research, it will be analytically studied that what are the main challenges and problems Landlocked States are facing in general and which International Conventions address to the land transit of Landlocked States and finally how do these international conventions effect and can solve the problem of Landlocked State.

The Convention and Statute on Freedom of Transit (the Barcelona Statute) 1921

International land transportation, in so far as it includes not only overland bilateral transport but also overland transit transport across one or more countries, underscores the need for recognizing freedom of transit as a universal need rather than as a need specific to Landlocked States. The universal nature of the need for freedom of transit was firstly recognized in the Convention and Statute on Freedom of Transit 1921, although with several important restrictions.

The Barcelona Convention and Statute on Freedom of Transit is an International treaty signed in Barcelona on 20 April 1921; the treaty ensures freedom of transit for various commercial goods across national boundaries. It was registered in League of Nations Treaty Series on 8 October 1921. It went into effect on 31 October 1922 and the convention is still in force at present. The Barcelona Convention, at present, has 50 states parties, among them 12 are landlocked states.

It did not specifically cater to the particular needs of Landlocked States, and applied only to railway and waterway transport, thus excluding land transport. That Convention, furthermore, received only a limited number

of ratifications. The failure of the Barcelona Convention, which focused primarily on Europe, to address road transport, excluded extensive portions of Africa and Asia, continents that are largely dependent on overland routes to and from the sea.[1]

The Barcelona Statute provides a framework for agreements dealing with transit. It requires that all contracting states facilitate the freedom of transit by rail or internal navigable waterways. This requirement includes, under Article 2, routes in use across territories under their jurisdiction that are convenient for international transit. The contracting states are permitted to apply reasonable tariffs on the traffic in transit, regardless of the point of departure or destination of the traffic. But these tariffs must be fixed so as to facilitate international traffic.[2]

Moreover, under Article 4, the taxes, facilities, or restrictions may not depend directly or indirectly upon the nationality or ownership of vessels, or means of transport utilized for a journey. Article 5 authorized a contracting State to disallow transit of passengers or goods otherwise prohibited in its territory. Article 6 removed any obligation for a contracting State to allow freedom of transit to a non-contracting State. Article 7 empowered contracting States to impose temporary restrictions on freedom of transit in case of an emergency affecting the safety of the State or the vital interests of the country.

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war under Article 8. The Statute shall, however, continue in force in time of war as far as such rights and duties permit.[3] Clearly, the regime established by the Barcelona Statute confirms the intention of states to recognize, for Landlocked States, a right of transit in the bordering territories.

Although the Barcelona Statute requires observance of the principle of freedom of transit by all possible means, signatories to the Barcelona

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[1] Helmut Tuerk, 'Reflections on the Contemporary Law of the Sea', Martinus Nijhoff Publishers and VSP (2012), p-52.

[2] Uprety, K, 'From Barcelona to Montego Bay and Thereafter: A Search for Landlocked States' Rights to Trade through Access to the Sea -A Retrospective Review', Singapore Journal of International & Comparative Law (2003) 7 p-204.

[3] M. Sinjela, Freedom of Transit and the Right of Access for Landlocked States: The Evolution of Principle and Law, 12 Georgia Journal of International Comparative Law, (1982), p-36.

Convention can depart from that principle. Under Article 9, when serious events affect the security or vital interests of the transit country, for instance, it may disregard the Statute for a limited time. According to Article 6 and 21, a State may also refuse to allow transit of goods or passengers for public health or public security reasons, or under the authority of general international conventions, or pursuant to decisions of the League of Nations.

Although the Barcelona Conference provided a promising start for securing an internationally recognized right of transit, from the Landlocked States' point of view several deficiencies were evident in its scope and coverage. First, it would have served these countries well had the right of transit been declared of universal application, rather than confined to States party to the convention. A second major limitation was that the Convention only applies to railway and waterway transport. The failure to address road transport excluded extensive portions of Africa and Asia which are largely dependent on overland routes to and from the sea. Another criticism of the Convention was directed at the great prominence it accorded transit problems of Landlocked States in Europe, thereby failing to take sufficient account of the distinct position of States in the new world.[4]

It should be noted that the Barcelona Statute concerns only water and rail transport, it is not applicable to non-rail overland or air transport. Moreover, it does not deal with the "right" of free access. It only deals with the "freedom" of access. It appears that the Statute tried, within the framework of a treaty, to establish equilibrium between the principle of freedom and the principle of sovereignty of states.

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. Furthermore, the right of free transit was not absolute, not overriding the rights and duties of belligerents and neutrals in time of war, not applying to passengers or goods excluded for reasons of health or public security, and not affecting provisions of conventions "relating

[4] M. Sinjela, 'Freedom of Transit and the Right of Access for Landlocked States: The Evolution of Principle and Law, 12 Georgia Journal of International Comparative Law, (1982), p-36.

to the transit, export or import of particular kinds of articles"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. While article 13 of the Statute provided for the settlement of disputes, 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, but fractured along regional lines.[5]

Nevertheless, the Convention, despite its insufficiency, can be considered an important step for the international community toward the formation of a universal law as well as a set of minimum standards in the international transit transport sector.

The General Agreement on Tariff and Trade (GATT) 1947

After World War II, several important events and trends conjoined improved access to the sea for landlocked states. For one thing, a relatively new concept emerged, that access to the sea is essential for the expanding of international trade and economic development. Therefore, world international organizations attempted to recognize the free access and freedom of transit to and from the sea.

The GATT 1947which was a self-executing agreement not subject to ratification, came into force on January 1, 1948, deals with transit transport in its Article-V, especially freedom of transit. Article V of the GATT provides the most important provisions in the field of international transit, including of road vehicles and the goods they carry. Currently, 164 states including 24 Landlocked States are parties to it. Although not specifically dealing with Landlocked States, it reaffirms the principles laid down by the Barcelona Statute. But the important difference between GATT and the Barcelona Statute is that the word sovereignty does not appear at all in the seven

[5] Simuel Pyeatt Menefee, "The Oar of Odysseus": Landlocked and Geographically Disadvantaged States in Historical Perspective, California Western International Law Journal, Volume 23 1992-1993, Number 1, Published by CWSL Scholarly Commons, 1992, p-38-39.

paragraphs of this Article, while the Barcelona Statute recalls the sovereign right of states.

The GATT 1947 (outside but linked to the UN system) deals with freedom of transit in its Article V. Article V of the GATT, therefore only refers to so called through-transit, i.e. transit in the GATT context, normally involves at least three states. Article V ensures that goods shipped from Country **A** to Country **C** may pass through Country **B** on their way to Country **C**. This guarantee is particularly important for landlocked countries. Freedom of transit also covers means of transport. Whilst some conventions and legal texts exhaustively list means of transport others, such as GATT Article V don't.[6]

The Article V of the GATT provides for freedom of transit for all member countries without specifically mentioning landlocked countries. It regulates the conditions a Member may impose on goods transported through its territory by another party to a foreign destination. The basic objective is to allow for freedom of transit through the territory of each Member for transports to or from the territory of other Members.[7]

In Article V (2), it provides for the freedom of transit of goods, vessels and other means of transport across the territory of Member States, via the routes most convenient for international transit, with no distinction based on flag of vessel, origin, departure, entry, exit, destination, or ownership of the goods, vessels or other means of transport involved.

Furthermore, transit Members shall, under Article V (3), not be subject to any unnecessary delays or restrictions and shall be exempted from any duties and charges relating to transit. An exception is made in regard to charges for transportation or those that are commensurate with administrative expenses entailed by transit or with the cost of services rendered. According to Article V (4), all charges and regulations imposed on traffic in transit have to be reasonable with regard to the conditions of the traffic. And under Article V (5), WTO members are also obliged to treat such traffic to, or from the

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[6] UNCTAD, 'Freedom of Transit', (UNCTAD Trust Fund for Trade Facilitation Negotiations, Technical Note 8, Rev2, 2009).

[7] WTO, 'Article V of the GATT 1994 – Scope and Application' (Note by the Secretariat, G/C/W/408, 2002) 4.

territory of any other member, no less favourably than traffic in transit to or from any third country with respect to transit charges, regulations and formalities.

Article V (6) of the GATT accords also the outlines that in the case of transit, member states shall grant treatment "no less favorable than that which would be accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party." And then, paragraph7 exempts the operation of aircraft in transit from the application of Article V. Air transit of goods (including baggage), on the other hand, does fall within the scope of Article V.[8]

Although the provisions of GATT do not depart significantly from those of the Barcelona Statute on Freedom of Transit, there are two main differences. In the definition of traffic in transit, the Barcelona Statute includes persons as well as goods, but the GATT is concerned, not only with the railways and navigable watercourses, but also all means of land transportation. However, like the Barcelona Statute, there is no mention of or special consideration for the needs of landlocked States in its Article V. All parties to GATT enjoy this freedom of transit on the basis of reciprocity.

It appears that the obligation in Article V is that goods in transit are not to be unduly interfered with, nor discriminated against, by the transit state. Therefore, the Barcelona Statute, and the GATT share the same objective: general regulation of transit transport. Among these three instruments, two have only entered into force but the remaining one also has obtained the status of customary law; their influence on the issue of free access to the sea, and thus on promoting international trade, is considerable.

The UN Convention on the High Seas 1958

A further important step regarding the relationship between landlocked countries and the sea was the adoption of the four Geneva Conventions on the Law of the Sea of 1958, by the First United Nations Conference on the Law of the Sea. Chronologically, the UN Convention on the High Seas 1958 is the

[8] Ibid, p.7.

third International Convention that recognized the right of access to the sea of Landlocked States and entered into force in 1962.

Under Article 3 of the Convention on the High Seas, it reads:

> "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 have by common agreement with the latter and in conformity with existing international conventions accord:
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> a) To the state having no sea-coast, on a basis of reciprocity, free transit through their territory; and
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> 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.
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> 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."

This article was in favour of land-locked States, however it depended on contingent agreement and on the good will of the coastal States concerned.

And this provision marked the first recognition of the special needs of Landlocked States in an international treaty of universal character. But the weak language coupled with the word 'should', the requirement of reciprocity and the explicit requirement of a bilateral agreement with the transit state to make the right of free access effective attracted criticism from Landlocked States. It broadly reflected the various provisions of previous treaties dealing with Landlocked States. The weaknesses outlined above with regard to the Barcelona Statute were not remedied by this Convention. The rights of

Landlocked States still remained non self-execution and dependent on the good will of transit States.

Therefore, this First United Nations Conference on the Law of the Sea (UNCLOS- I), apart from the now undisputed recognition of the right of Landlocked States to their own flag on the seas, however, produced only a rather meagre result, namely Article 3 of the Convention on the High Seas 1958. For these reasons Landlocked States attempted to seek a separate convention dealing with their transit transport problem, and the result of that effort was the 1965 United Nations Convention on Transit Trade of Landlocked States.

The UN Convention on Transit Trade of Landlocked States (the New York Convention) 1965

The UN Convention on Transit Trade of Landlocked States (the New York Convention) 1965, is the first multilateral instrument devoted exclusively to the special transit problems of Landlocked States. This Convention developed under the auspices of UNCTAD, specifically addresses the transit transport issues of Landlocked States. The Conference of plenipotentiaries adopted the Convention on Transit Trade of landlocked states on 8 July 1965. The Convention entered into force on 9 June 1967 following its ratification by the required minimum of two landlocked and two transit States having a sea-coast. It has thus far been adhered to by 43 States with 23 Landlocked States, among them only 22 coastal States, some of which do not even border a landlocked country. This was the first international Convention to deal specifically with the problem but, while it certainly gave a measure of "status" to it, it did not offer a solution. Its effectiveness is limited, moreover, by the fact that few transit states have ratified or acceded to it.

The main purpose of the New York Convention was to incorporate into treaty law the rights and obligations of landlocked States and their transit neighbors with regard to the movements of goods in international transit, and then to generate universal acceptance of the Convention.[9]

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[9] Uprety, Kishor, 'The Transit Regime for Landlocked States: International Law and Development Perspectives',The World Bank,Washington, D.C(2006), p-71.

The Convention on Transit Trade of Landlocked States, in its preamble, recalls Article 55 of the Charter of the United Nations which required it under this Article to promote conditions of economic progress and solution of international economic problems. The 1965 New York Convention starts with a relatively long preamble that reproduces excerpts of the resolution of the 11th UN General Assembly, the eight principles of the 1964 UNCTAD, and Article 3 of the 1958 Convention on the High Seas. Most of the clauses in fact derive from the Barcelona Statute and some are identical. What distinguishes the 1965 Convention from the Barcelona Statute is that application of the New York Convention is more specific. The Barcelona Statute deals with transit in general, without specifically referring to Landlocked States; the New York Convention deals with Landlocked States access to and from the sea.[10]

Principle I of the New York Convention 1965 is as follow;

> "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"

This is enhanced in the fourth principle, which states that;

> "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."

But relating to these two principles, it had already weakened in substance under Principle V that states:

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[10] Uprety, K, 'From Barcelona to Montego Bay and Thereafter: A Search for Landlocked States' Rights to Trade through Access to the Sea -A Retrospective Review', Singapore Journal of International & Comparative Law (2003) 7, p-212.

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

Therefore, these principles are interdependent, and each must be interpreted with due consideration to the others.

As in the negotiation of the previous international instruments, the main obstacle in the New York Convention to recognition of the right of access resided in the territorial sovereignty of transit States. Simply, the right of access could be granted to neighbors only if the sovereignty of the transit States was guaranteed. To some extent, this explains the contradiction between the first and fifth principles of the New York Convention preamble.[11] To counterbalance the first principle, which recognizes freedom of access, the fifth principle affirmed the sovereign rights of transit States by emphasizing that the principles were interdependent.

Regardless, the Convention on Transit Trade of Landlocked States has modernised and amplified the Barcelona Convention for its application to transit trade of the Landlocked States. For instance, in Article 1, it is provided that;

> "The term "traffic in transit" means the passage of goods including unaccompanied baggage across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage. The trans-shipment, warehousing, breaking bulk, and change in the mode of transport of such goods as well as the assembly, disassembly or reassembly of machinery and bulky goods shall not render the passage of

[11] Uprety, K, 'From Barcelona to Montego Bay and Thereafter: A Search for Landlocked States' Rights to Trade through Access to the Sea -A Retrospective Review', Singapore Journal of International & Comparative Law (2003) 7, p-212.

> goods outside the definition of "traffic in transit" provided that any such operation is undertaken solely for the convenience of transportation. Nothing in this paragraph shall be construed as imposing an obligation on any Contracting State to establish or permit the establishment of permanent facilities on its territory for such assembly, disassembly or reassembly."

This Article includes not only the passage of goods but also the passage of unaccompanied baggage in the definition of "traffic in transit". And even a Landlocked States may become a state of transit, if 'traffic in transit' of another Landlocked States passes through its borders. There is a specific qualification of 'traffic in transit' as the passage of goods, etc. between a Landlocked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that Landlocked State and which includes sea transport directly preceding or following such passage.

Similarly, in its Article 1(d), it provides for quite a broad definition of the term "means of transport" which includes any railway stock, seagoing and river vessels and road vehicles, porters and pack animals where the local situation so requires and if agreed upon by the Contracting States concerned, other means of transport and pipelines and gas lines when they are used for traffic in transit within the meaning of this article.

Perhaps the most important of all is the guarantee in the Article for traffic in transit and means of transport.[12] It has stipulated that measures taken for regulating and forwarding traffic across the territory of contracting states shall facilitate traffic in transit. It has also provided passage across or access to the territory of contracting States of persons whose movement is necessary for traffic in transit.

Article 2(1) establishes that;

> "Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. Subject to the other provisions of this Convention, the measures taken

[12] S P, Subedi, 'The United Nations and the Trade and Transit Problems of Landlocked States,' in M I Glassner (ed), The United Nations at Work (1998), p-143.

> by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned."

Therefore, under Article 2(1), freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport, and such traffic to be provided on routes in use mutually acceptable for transit to the Contracting States concerned.

And Article 2 (2) provides that;

> "The rules governing the use of means of transport, when they pass across part or the whole of the territory of another Contracting State, shall be established by common agreement among the Contracting States concerned, with, due regard to the multilateral international conventions to which these States are parties."

So under Article 2(2), other rules governing means of transport also are to be established by agreement among or between the contracting parties concerned and under Article 2(3), each Contracting State shall authorize, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons whose movement is necessary for traffic in transit.

Except in cases of *force majeure,* contracting States must take measures necessary to avoid delays or restrictions of traffic in transit; where such obstacles should arise, the Convention mandates mutual cooperation among the competent authorities for their expeditious removal.[13]

Paragraph 4 of Article 2 provides that the passage of traffic in transit across the territory of contracting states shall be permitted in accordance with the principles of customary international law or applicable international conventions and with their internal regulations.

Article 3 of the New York Convention provides;

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[13] M. A. Sinjela, "Freedom of Transit and the Right of Access for Landlocked States", 12 Georgia Journal of International and comparative Law (1982), p- 41.

> "Traffic in transit shall not be subjected by any authority within the transit State to customs duties or taxes chargeable by reason of importation or exportation nor to any special dues in respect of transit. Nevertheless on such traffic in transit there may be levied charges intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such charges must correspond as nearly as possible with the expenses they are intended to cover and, subject to that condition., the charges must be imposed in conformity with the requirement of non-discrimination laid down in article 2, paragraph 1."

According to this Article, the Transit State must not levy any customs duties or other taxes on transit traffic except the dues corresponding to the expenses for supervision and administration necessitated by the traffic in transit.

> "The Contracting States undertake to provide, subject to availability, at the points of entry and exit, and as required at points of trans-shipment, adequate means of transport and handling equipment for the movement of traffic in transit without unnecessary delay."

As a means of protecting Landlocked State, Article 4 obligates transit states to provide the means of transport so that the traffic in transit may be effectuated without unjustified delays, and requires that the tariff for such facilities be equitable.

There are two noteworthy provisions in the Convention. One is Article 4which requires States Parties "to provide, subject to availability, at the points of entry and exit, and as required at points of trans-shipment, adequate means of transport and handling equipment for the movement of traffic in transit without unnecessary delay." The other one is Article 7which requires States Parties to take all measures "to avoid delays in or restrictions on traffic in transit. Should delays or other difficulties occur in traffic in transit, the

competent authorities of the transit State or States and of the land-locked State shall co-operate towards their expeditious elimination."[14]

The New York Convention also contains several technical details. For instance, under Article 5, the transit states must use simplified documentation and special procedures with regard to traffic in transit. They must provide warehousing facilities, under Article 6 and by mutual agreement with Landlocked State, they may grant free zones or similar facilities under Article 8.The New York Convention also includes situations allowing the prohibitions on access for Landlocked State. Such prohibitions, according to Article 11, may be imposed by transit states for reasons related to public order, for the protection of their essential security interests, in the occurrence of some serious events (this being defined as a situation endangering the political existence and the safety of contracting state) (under Article 12), in case of war, or due to obligations deriving from international or regional treaties to which the contracting transit state is a party under Article 13.

Last but not least important is the compulsory dispute settlement provision of Article 16. Under this Article, any dispute which may arise with respect to the interpretation or application of the provisions of this Convention which is not settled by negotiation or by other peaceful means of settlement within a period of nine months shall, at the request of either party, be settled by arbitration.

However, in many other respects, this Convention repeats the language and substance of the Barcelona Statue and Article V of the GATT. It accepts the principle of reciprocity, does not define the legitimate interests of transit States and requires a bilateral agreement with the transit State on actual modalities of transit. Moreover, the effectiveness of this Convention is rather limited since only a very few transit States have ratified it. Thus it is difficult to state that this Convention created an unfettered universal right of land-locked States to freedom of transit across the territory of transit States.

The New York Convention has the merit of being the first multilateral agreement that deals exclusively in a single instrument with the specific

[14] S P, Subedi, 'The United Nations and the Trade and Transit Problems of Landlocked States,' in M I Glassner (ed), The United Nations at Work (1998), p-143-144.

problems of transit trade. It does not, however, contain any significant innovation, and the influence of former international conventions is evident.[15]

On the whole, although all states recognized and were beginning to address the problem of being landlocked for developing economies, those states that did not face the problem themselves did not want to make the economic or sovereign concessions necessary to assist Landlocked Developing Countries gain freer access to global trade. The Convention did, however, adopt an important document, whose preamble clearly states a principle that highlights the importance of access to the sea for development: "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." While it was a noble attempt to address the problem and international law surrounding it, the document was not ratified by nearly as many coastal states as was originally hoped.[16]

Although the New York Convention contains a few weak elements, which resulted from the intransigence of transit states, it does attempt to deal specifically with the transit problems of states deprived of access to and from the sea. Furthermore, although it has been criticized, the New York Convention shows that enforceable rules for transit rights of landlocked states can indeed be formulated in the framework of a multilateral convention intended to be universal in scope. Since even this document did not fully satisfy the concerns of Landlocked States, they kept pressing for a more satisfactory international regime dealing with their rights during the nine years of negotiation in the Third United Nations Conference on the Law of the Sea (UNCLOS III).

The United Nations Convention on the Law of the Sea 1982

Compared to the several previous attempts made to the international level for securing the transit rights of the Landlocked States, the UN

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[15] Uprety, Kishor, 'The Transit Regime for Landlocked States: International Law and Development Perspectives',The World Bank,Washington, D.C(2006), p- 74.

[16] Breanna Long, United Nations Conference on Trade and Development, Landlocked Development Countries, Institute for Domestic & International Affairs, Inc. (IDIA) (2008), p-4.

Convention on the Law of Sea seems to be a more comprehensive and existing document for securing the same right and the rights relating to access to and from the sea. The adoption of the Law of the Sea Convention 1982 marked a milestone in the development of the law of the sea. For the first time, there was a single, comprehensive treaty governing all uses of the seas and oceans. Moreover, the Convention represented a revolution in the manner in which international law is made.

The United Nations Convention on the Law of the Sea (UNCLOS) is a significant input to the rule of law. It already forms a substantial part of current international law. It sets out principles and norms for the conduct of relations among States on maritime issues. As such it contributes immensely to the maintenance of global peace and security. It has been described as a "Constitution for the Oceans" and is widely considered to be a most significant achievement of the international community, and is ranked together with the Charter of the United Nations.

The Convention in its part X, has incorporated the provisions regarding the right of free access to the sea for Landlocked States. The United Nations Convention on the Law of the Sea (UNCLOS) 1982 has often been referred to as a "package deal" because of the circumstances in which it was negotiated, including the many different issues.

The UNCLOS 1982, together with the Implementing Agreement relating to the provisions of Part XI of the Convention, adopted in 1994, is a success story. Its success is not only determined by the number of States that have signed the Convention and the Agreement, or ratified or acceded to it, and that number is already remarkable; the Convention's success is also determined by its general acceptance by States, which is ventured to say is universal. More importantly for a law making treaty such as this Convention, its success is measured by its tangible achievements, i.e., by its widespread and consistent and uniform application in State practice.

Although the existence of the right of Landlocked States to access to and from the sea had been acknowledged by a majority of states in the several earlier treaties, it's internationally binding status, particularly from the aspects of practicality of enforcement, still needed improvement. The Landlocked State therefore continued to demand a formulation that was more valid,

objective, and universal. In this context, attempts towards reformation of the status of the right of access were made by the Third United Nations Convention on the Law of the Sea 1982.[17]

It was signed on December 10, 1982 after 14 years of negotiations to which more than 150 countries representing all regions of the world participated. The Convention entered into force on November 16, 1994. It had attracted 167 contracting parties including EU and 26 Landlocked States. The 1982 UNCLOS is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III). Since the UNCLOS II held in 1960 failed to achieve anything significant, negotiation were continued at the UNCLOS III which lasted from 1973 through 1982.

During the nine years of negotiations in UNCLOS III, a number of proposal were put forward by individual States, both landlocked and transit States, as well as group of States, outlining their negotiation positions. While the Landlocked States were keen to secure an unfettered right of free access to and from the sea, many transit States were anxious to have their sovereignty and territorial integrity preserved and not affected by the demands of Landlocked States. One other contested issue between the Landlocked State and transit States was the question of reciprocity. While the Landlocked States argued that their right of free access to and from the sea and their freedom of transit should not be subject to reciprocity, many transit States were insisting that reciprocity was the basis for any cooperation between the Landlocked States and transit States.

UNCLOS III is remarkable for its coverage and extent. Participating in the deliberations were 165 States (plus Namibia), three Territories, eight National Liberation Movements, 26 Specialized Institutions and other intergovernmental organizations, and 57 nongovernmental organizations (NGOs) as observers. It was the largest diplomatic conference ever convened. The duration of the Conference is also noteworthy: It lasted 9 years, in which there were 11 formal sessions totaling some 88 weeks of continuous negotiations, as well as numerous unofficial inter-sessions. The length of the

[17] Uprety, Kishor, 'The Transit Regime for Landlocked States: International Law and Development Perspectives', The World Bank, Washington, D.C(2006), p- 75-76.

Conference should not be a surprise. The work to be accomplished was great.[18]

The overall result of the intense negotiating effort at the Third United Nations Conference on the Law of the Sea is certainly far from wholly satisfying the interests and needs of landlocked States, as their views are only to some degree reflected in UNCLOS. The Convention, however, constitutes the only solution on which agreement with the coastal States was possible and which nevertheless to a certain, albeit rather narrow, extent reflects the legitimate demands of Landlocked States.[19]

Since the aim of UNCLOS III was to adopt a convention on the Law of the Sea by consensus, it was necessary for all individual States as well as various groups of States to adopt a give and take policy during the negotiations. The negotiated provisions on Landlocked States of the 1982 UN Convention on the Law of the Sea are contained in Part X, Articles 124 to 132.

The provisions of Part X share to some extent the narrow scope of the relevant articles of the 1958 Geneva Convention on the High Seas and the 1965 New York Convention on Transit Trade, but at the same time improve the legal situation of the landlocked States. This Convention is a general and universal convention which regulates all parts and virtually all uses of the oceans. It is a comprehensive and complex document that covers issues ranging from a state's rights over foreign ships in its territorial waters to who controls minerals at the bottom of the ocean.

This convention is also an international agreement dealing with all traditional aspects of ocean governance and uses. It deals with Landlocked States only briefly and the rights of access to the sea are outlined in detail in Part X of the Convention. It has few other provisions that could be implicitly linked with the right of access.[20]

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[18] Uprety, Kishor, 'The Transit Regime for Landlocked States: International Law and Development Perspectives', The World Bank, Washington, D.C(2006), p- 79.

[19] Helmut Tuerk, 'Reflections on the Contemporary Law of the Sea', Martinus Nijhoff Publishers and VSP (2012), p-57.

[20] Uprety, Kishor, 'The Transit Regime for Landlocked States: International Law and Development Perspectives', The World Bank, Washington D.C(2006), p- 85-86.

Part X of the United Nations Convention on the Law of the Sea 1982 (Article 124-132) concerns specially a number of rules concerning the right of access of Landlocked States to and from the sea.

The core provision of this Part is Article 125, which enshrines the right of access by landlocked countries to and from the sea, and freedom of transit through the territory of transit States by all means of transport. The main provision in this regard is to be found in Article 125(1) of the 1982 convention. It provides that:

> "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 on 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."

Therefore the key effects of Article 125(1) are; first, it guarantees the right of free access to and from the sea to landlocked states, second, it also guarantees to them freedom of transit without any prerequisite if this freedom is to be exercised in relation to the right of free access to and from the sea and third, breaking from the Barcelona tradition, it eliminates the requirement of reciprocity.

However, the provision of Article 125(2) which substantially reduced the force of the above paragraph specifically emphasizes as follow;

> "The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit State concerned through bilateral, sub-regional or regional agreements."

The right of access is, however, contrary to the 1965 Convention, made contingent upon bilateral, sub-regional or regional agreements between the landlocked States and transit States, laying down the terms and modalities for exercising freedom of transit.[21]

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[21] Helmut Tuerk, 'Reflections on the Contemporary Law of the Sea', Martinus Nijhoff Publishers and VSP (2012), p-58.

Some scholars confirm that Article 125(2) provides for a *pactum de contrahendo,* but what is the scope of the obligations of the transit States? It is possible to impose an obligation to negotiate, but can one impose an obligation to conclude? This is one of the thorniest issues in international law. Also, what happens if Landlocked States and a transit State cannot reach agreement? The Convention remains silent.[22]

As in the other conventions, under Article 124 (1) (d), the "means of transport" means;

"(i) railway rolling stock, sea, lake and river craft and road vehicles;

(ii) where local conditions so require, porters and pack animals.

These means are defined in the same manner as in the 1965 Convention as comprising railway rolling-stock, sea, lake and river craft and road vehicles and, where local conditions so require, also porters and pack animals, omitting such important means as aircraft and pipelines.

And under Article 124 (2);

> "Land-locked States and transit States may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1."

This paragraph is relatively flexible because landlocked states and transit states may, by agreement, include as means of transport pipelines and gas-lines and means of transport other than those included above.

Furthermore, where there are no means of transport in transit states to give effect to the freedom of transit or where the existing means (including the port installations and equipment) are inadequate in any respect, the transit states and landlocked states concerned may cooperate in constructing or improving such means of transport. Because this part clearly provided in its Article 129;

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[22] Uprety, K, 'The Transit Regime for Landlocked States: International Law and Development Perspectives', The World Bank, Washington, D.C, p- 86.

> "Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may co-operate in constructing or improving them."

Moreover under Article 128,

> "For the convenience of traffic in transit, free zones or other customs facilities may be provided at the ports ofentry and exit in the transit States, by agreement between those States and the land-locked States."

In essence, UNCLOS codifies modern customary international law; it reflects the law of the sea in written form. Similarly, it implies the requirement that the transit States cooperate with Landlocked States.[23] The provisions of Article 124(2), 125(1) and 128 of this Convention contemplate regulation between the Landlocked States and transit States.

Some articles provide expressly for cooperation. Article 129 foresees cooperation between transit States and Landlocked States in constructing means of transport to give effect to the freedom of transit of Landlocked States. Article 130 requires such cooperation in the expeditious elimination of delays or other technical difficulties of traffic in transit.

However, pragmatic analysis of the provisions of UNCLOS III shows that most of the rules set by the Convention could already be found in the earlier Conventions (the Barcelona Convention, the GATT, the High Seas Convention, or the New York Convention). For instance, such is the case of the exclusion of application of the MFN clause under Article 126, exemption from custom duties, taxes, or other charges under Article 127; equal treatment in maritime ports under Article 131; the grant of greater warehousing facilities under Article 132; and assignment of the free zones or other customs facilities to bilateral agreements under Article 128.

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[23] Uprety, K, 'The Transit Regime for Landlocked States: International Law and Development Perspectives', The World Bank, Washington D.C, p- 94.

A major deficiency of UNCLOS 1982 undoubtedly concerns the treatment of ships flying the flag of landlocked States in the ports of a transit State. Pursuant to Article 131 these ships are only accorded treatment equal to that of other foreign ships, whereas Article 3 of the 1958 Convention on the High Seas provided for combined most-favored nation or national treatment, whichever was more favorable to the vessel. That rule of UNCLOS only means that vessels may not be discriminated against in maritime ports for the sole reason that they fly the flag of a landlocked State. Accordingly, this provision amounts to no more than a corollary of the right of landlocked countries to sail ships under their own maritime flag. Furthermore, provisions on legally guaranteed access to those ports from the sea are lacking. And as with previous conventions, the transit states are not obligated to ensure transit for Landlocked States. Essentially a convenient transit for Landlocked States may be refused, at any time by transit states.[24]

But all aspects of the freedom of transit mentioned above are limited by Article 125 (3) that transit states exercise full sovereignty over their territory. Therefore, a transit state may act to protect its 'legitimate interests' and based on that insist that agreements regarding terms and conditions for exercising the freedom of transit be made.

Hence, the UNCLOS sets out a legal rule in favour of transit rights for land-locked States. On the other hand, it is not altogether clear that land-locked States have a legal right of access to the sea across the territory of transit States that have ratified only the High Seas Convention 1958, or across the territory of transit States that have ratified neither the law UNCLOS nor the High Seas Convention 1958. And it is to be noted that none of the Central Asian landlocked States has adhered to UNCLOS and that several landlocked States, particularly in Africa, have signed the Convention without so far ratifying it.

Possibly UNCLOS III may be advantageous for some Landlocked States that are also transit States, but for most of the Landlocked States in Africa, Asia, and South America, it is a disappointment. In general, the

[24] Helmut Tuerk, 'Reflections on the Contemporary Law of the Sea', MartinusNijhoff Publishers and VSP (2012), p-59-60.

Landlocked State had a vital interest in the attempt of UNCLOS III to improve their transit position, but their hopes were in vain.

Conclusion

The four major international legal instruments mentioned in this research, which address the issue of land transit transport, all contain several provisions which are advantageous for Landlocked States, such as improving transport means, providing exemptions from customs duties and taxes, etc. However, on the other hand, various areas deficiencies can also be identified with regard to the right of transit and the right of access to the sea of Landlocked States.

The Barcelona Convention confines the right of transit to rail and waterways transport and does not apply the right to road transport. This means that Landlocked States which depends on land routes to the sea cannot benefit from this Convention. Also, the right of provided by the Convention applies only to States parties to the Convention and is not a universal right.

The shortcoming of the GATT lies in the fact that the freedom of transit it provides is the good only, not for passengers and the freedom covers all member countries without specifically mentioning Landlocked States. Thus, there is no special consideration for the needs of Landlocked States. But, unlike the Barcelona Convention, the GATT does not mention State sovereignty while the sovereign right of the States is referred to in the Barcelona Convention.

The main obstacle in the New York Convention is that the right of transit and access depends on guaranteeing the sovereignty of the transit State and requires a bilateral agreement between the two parties. This could lead to restitutions on transit for Landlocked States.

The weak point of the UNCLOS 1982 is that it requires bilateral, sub-regional or regional agreements laying down the terms and modalities for exercising the freedom of transit. This requirement could lead to difficulties being faces by a Landlocked States in the event that it is unable to reach an agreement with the transit State.

Another major deficiency of the UNCLOS 1982 is that it grants ships flying the flag of Landlocked States treatment only equal to that of other foreign ships instead of MFN treatment as granted by the UN Convention on the High Seas 1958.

Therefore, although these all conventions are provided for solving the problems of Landlocked States, there are raised many issues to be addressed from their provisions.

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