

Innovations

Statutory Challenges of Landlocked States in the Exercise of Fundamental Rights and Obligations under the UNCLOS Regime

¹Dr. Gabriel E. B. Inyang; ²James E. Archibong

^{1,2} Faculty of Law, University of Calabar, Nigeria

¹ ORCID ID: 0000-0002-6515-1315

Correspondence Author: **Dr. Gabriel E.B. Inyang**

Abstract: *The sea is a large mass of water girdled by land. It constitutes an essential part of human activities, including trade and commerce, voyage, mineral extraction, power generation, and the blue economy. The landlocked states, which are mostly developing countries, lack territorial access to the sea. The deprivation of landlocked states from exercising their fundamental rights and obligations over the high seas, which constitute the common heritage of mankind, forms the main objective of this research. Various national constitutional provisions and international statutory regimes are replete with fair, just, and equitable distribution of energy and natural resources amongst citizens and states/non-state parties to conventions, treaties, and protocols. The study was provoked by international statutory deprivation of landlocked states from the benefits of exploration of the energy and natural resources in the high seas. This unjust statutory management evoked the need to explore ways of assisting the land-locked countries escape the seeming punishment of lack of ownership, control, and management of the high seas and their rich and extensive natural resources. The methodology adopted in this research was an interrogation of primary and secondary sources and analytical techniques. The findings include that landlocked states face significant challenges such as higher transportation costs, slower economic growth, increased dependence on transit neighbours, often leading to lower overall development and trade compared to their coastal counterparts. This work recommends the statutory reform of the United Nations Convention on the Law of the Sea (UNCLOS 82). There form of UNCLOS and adoption of remedial measures to strengthen existing weak mitigating global initiatives will have far-reaching results for landlocked states than the subsisting New York Convention 1965, which subjects them to restrictive bilateral and multilateral agreements and the whims and caprices of the coastal states.*

Keywords: *Seas, landlocked countries, coastal states, UNCLOS, fundamental rights*

1. Introduction

The International Law of the Sea is that part of public international law that regulates the rights, duties, and obligations of states and other subjects of international law, regarding the use and utilization of the seas in peacetime (Ahmed, 2017). It is distinguished from the private maritime law that regulates the rights and obligations of private persons on maritime matters, for example, the carriage of goods, marine insurance. Since the beginning of time, land territories were divided between or among states based on political power, culture, and geography, among others. Among them, some states are called landlocked states, meaning states without a coastline. Landlocked states are distinct from other states in one decisive fact, as the case may be, this is because they lack access to and from the sea.

The fundamental principle governing the law of the sea is that “the land dominates the sea so that the land territorial situation constitutes the starting point for the determination of the maritime rights of States. The freedom to use the world’s marine waters is one of the oldest customary principles of international law. Specifically, the shrinking of the areas where such principles apply started with the First Conference of the United Nations on the Law of the Sea in the 1950s. The main actors in this diminution of freedom are the coastal States seeking to assert control over maritime areas and resources. However, the result is an encroachment on the freedom of the movement of goods, services, and persons, which ultimately interferes with the freedom of navigation. Since 1982, the sea has had a constitution or its convention regulating not only the rights and duties of the states, but also vessels navigating in different zones.

The high seas are open to all states, whether coastal or landlocked. This is because the freedom of the high seas is exercised under the conditions laid down by the United Nations Convention on the Law of the Sea, UNCLOS, which gives States sovereign rights and duties in varying degrees over the different zones of the sea. These zones are: internal waters, territorial sea, contiguous zone, continental shelf, exclusive economic zone (EEZ), and the high seas. It also gives coastal states more or less jurisdiction, which gives rise to issues that landlocked states consider disadvantageous.

In international law of the sea, the maritime space that ought to peacefully settle global disputes on maritime boundaries between or among landlocked and coastal states and defines various jurisdictions of maritime zones as well as rights, duties and obligations of states in these zones, especially about the conservation of marine environment and biodiversity seems to create issues for the landlocked states as against the coastal states. In particular, the article noted the laudable contributions that various conventions and regimes have made over the years in ensuring peaceful navigation, fishing activities, and the socio-cultural and economic life of the states, particularly in the high seas.

The purpose of this work is to proffer remedial measures for weak mitigating global initiatives adopted to ameliorate the statutory deprivation of landlocked states from the economic benefits of the high seas. Some of these measures are more inclusive and adaptable approaches in international policy debates, a departure from rigid classifications, urging for upholding collective action, recognizing the intricate connections between geography, politics, law, and the environment.

2. The rights and duties of states in different sea zones under the United Nations Convention on the Law of the Sea (UNCLOS) 1982

As stated earlier, countries have varying degrees of jurisdictional and legislative rights and duties in the different zones. Similarly, foreign vessels are authorized to undertake different activities in the said zones with varying degrees of freedom. Oceans and seas cover 71.4 percent of the Earth's surface. They contain nine-tenths (9/10) of our water resources and are home to over 97 percent of life on Earth. They are an essential part of our biosphere; they power our climate and affect our health and well-being. Indeed, without the oceans, there would be no life on Earth. The Law of the Sea Convention 1982 is the foundation of the legal instrument that provides the starting point for discussion of the rights and duties of states regarding the high seas and issues involved around it.

2.1. Internal waters

Internal waters are assimilated to the terrestrial territory, and the States can enjoy full and exclusive sovereignty over them (Lestari & Ariadno, 2019). A foreign vessel, located in the internal waters, is subject to the legislative, administrative, judicial, and jurisdictional powers of the State regarding any illicit acts committed on board the vessel or on land by crew members. The state does not have to allow innocent passage, except where straight baselines enclose as internal water areas which had not previously been considered as such. In those circumstances, a right of innocent passage as provided in UNCLOS shall exist through internal waters. In *R Vs Anderson*, the Court of Appeal in the United Kingdom declared that an American national who had committed manslaughter on a British ship in French internal waters was subject to the jurisdiction of all three states.

2.2. Rights and duties of states over foreign merchant vessels

Breide and Saunders (2005:5) aver that concerning the high seas, States have civil rights and duties over foreign merchant vessels. Specifically, foreign vessels are subject to the coastal state's regulations on navigation and its sanitary, fiscal, technical, and customs control, which must be implemented without any discrimination between the vessels.

Nonetheless, when a dispute arises between the crew members (whatever their nationality may be), the coastal state will usually not assert jurisdiction. As for penal jurisdiction, the coastal state has exclusive competence over illicit acts committed on board foreign merchant vessels located within the internal waters. However, foreign ships will not usually be subject to the coastal state's jurisdiction if they enter its internal waters because of force majeure or distress.

2.3. Rights of states over foreign warships

On the other hand, foreign warships, including government vessels used for non-commercial purposes, are exempted from the coastal and landlocked states' civil rights due to the sovereignty of immunity. This immunity, according to Article 32 of UNCLOS, is subject to the behavior of the vessel that must abstain from any hostile attitude, should a vessel engage in such acts; the State will have a right of self-defence.

Again, when an act is committed within the conduct of public affairs, the State may proceed and make an arrest, but it must deliver the offender to the captain of the ship, if so requested. In the same vein, fiscal, navigation, sanitary, and port regulations, as well as the competence of the local authorities in charge of policing and maintaining good order, have to be respected by the foreign warship. This is because each State also has specific regulations regarding the duration of stay, the number of warships simultaneously allowed, and the interdiction research and military exercises.

2.4. The territorial sea

Ngantcha (1986) contends that by the provision of UNCLOS, States can exercise full competence in the territorial sea, however, with certain concessions. The principal limitation on this sovereignty is the innocent passage of foreign vessels, whether private or military. This customary principle is stipulated in Article 17 of UNCLOS, which provides that "ships of all states, whether coastal or landlocked, enjoy the right of innocent passage through territorial sea".

Article 18 of UNCLOS defines "Passage" as the navigation through the territorial sea without entering the internal waters of the state to enter or leave the internal waters, with the condition that the passage be continuous and expeditious, save in cases incidental to navigation, of force, distress, or for helping other vessels. UNCLOS also defines "innocent passage" in Article 19 (1) as "innocent so long as it is not prejudicial to the peace, good order or security of the coastal state". Therefore, Article 19 further lists activities that constitute a threat to the peace and security of the states, and are therefore prohibited in the territorial sea. The activities include: military, activities, activities contrary to coastal states' customs, fiscal, immigration and sanitary regulations, pollution, fishing activities, research or

survey activities, interference with systems of communication or any other facilities or installations, and any other activity not having a direct bearing on passage.

Article 20 also imposes an obligation on foreign submarines and other underwater vehicles to navigate on the surface and show their flags while in the territorial sea of another State. In 1949, in the case of the *Corfu Channel Case*, the *United Kingdom v. Albania*, the International Court of Justice (ICJ) recognized that all vessels have a right of passage through international straits, even warships, as long as they do not engage in activities that are currently listed in UNCLOS Article 19.

2.5. The contiguous zone

Bernaerts (1988) contends that the contiguous zone is part of the Exclusive Economic Zone (EEZ), and thus, of the high seas where freedom of navigation applies. Here, every state, whether coastal or landlocked, has the right to sail ships flying its flag on the high seas. Article 90 (2) UNCLOS provides that every state shall issue to ships to which it has granted the right to fly its flag documents to that effect. Again, Article 92 (1) UNCLOS stated that Ships shall sail under the flag State only and, save in exceptional cases expressly provided for in international treaties, shall be subject to exclusive jurisdiction of the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the event of real transfer of ownership or change of registry.

The rights and duties of states in the contiguous zone are contained in UNCLOS. Article 33 provides that States can exercise the control necessary to prevent and repress violations of their legislation concerning customs, taxes, immigration, and sanitation within their territorial sea. In this case, warships are immune; therefore, this provision applies only to private vessels. Under Article 303 (2) UNCLOS to control traffic in historical and archeological objects, States may presume that the removal of such objects from the zone without the state's consent would violate the laws mentioned in the said Article; in that case, States may be required to act accordingly.

2.6. The exclusive economic zone (EEZ)

Scovazzi (1984) suggests that the Exclusive Economic Zone does not follow either the concept of sovereignty, prevailing in the territorial sea, or the concept of freedom, which characterizes the high seas. Foreign States also have rights regarding navigation and non-economic uses of the EEZ. Article 58 UNCLOS provides that foreign states shall enjoy some of the freedoms of the high seas as outlined in Article 87. These freedoms include: navigation, over flight, the laying of submarine cables and pipelines, and other international lawful uses of the sea related to those freedoms. This freedom gives the right to other states to engage in non-economic activities in the EEZ. Again, Article 58 goes further to state that

Articles 88 through 155, which apply to the high seas, can be applied to the EEZ as long as they are not incompatible with the UNCLOS Articles regulating the EEZ.

2.7. Rights and duties of states to construct artificial islands and scientific research

According to UNCLOS, Article 246 (1) states have the right to regulate, authorize, and conduct marine scientific research in their EEZ and on their continental shelf. Now, no state shall conduct research in the EEZ of the coastal state or landlocked state without the consent of that state. The state shall grant its consent in normal circumstances as contained in articles 242, 243, 244, and 245 of UNCLOS.

2.8. The high seas

Freedom, rights, and duties are the fundamental principles underlying the legal concept of the high seas. According to UNCLOS in Article 87, the general freedom of the high seas includes, inter alia, the freedom of navigation and over flight, as well as the freedom to lay submarine cables and pipelines, to construct artificial islands and other installations permitted under international law, to fish and to engage in marine scientific research. After stating that all states should exercise these freedoms, it is crucial to remember that they are not absolute and can be subject to certain limitations, as outlined in international and domestic law, to protect the rights and freedoms of others, public order, and the general welfare. UNCLOS reminds us that the high seas “shall be reserved for peaceful purposes.

In March 1995, after having complained that Spanish fishing vessels violated the international quotas designed to protect turbot straddling Canada’s jurisdictional lines in the Grand Banks region off the Newfoundland coast, a Canadian gunboat seized a Spanish-flagged vessel, the *Estai*, which was fishing for the turbot. The gunboat pursued the Spanish fishing trawler, fired warning shots across her bow, and confiscated the vessel. On board the *Estai*, Canadian investigators found that nearly 80 percent of the catch was illegal: young, small fish caught by nets with small holes. Faith (1996:199) opines that the Canada/Spain Turbot War is one of the most publicized disputes of the states’ rights and duties on the high seas.

Spain immediately instituted proceedings against Canada before the International Court of Justice (ICJ) maintaining that the court should declare the boarding of the *Estai* by the Canadian Coast Guard and the temporary detention of Spanish crew as violating the freedom of navigation and fishing on the high seas that exist under international law (Akiba, 1997). Canada responded that the ICJ lacked jurisdiction over this dispute because of its law, specifically excluding the compulsory jurisdiction of the ICJ in conservation and management disputes, as well as measures taken by Canada concerning vessel fishing in the North Atlantic Fishing Organization’s regulatory area of the high seas. Indeed, on December 4, 1998, the

ICJ decided by a twelve to five votes that it lacked rights and jurisdiction over the dispute (Akiba, 1997).

Canada's seizure of the *Estai* was based on Canadian law, authorizing it to enforce fishing regulations beyond its 200-mile limits into the so-called straddling areas (Faith, 1996). The problem with using national law to justify this action was that the act contravened international law. Spain and the European Union, in turn, accused Canada of pure and simple piracy, claiming that Canada had violated international law. But Canada's Coastal Fisheries Protection Act (CFPA), as amended in 1994, unilaterally extended the jurisdiction of Canada's enforcement zone to all areas under the North Atlantic Fisheries Organization (NAFO) regulatory area. Section 8 of the Act, which grants arresting power, provides that a protection officer may arrest without warrant any person whom the officer suspects on reasonable grounds has committed an offense under this Act. The Canadian officers acted upon this grant of authority when they arrested the captain of the *Estai* and seized the vessel.

3. Different regimes relating to the high seas

3.1. The Treaty of Versailles, 1919

Immediately, after the First World War, states were considering that they could not stay without depending on each other. They considered the need for cooperation. Therefore, they made the Treaty of Versailles in 1919. The high and contracting parties agreed to recognize the sea coast which was registered at some specific place situated in its territory, such place shall be recognized as part of the registry of such vessels. The treaty included several provisions, the remarkable one being the regime for the establishment of transit for landlocked states on certain international rivers in Europe. The Statute defines traffic in transit to include persons and goods. Article 1, which aimed at addressing the issues of access for landlocked states, was rather a general system for promoting international communication.

3.2. The General Agreement on Trade and Tariffs (GATT), 1947

Shortly after the Second World War, the major trading nations of the world, at the initiative of the United States of America, committed to reducing tariffs and other barriers to trade for their mutual benefit to facilitate post-war reconstruction, recovery, and peace. The GATT suffers from being general, not specifying rights and obligations. The 1948 Havana Charter, Article 33, which was devoted to freedom of transit for landlocked countries, never came into force.

3.3. The rights and duties of landlocked states under UNCLOS 1982

The Law of the Sea Convention was opened for signature by the states on the 10th December 1982 in Montego Bay, Jamaica. The said Convention entered into

force by its Article 308 on 16 November 1994. Today, it is the globally recognized regime dealing with all matters relating to the law of the sea. The Convention (full text) comprises 320 articles and nine annexes, governing all aspects of the ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial activities, transfer of technology, and the settlement of disputes relating to ocean matters.

4. Challenges of landlocked states in the exercise of their rights under the UNCLOS regime

Historically, being a landlocked state has been disadvantageous to a country's development (Mackellar et al, 2000). It cuts a nation off from important sea resources such as fishing, access to port, and impedes or prevents direct access to maritime trade, a crucial component of economic and social advance (Faye et al, 2004). Glassner (1978:302) contended, which is in accord with his intellectual reasoning, that the landlocked states have little or no control over the availability, suitability, or operating efficiency of the transportation system and port facilities outside their borders upon which they depend for their foreign trade, and they have little leverage in the determination of tariff schedules for their transit goods. This dependence upon other states for transport facilities is a common imbroglio among the landlocked states on the high seas (Prahdan, 2013:5). Again, most of the landlocked states among the developing countries have a few natural resources and products.

4.1. Landlocked countries depend on strong political relations with transit countries

The landlocked countries' dependence on the transit countries about the high seas has given rise to so many conflicts (Africa Defence Forum, 2024). If a landlocked country and its transit neighbor conflict, either military or diplomatic, the transit neighbor can easily block borders or adopt regulatory impediments to trade. The landlocked countries of the South Caucasus and Central Asia have been acutely affected by cross-border disputes. Faye et al (2024:32) contend that a country like Afghanistan has suffered from extremely weak infrastructure. In the South Caucasus, fighting between the two landlocked countries, Armenia's only alternative transit routes, through Georgia and Iran, are through mountainous terrain and with relatively weak infrastructure. Relations with neighboring countries need not be in violent conflicts to severely hamper a landlocked country's economy.

4.2. Landlocked states face high transportation costs

The high transportation costs typically place landlocked states at the international markets, which is due to their remote geographical location. The said

landlocked states do not only face the challenge of distance, but also the challenges that result from their dependence on passage through a sovereign transit country, one, in this context, through which trade from the landlocked country must pass to access international shipping markets (Faye et al, 2004). Access to international markets is a major problem for landlocked States. Goods from such States are usually exorbitant and can barely compete in the international markets with goods from coastal States. Apart from higher costs, there are also the risks of disruptions, less capital export, and constraints for economic and social development (Frederick et al, 2021).

4.3. The principle of neighbour's peace and stability

When transit countries suffer from civil war, transit routes can be damaged or closed, which often requires a rerouting of major trade corridors or, in the worst case, a stoppage of transit. The landlocked countries of Western Africa have been particularly affected by neighbour's internal conflicts, for example, Mali, Ghana, and Togo, among many Western African countries that suffered from conflicts, political instability, and ethnic violence. The landlocked countries of Africa, most notably Malawi, have suffered significantly from the surrounding civil wars in Namibia and Angola. The civil wars of Georgia in the 1990s had dramatic effects on the region by severely hampering the vital corridor link across the Caspian Sea. These wars and the cost of transportation from landlocked countries to the transit state have not only required that trade be rerouted during the war, but to a large extent, it has also destroyed much of the internal infrastructure and drastically weakened the ports, which are only being rehabilitated. In Africa, landlocked challenges could be a potential cause of conflict. Due to its landlocked constraints, Ethiopia entered into an agreement with Somaliland for access to the Red Sea in return for recognition and self-government of the latter. This agreement fueled resentment in Somalia, which regards Somaliland as part of its territory (Africa Defence Forum, 2024).

5. Recommendations

Flowing from the legal and other issues discussed and examined in this work, the following recommendations are pertinent:

- a. Reforms of international trade and trade facilitation
 1. Creating an environment for integrating national firms into regional and global value chains. These can be done by supporting national firms, whether local or Small and Medium Enterprises, to participate in both local and international trade.
 2. To reduce the lack of access to ports and seas, landlocked States must improve market access for their products without arbitrary or non-tariff barriers.

- b. Devising ways to develop infrastructure, including engaging private firms under options of public-private partnerships (PPPs).
 - 1. The landlocked states should, as a matter of urgency, expand their railway and other transportation networks for the efficient carriage of goods and cargoes
 - 2. Creating bilateral and/or regional mechanisms to address the various bottlenecks in the implementation of bilateral, regional, and/or multilateral agreements.
 - 3. The landlocked states should endeavor to promote the establishment and implementation of relevant transport agreements at the regional, sub-regional, and national levels.
- c. Review of United Nations Convention on the Law of the Sea
The bilateral agreements between coastal and landlocked states and other transit nations should be comprehensively considered for their benefits, to give them advantageous participation and involvement in international trade.
- d. The New York Convention is considered a cornerstone of international arbitration, ensuring that foreign arbitral awards are recognized and enforced in the same way as domestic awards by contracting states. In Article III of the Convention, contracting states are obligated to enforce Convention awards; the absence of this enforcement provision in such Convention becomes a basis for the parties to the Convention to withdraw there from. Article V outlines the grounds on which recognition and enforcement of an arbitral award may be refused. These provisions point to the fact that the New York Convention is not adequate to protect and assist landlocked states in exercising their rights and obligations under UNCLOS '82.

The list of recommendations is by no means unexhaustive but this work posits that the said recommendations are going to provide incentives for further discussions whenever amendment is called upon by the States parties to United Nations Convention on the Law of the Sea, UNCLOS, for justice, equity and good faith in the use of the seas, particularly, as it affects the Landlocked States.

6. Conclusion

The rights and duties of States concerning the high seas, in which the landlocked states and the principles of freedom of transit are now part of customary international law, binding all states, but the landlocked states have not been able to take advantage of those rights provided by international law. This is because those

rights and duties are based on the views of jurists, bilateral agreements, multilateral conventions, and principles. Now, the right of access to and from the seas or transit is most important for landlocked states. However, the landlocked states cannot enjoy the other rights without accessing the sea. But, to do that, landlocked states depend on the bilateral agreement with the coastal states for access to and from the sea.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1965) in Article 15 has secured for landlocked States the freedom of transit “based on reciprocity”. Again, Article 125 (2) UNCLOS has stated the terms and modalities for exercising freedom of transit, which shall be agreed upon between the landlocked states concerned through bilateral, sub-regional, or regional agreements. These provisions have restricted the rights of landlocked states. The landlocked states’ dependence on transit states, peace, stability, political and economic relations, and administrative practices has been a challenge for landlocked states over the years. The landlocked states face so many statutory challenges, such as high costs and long waiting times, high customs/tax charges, procedural problems, lack of electronic data interchange, institutional weakness, lack of coordination, and lack of alternate transit routes in which the landlocked states can find other means.

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