

RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA: CASE OF NEPAL

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ABSTRACT

Land-locked developing countries are developing countries that lack territorial access to and from the sea. They therefore face the double challenge of development and access to international markets. The land-locked developing countries have been facing constant challenges in the areas of trade, transit and socio-economic development due to lack of territorial access to the sea, remoteness and isolation from world markets and high transit costs. The world community has developed some rules about the rights of land-locked states. The Barcelona Convention and Statute on Freedom of Transit (1921), the Geneva Convention and Statute on the International Regime of Maritime Ports (1923), the Geneva Conventions on the Law of the Sea (1958), the New York Convention on the Transit Trade of Land-locked States (1965) and the United Nations Convention on the Law of the Sea (LOSC, 1982).

The LOSC replacing the four Geneva Conventions, provides land-locked states with the right of access to and from the seas and freedom of transit. However, LOSC makes such rights subject to the agreements to be made by land-locked and transit states. This, in turn, depends on the prevailing relations between the concerned states. If they are not in a smooth relation, the transit states may be unwilling to negotiate such an agreement and thereby put impediments on the land-locked states' free transit. The rights of land-locked states depend on the political will and commitment of transit states. The denial of free transit, affects the rights of land-locked states on the different maritime regimes. Land-locked states have no absolute right of access to and from the seas. Hence, the study concludes that to give practical effect to those rights, negotiating bilateral and multilateral agreements with the transit states has a crucial and irreplaceable role.

Being a land-locked developing country Nepal has been facing geographical, political, trade, transit, and others challenges. Nepal depends on India for its access to and from the sea. Nepal has conclude a bilateral treaty dating back from the British-India period. In 1950, the Nepal and India Trade and Transit Treaty has been concluded on the basis of reciprocity.

In this situation it is necessary to give priority in the application of rights of land-locked states for national prosperity. I have attempted to analyse the rights of land-locked states to and from the sea, with Nepal as a case study.

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LIST OF ACRONYMS

ADC	Additional Duty of Customs
AFAFGIT	ASEAN Framework Agreement on the Facilitation of Inter-state Transport
AFAFIST	ASEAN Framework Agreement on the Facilitation of Goods in Transit
ASYCUDA	Automated System for Customs Data
ASEAN	Association of Southeast Asian Nations
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BIPPA	Bilateral Investment Protection and Promotion Agreement
BoI	Board of Investment
CBTA	Cross-Border Transport Facilitation Agreement
CEFTA	Central European Free Trade Agreement
CONCOR	Container Corporation of Indian Limited
CoO	Certificate of Origin
CTD	Customs Transit Declaration
CVD	Countervailing Duty
DG	Director General
DFTP	Duty Free Tariff Preferences
DPR	Duty Refund Procedure
EBRD	European Bank for Reconstruction and Development
ECA	Economic Commission for Africa
ECR	East Central Railway
EEZ	Exclusive Economic Zone
ECAFE-	Economic Commission for Asia and Far East
EFTA	European Free Trade Association
ESCAP	Economic Commission for Asia and the Pacific

ESCWA	Economic and Social Commission for Western Asia
ER	Eastern Railway
EU	European Union
FOB	Free On Board
GATT	General Agreement on Tariffs and Trade
GMS	Mekong Sub-region
ICCD	Import Containerised Cargo Declaration
ICD	Inland Container Depots
ICFGATE	e Commerce Portal Central Board of Excise and Customs
ICP	Integrated Check Post
ICJ	International Court of Justice
ICT	Information and Communication technology
ICTs	Information and Communications technology
IGC	Inter-Governmental Committee
IGETC	Inter-Governmental Economic and trade Committee
IGSC	Inter-Governmental Sub-Committee
IMO	International Maritime Organization
IRDA	Insurance Regulatory and Development Authority of India
LCSs	Land Custom Stations
LDC	Least Developed Country
LLC	Land-locked country
LLCs	Land-locked Countries
LLDC	Land-locked Developing Country
LLDCs	Land-locked Developing Countries
LLGDS	Land-locked and Geographically Disadvantage States

LLS	Land-Locked State
LOSC	United Nation Convention on Law of the Sea
MFN	Most Favored Nation
MoU	Memorandum of Understanding
MoUs	Memorandums of Understanding
NCTS	New Computerized transit System
NRN	Non Resident Nepalese
NTBs	Non-Tariff Barriers
NTTFC	Nepal-Tibet trade Facilitation Committee
NTIS	Nepal Trade Integration strategy
PPP	Public-Private Partnership
RSA	Rail Service Agreement
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trade Agreement
SCO	Shanghai Cooperation Organization
SER	South Eastern Railway
SMRTS	SAARC Regional Multimodal Transport Study
SSIU	Small Scale Industrial Units
TBLs	Text Board of Legal Specialization
TIR	International Road Transport
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCLOS	United Nations Conference on Law of the Sea
UNECE	United Nations Economic Commission for Europe
UNTS	United Nations treaty Series

US	United States
YILC	Yearbook of International Law Commission
WTO	World Trade Organization

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INTRODUCTION

1.1 Introduction

Since the very beginning of time the land territory divided between states on the basis of political power, armed power, casts, culture, religion, geography etc. Among them some states have no access to sea because they are surrounded by the land of other states. Those states are called land-locked states, meaning of state which has no sea-coast.¹ Land-locked states are distinct from other states in one decisive fact : they lack access to and from the sea. The oceans are important for land-locked as a means of communication and a reservoir of marine natural resources. From economic and strategic viewpoints, it would be no exaggeration to say that the survival and prosperity of land-locked states rely on their freedom to communicate and to trade. Thus the safeguarding of the interests of land-locked states becomes a significant issue in the law of the sea.² Indeed, the Preamble of the LOSC explicitly refers to ‘the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, where coastal or land-locked’.³

Historically, being land-locked was regarded as a disadvantageous position. It cuts the country off from sea resources, such as fishing, and more importantly cuts off direct access to seaborne trade which makes up a large percentage of international trade. For land-locked countries the effect is particularly strong, as they are limited in their trading activity with the rest of the world. Paul Colier in his book “The Bottom Billion” states :- “If you are coastal, you serve the world, if you are land-locked, you serve your neighbors.”⁴ From economic and strategic viewpoints, it would be no exaggeration to say that the survival and prosperity of Land-locked states rely on their freedom to commission and trade.⁵

Modern developments and increasing globalization has made states dependent upon one-another’s because no any nation can remain in isolation. Further, dependency has been determined by the geographical construction of the state as well. For example land-locked states

¹ Art. 124(1)(a), LOSC.

² Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press, 2015), 404.

³ Preamble of the LOSC.

⁴ http://en.wikipedia.org/wiki/land-locked_country, Accessed on July 25, 2017.

⁵ L.Caflisch, *Land-locked States and their access to and from the Sea* (49 *British Year Book of International Law*, 1978), 74.

need to cooperation with coastal states to enjoy the transit facilities necessary for international trade and economic development.

In 1919, established league of nation called Versailles treaty this treaty provides flag state rights and navigation right. The Barcelona Convention and Statute on Freedom of Transit (1921) also agreed transit rights and other various kinds of facilities. Mostly important international conventions are developed after 2nd world war. General Agreement on Tariffs and Trade (GATT), the four Geneva Conventions on the Law of the Sea 1958 is developed transit right of LLS. The New York Convention on the Transit Trade of Land-locked States 1965 is very important for the LLS transit rights. LOSC is the most important convention dealing with right and obligations of states to and at sea. A state whose boundaries are entirely surrounded by land is called a land-locked state. In view of their specific geographical situation they have been granted rights and privileges in accordance with the rules of modern international law.⁶

LLSs have faced many problems for the access to and from the sea. Sea is the very important natural resource. Different kind of resources is available in the sea. Coastal states have taken more and more benefit from the sea, but land-locked states have no easy access to sea and from the sea. The principles of reciprocity that the transit of land-locked states to and from sea depends on the goodwill of the coastal states concerned. The right of access to the sea and from the sea of land-locked states has been accepted by international treaties, customs and principles. But these states have felt dominated from costal states on the application of their rights. The right of the freedom of transit of land-locked state is depended on the bilateral treaty and friendly relation with the coastal states for the access to the sea and from the sea.

The oceans and their marginal seas cover nearly 71 percent of Earth's surface⁷ and constitutes a vast area of communication, sources of living and non-living resources and an object of scientific research. There are at present forty five land locked states⁸ which, in an international community (UN members) of one hundred ninety three states, makes a significant group (see tables 1.1).

⁶ H.O. Agarwal, International Law and Human Rights, (Central law publication, Allahabad, 2010), 153.

⁷ Encyclopedia of Britannica, Ocean Earth Feature Written by Alyn C. Duxbury, <https://www.britannica.com/science/ocean>, Accessed on November 1, 2017.

⁸ Tanaka, Law of the Sea, 404.

Tables 1.1 Land-locked states and the LOSC⁹

S.N.	Land-locked states parties to the LOSC	S.N.	Land-locked states not parties to the LOSC
1	Armenia	1	Afghanistan
2	Austria	2	Andorra
3	Azerbaijan ¹⁰	3	Bhutan
4	Belarus	4	Burundi
5	Bolivia	5	Central African Republic
6	Botswana	6	Ethiopia
7	Burkina Faso	7	Holy See (Vatican City)
8	Chad ¹¹	8	Kazakhstan
9	Czech Republic	9	Kosovo
10	Hungary	10	Kyrgyzstan
11	Laos	11	Liechtenstein
12	Lesotho	12	Rwanda
13	Luxembourg	13	San Marino
14	Macedonia ¹²	14	South Sudan
15	Malawi ¹³	15	Tajikistan

⁹ Donald R Rothwell and Tim Stephens, *International Law of the Sea* (Oxford and Portland Oregon 2010), 191.

¹⁰ United Nations, Division of Ocean Affairs and Law of the Sea, Chronological lists of ratifications of, accessions and successions to the CLOS, Last Updated : 23 may 2017, http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm, Accessed on November 2, 2017.

¹¹ Ibid.

¹² Succession from Socialist Federal Republic of Yugoslavia.

¹³ United Nations, Division of Ocean Affairs and Law of the Sea, Chronological lists of ratifications of, accessions and successions to the CLOS, Last Updated : 23 may 2017, http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm, Accessed on November 2, 2017.

16	Mali	16	Turkmenistan
17	Moldova	17	Uzbekistan
18	Mongolia		
19	Nepal		
20	Niger ¹⁴		
21	Paraguay		
22	Serbia		
23	Slovakia		
24	Swaziland ¹⁵		
25	Switzerland		
26	Uganda		
27	Zambia		
28	Zimbabwe		

The LOSC defines a land-locked state as one that has no sea coast.¹⁶ There are forty five such states, twenty eight of these states have ratified the LOSC (see Table 1.1, above). Both the African and European continents have the largest number of land-locked states, Africa with sixteen and Europe fifteen. There are twelve land-locked states in Asia, and two in South America (see Table 1.2, below). While approximately 20% of the countries in the world are land-locked, they are distributed as approximately 40% of the world's low income economies and less than 10% in the world's high income countries.¹⁷ Nagorno-Karabakh, South Ossetia, West Bank and Transnistria are known as a land-locked, but these are disputed regions with

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Art 124(1)(a), LOSC,

¹⁷ Bidisha Lahiri and Feroz K. Masjidi, 'Land-locked Countries: A Way to Integrate with Coastal Economies', *Journal of Economic Integration* Vol.27 No.4, December 2012, 505~519, <http://search.proquest.com/openview/2e56cfd8bb22e88556f7b1a9514ec2c48/1?pq-origsite=gscholar&cbl=54198>, Accessed on November 2, 2017.

limited international recognition. No land-locked countries are found in North America, Australia and the Antarctic continent.

Some land-locked countries can have access to the ocean along wide navigable rivers. For instance, Paraguay (and Bolivia to a lesser extent) has access to the ocean by the Paraguay and Parana rivers. Some countries have coastlines on land-locked seas, such as the Caspian Sea and the Aral Sea. Since these seas are in effect lakes, and do not allow access to wider seaborne trade. Azerbaijan and Turkmenistan have a coast on the saltwater Caspian Sea. Uzbekistan has a coast on the saltwater Aral Sea. Kazakhstan has a coast on the Caspian Sea and Aral Sea. These countries are still considered to be land-locked.¹⁸ In addition, there are number of states which are called to be geographically disadvantaged state. Their coastline is very short in portion to the size of their land territory. However, land-locked states have the right of navigation on the high sea by their own flag but these rights could only be effective if they enjoy the right to have the access to the ports.

Tables 1.2 Land-locked states by region¹⁹

S.N.	Africa	Asia	Europe	South America
1	Botswana	Afghanistan	Andorra	Bolivia
2	Burkina Faso	Armenia	Austria	Paraguay
3	Burundi	Azerbaijan	Belarus	-
4	Central African Republic	Bhutan	Czech Republic	-
5	Chad	Kazakhstan	Holy See (Vatican City)	-
6	Ethiopia	Kyrgyzstan	Hungary	-
7	Lesotho	Laos	Kosovo	-
8	Malawi	Mongolia	Liechtenstein	-
9	Mali	Nepal	Luxembourg	-

¹⁸ http://en.wikipedia.org/wiki/land-locked_country, Accessed on July 30, 2017.

¹⁹ Rothwell and Stephens, Law of the Sea, 192.

10	Niger	Tajikistan	Macedonia	-
11	Rwanda	Turkmenistan	Moldova	-
12	South Sudan ²⁰	Uzbekistan	San Marino	-
13	Swaziland	-	Serbia	-
14	Uganda	-	Slovakia	-
15	Zambia	-	Switzerland	-
16	Zimbabwe	-	-	-

Traditionally, the special interests of land-locked states when it comes to the law of the sea have been twofold. The first is securing rights of transit across the territory of neighboring states so as to obtain access to the sea. The second is obtaining the right to grant nationality to vessels, which are then permitted to navigate freely and granted access to the port of a coastal state adjoining the land-locked state.²¹ At UNCLOS III land-locked states sought affirmation of these interests, and with the geographically disadvantaged states, also sought new rights of access to the resources of the EEZ the continental shelf and the deep seabed.²²

1.2 Characteristics of land-locked states

According to Martin Ira Glassner land-locked 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 characteristic of land-locked states.²³

Most of the LLS among the developing countries have a few natural resources and products. Therefore they have to depend upon the market of neighboring transit states. Some LLS are

²⁰ UN News Centre, South Sudan's national flag (center) flies at UN Headquarters its admission as the 193rd member State (14 July 2011), <http://www.un.org/apps/news/story.asp?NewsID=39034>, Accessed on November 2, 2017.

²¹ Rothwell and Stephens, *Law of the Sea*, 192.

²² *Ibid.*

²³ Gajendra Mani Pradhan, *Transit of Land-locked Countries and Nepal* (2nd ed.), (Pairavi Prakashan, Kathmandu 2013), 5.

enjoying more than one alternative route for transit. These states have no difficult problems in comparison to other LLS which have to depend completely on only one state for its transit.

The European LLS have no problem of utilizing the right of access to the sea than the Asian and African LLS. Before the Second World War, European LLS were conscious of their right of access to the sea and access to the other countries. At that time most of the Asian and African LLS were either in a colonial state or in completely underdeveloped state. Therefore they could not raise the problem effectively.

The twelve countries with the lowest human development index scores are land-locked, thirteen land-locked countries are classified as low human development, and not one of the non-European land-locked countries is classified as high human development.²⁴

All of the analysis, we can't find the common characteristics of all LLS, but in general most LLS have following characteristics:

Most of the LLS are developing countries

In spite of technological improvements in transport, land-locked developing countries continue to face structural challenges to accessing world markets. As a result, land-locked countries often lag behind their maritime neighbors in overall development and external trade. While the relatively poor performance of many land-locked countries can be attributed to distance from coast, several aspects of dependence on transit neighbors are also important.

Land-locked countries are dependent on their transit neighbors' infrastructure:

Land-locked countries are completely dependent on their transit neighbors' infrastructure to transport their goods to port. This infrastructure can be weak for many reasons, including lack of resources, miss-governance, conflict and natural disasters. Weak transit infrastructure also limits

²⁴ Michael L. Faye et.al, "The Challenges Facing Land-locked Developing Countries," Journal of Human Development, Vol.5, N0.1, Carfax Publishing, (March, 2004) : 32.

the return to investment on land-locked countries' internal infrastructure, since market opportunities are constrained.²⁵

Land-locked countries depend on strong political relations with transit countries

If a land-locked country and its transit neighbor are in conflict, either military or diplomatic, the transit neighbor can easily block borders or adopt regulatory impediments to trade. The land-locked countries of the South Caucasus and Central Asia have been acutely affected by cross-border disputes. After the dissolution of the Soviet Union, the former republics were divided according to previous administrative boundaries. These boundaries have been the source of many disputes. As a result, borders are regularly defended with landmines and physical blockades. Afghanistan, suffers from extremely weak infrastructure. In the South Caucasus, fighting between the two land-locked countries, Armenia's only alternative transit routes, through Georgia and Iran, are restricted by mountainous terrain and relatively weak infrastructure. Ethiopia has also suffered immensely from conflict with its transit neighbor, Eritrea.²⁶

Relations with neighboring countries need not be in violent conflict to severely hamper a land-locked country's economy. For example, India, Nepal's sole transit neighbor, blockaded the border between the two countries in 1990, an action cited as a major cause of the overthrow of the Nepalese *panchayat* government. Moreover, between 2001 and 2002, India instituted significant trade restrictions on Nepal during the negotiation of a bilateral trade agreement. These restrictions were alleged to have been instituted to extract concessions in negotiations.²⁷

Neighbors' peace and stability affects the LLCs

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 land-locked countries of western Africa have been particularly affected by neighbors' internal conflicts. Mali, Togo and Ghana were suffered from conflict, instability and ethnic violence, in

²⁵ Ibid, 43.

²⁶ Ibid, 45.

²⁷ Ibid, 46.

past 1990s decades. Sierra Leone, Guinea, Liberia has spent most of the decade in violent civil wars.²⁸

The land-locked countries of southern Africa, most notably Malawi, have suffered significantly from the surrounding civil wars in Mozambique, Namibia and Angola. The Georgian civil wars of the 1990s have had dramatic effects on the region by severely hampering the vital corridor link across the Caspian Sea. These wars not only required that trade be reroute during the war, but also destroyed much of the internal infrastructure and significantly weakened the port, which is only now being rehabilitated.²⁹

LLS are affected by the administrative practices of neighbor state

Land-locked countries are also subject to the administrative burdens associated with border-crossings, with these often adding the greatest amount to shipping costs. To transit a country, there are a host of direct transit and customs charges, some of which must be paid upfront and some *en route*. The direct costs, however, form only a small part of the picture. International transit also requires burdensome paperwork and bureaucratic procedures that are costly to deal with and place a high administrative burden on shippers. Border crossings also cause long delays on transit traffic. It is regularly noted that the time delays and the variability of time in transit are a greater concern to traders than direct costs, as they hinder the ability to meet delivery contracts without large inventory stocks.³⁰

While there is little direct cross-country evidence on the fees and administrative burdens facing importers and exporters, these costs are most regularly cited in reports on western Africa, where it is necessary to cross more than one border, such as the route from Burundi through Rwanda, Uganda and Kenya, one must often pay these fees at several borders. In addition to direct administrative costs, delays are also a serious concern in many parts of Africa.³¹

The most notable exception to the administrative burdens of transit is found in Bhutan. All Bhutanese transit trade through India is handled by Bhutan's own customs agency. Hence, administratively Bhutan can trade as if it were not land-locked. This is largely a result of strong

²⁸ Ibid, 46-47.

²⁹ Ibid, 47-48.

³⁰ Ibid, 48.

³¹ Ibid, 48.

Bhutanese and Indian relations and the minimal amount of Bhutanese transit trade. In other instances, efforts to reduce administrative charges and delays have taken place at the regional level.

LLSs face the high transportation costs

High transportation costs typically place LLSs competing in global markets due to the geographically remote area. LLSs not only face the challenge of distance, but also the challenges that result from a dependence on passage through a sovereign transit country, one through which trade from a land-locked country must pass in order to access international shipping markets. Overall, the land-locked countries do worse than their maritime neighbors in each component of the HDI.³² The LLSs' high average cost of trade is nearly double that of the maritime countries. The notable exceptions are Bhutan, Laos, and Swaziland³³

Nepal a land-locked state, is situated on the southern slope in the Himalayas between India and China, It has for centuries been an independent sovereign state. It has never been conquered no foreign power has ever occupied the country nor intervened in its internal and external affairs. No foreign flag has ever flown over Nepal. Nepal has its own system of government.³⁴

Nepal is not only a land-locked country but also an India-locked country because she is surrounded by India on three sides and her territory is separated from China by the Himalayan range. Thus a transit treaty with India has particular importance. Nepal has obtained membership status of WTO in 2004 as a 147th member.³⁵ As a member of WTO, she has the right of transit facility. Article V of the General Agreement on Tariffs and Trade (GATT)³⁶ which constitutes mandatory provisions for all member countries of WTO, deals with freedom of transit. It is clearly stated that, "there shall be freedom of transit to all contracting parties, via routes most convenient for international transit for traffic in transit to or from the territory of other contracting parties." As Nepal and India both

³² Ibid, 32-33.

³³ Ibid, 40.

³⁴ Avtar Singh Bhasin, *Nepal India Relation Trade and Transit* (Geeta publisher, New Delhi, vol1), 4.

³⁵ Posh Raj Pandey, Ratnakar Adhikari and Swarnim Wagle, 'Nepal's Accession to the World Trade Organization: Case Study of Issues Relevant to Least Developed Countries', paper prepared for the Development Policy and Analysis Division of the United Nations Department of Economic and Social Affairs (UN-DESA), <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/CDP-bp-2014-23.pdf>, Accessed on November 2, 2017.

³⁶ World Trade Organization, Art V, General Agreement on Tariffs and Trade, 1994, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_01_e.htm, Accessed on November 2, 2017.

are members of WTO, this provision of WTO guides the transit treaty between Nepal and India. Transit Treaty between Nepal and India objectives strengthen the existing friendly relationship and cooperation between the two countries.³⁷

Nepal is mostly depending upon with India because of our geographical structure. Nepal made bilateral treaty with India for the transit right and access to sea and from the sea in the basis of reciprocity. As result Nepal has made Nepal and India trade and transit treaty in time to time in reciprocity basis. Nepal and India Transit Treaty has renewed on 5 January 2013. This treaty remains in 2020. Nepal has made bilateral treaty with India from British India period. The first friendly relation treaty has done in 1923 with British India government after then, we made with independent India, treaty of friendly relation and Treaty of Trade and Transit 1950. After then Nepal and India continuous has made periodic trade and Transit Treaty till now with some misunderstanding. Sometimes the India makes problem in transit and trade. In 1989 India refused renews trade and transit treaty, near about two years we faced so much problem in trade and transit necessary day by day goods and so on.

Nepal could potentially use some of Bangladesh port but Indian Territory separate Nepal from Bangladesh. This makes Nepal virtually dependent on India for her access to and from the sea and ultimately to exercise its transit right under the separate transit treaty with the renewal provision. However Nepal has not been able to exercise the transit rights solely being the LLS but right is based on the principle of reciprocity.

Nepal basically suffering high cost sea and long time for export and heavy burden of transport cost. The bilateral transit treaty that confers transit rights through each other territory through mutually agreed 15 transit routes. Nepal has been negotiating with India to add in the transit treaty new land routes between Vishakptanam sea port and four major customs, rail routes between Birjung dry port and Vishakptanam and also Rohnpur (Bangladesh) Singhabad (India) Jogbani (India) and Phulbari-Banglabanda in order to facilitate Nepali foreign trade. Indian demand to allow movement of goods from one part of India to another via Nepal through simple custom undertaking, and other India wants to formally incorporate additional one time lock (OTL) system in the transit treaty. India has been seeking such a facility on a reciprocal basis for

³⁷ <http://santoshbaral.blogspot.com/2013/04/transit-treaty->, Accessed on July 30, 2017.

the transit facility.³⁸ The bilateral Treaty of Transit confers transit rights through each other's territory on mutually agreed routes and modalities.

Nepal and India both are party of the LOSC 1982, WTO and others International and regional convention. These conventions guaranteed the transit rights of LLS and India obligation to respect of the transit rights of Nepal. Many provision of the LOSC 1982 still not incorporate in Nepal and India Transit Treaty 2013. Nepal should try to include the provision of international instruments through diplomatically in transit treaty.

This Research paper has tried to attempt to analyze the provision of Nepal and India Transit Treaty 2013 and LOSC, 1982 as well as transit relation between Nepal and India. Also deeply study is necessary to address the problems, challenges and solutions.

1.3 Scope and objectives

The study is concern with the right of access of land-locked states to and from the sea especially for Nepal. It has to be stated clearly that this research is based on literature review and desktop analysis. No field work/survey was done for this research. Therefore it is limited on the basis of substantial and practical part about the rights of land-locked Nepal. This study is basically related with the rights of land-locked states under United Nations Convention on Law of the Sea, 1982, and serious constraints and challenges faced by land-locked developing countries in the area of trade, transit and overall socio-economic development. The objectives of the study are follows:

1. To explore the rights of land-locked states under international law.
2. To identify the challenges and difficulties on the application of the rights of land-locked Nepal.
3. To recommend the suggestions for the effective application of these rights for Nepal.

1.4 Format of the study

The study has been divided into two parts:

In the first parts is right of land-locked states to and from the sea in which deal with the first chapter is sources of International law relating to the right of land-locked states and second chapter development of right of the land-locked states.

³⁸ The Kathmandu post, Friday, December 14, 2012.

The second parts is the case of Nepal, which deals with first chapter bilateral treaties for ensuring the rights of land-locked Nepal and second chapter state practices, challenges and solutions for land-locked Nepal

Finally the conclusion, provides summary and recommendation.

PART- ONE

RIGHTS OF LAND-LOCKED STATES TO AND FROM THE SEA

Chapter 1. Sources of international law relating to the right of land-locked states

This chapter is dedicated to the sources of international law relating to the right of land-locked states, basically treaties, international customary law, general principles, judicial decisions and doctrine.

Section A : Treaties and international customary law

Paragraph 1 : Treaties

Treaties are a principal source of international law. According to Article 38 (1) (a) of the Statute of the International Court of Justice the Court shall apply international conventions, whether general or particular, establishing rules expressly recognized by the consenting states. The term “treaty” is used to cover a binding agreement between subjects of international law that are governed by international law.³⁹ According to Paul Reuter, a treaty is ‘an expression of concurring wills contributable to and more subjects to international law and intended to have legal effects under the rules of international law’.⁴⁰ At the global and regional levels, various aspects of the law of the sea are currently governed by a considerable numbers of treaties. With respect to treaties, as has been noted the contemporary international law of the sea since the conclusion of the four Geneva Convention has been dominated by multilateral treaties of which the LOSC is now clearly the principal international instrument in the field.⁴¹ Rules of international law governing treaties are codified in the 1969 Vienna Convention on the Law of

³⁹ Lori Fisler Damrosch et.al, International Law, Cases and Materials (West Group, A Thomson Company, 2001), 451.

⁴⁰ P. Reutter, Introduction to the Law of Treaties (London and New York, Kegan Paul International, 1995), 30.

⁴¹ Rothwell and Stephens, Law of the Sea, 22.

treaties.⁴² The UN Office of Legal Affairs in its Treaty Section provide in chapter XXI an overview of universal treaties related to the : law of the sea⁴³ :

Table 1.3 Law of the sea related treaties

S.N.	Treaties
1	Convention on the Territorial Sea and the Contiguous Zone. Geneva, 29 April 1958
2	Convention on the High Seas. Geneva, 29 April 1958
3	Convention on Fishing and Conservation of the Living Resources of the High Seas. Geneva, 29 April 1958
4	Convention on the Continental Shelf. Geneva, 29 April 1958
5	Optional Protocol of Signature concerning the Compulsory Settlement of Disputes. Geneva, 29 April 1958
6	United Nations Convention on the Law of the Sea. Montego Bay, 10 December 1982
6.a.	Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. New York, 28 July 1994
7	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. New York, 4 August 1995
8	Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea. New York, 23 May 1997
9	Protocol on the Privileges and Immunities of the International Seabed Authority. Kingston, 27 March 1998

A treaty may generate three effects in relations to rules of customary law.⁴⁴ First, a treaty may embody already established rules of customary law. This is called declaratory effect. In the context of the law of the sea, a good example is the Geneva Convention on the High Sea. In fact, the Preamble of the Convention on the High Sea explicitly refers to the codification of the rules of international law relating to the high sea. Second, where a treaty states rules reflecting State practice prior to the adoption of the treaty, such rules may be ripe for transition from *lex ferenda* to *lex lata*. This is called the crystallizing effect. It can be seen in some provisions of the Geneva Convention on the Continental Shelf. In fact, the ICJ, in the North Sea Continental Shelf case,

⁴² Vienna Convention on the Law of Treaties 1969, Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 33, http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, Accessed on November 12, 2017.

⁴³ United Nations, Treaty collection, Treaty Section, Office of Legal Affairs, <https://treaties.un.org/pages/Treaties.aspx?id=21 &subid=A&clang=en>, Accessed on July 31, 2017.

⁴⁴ The North Sea Continental Shelf Case, ICJ Reports 1969, 38-39.

ruled that Articles 1 to 3 of the Convention on the Continental Shelf were regarded as reflecting, or crystallizing, or at least emergent towards a new rule of customary law relative to the continental shelf.⁴⁵ Third, a treaty may generate a new rule of customary law. It is possible that, where after a treaty has come into force, States other than the parties to it find it convenient to apply the convention rules in their mutual relations. Such state practice may lead to the development of a new customary law.⁴⁶ This effect is called the generating effect.

As sources to regulate the rights of land-locked state's, there are a number of treaties at global, regional and bilateral level. Global or universal treaties have been playing a vital role as a sources of rights of LLS. Most prominent are the multilateral treaties on safety and pollution by ships that have been adopted under the auspices of the International Maritime Organization.⁴⁷ The IMO is now responsible for nearly 30 international conventions and agreements and its members have adopted numerous protocols and amendments.⁴⁸ These conventions are legally binding for all countries that have ratified the conventions.

The international regional treaties cover the particular relationships of the coastal and land-locked states such as navigation through the international rivers or marine pollution from the land-based sources. There are number of bilateral treaties between land-locked and port states for transit. The transit treaty between Nepal and India has given certain rights to land-locked county Nepal to access to the sea side of India.

Paragraph 2 : International customary law

International customary law is one of the important regulators in determination of the legal status of land- locked states. According to Article 38 (1) (b) of the Statute of the International Court of Justice the Court shall apply international custom as evidence of a general practice accepted as law.

⁴⁵ Ibid, 39.

⁴⁶ Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press, 2015), 13.

⁴⁷ United Nations, Treaty collection, Treaty Section, Office of Legal Affairs, No. 22484, Multilateral, Protocol of 1978 relating to the International Convention for the prevention of pollution from ships, 1973 (with annexes, final act and International Convention of 1973), Concluded at London on 17 February 1978, <https://treaties.un.org/doc/Publication/UNTS/Volume%201340/volume-1340-I-22484-English.pdf>, Accessed on November 12, 2017.

⁴⁸ International Maritime Organization, www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx, Accessed on July 31, 2017.

Customary international law can be divided into two categories. The first category is general customary law. While treaties are binding only upon the parties to them, it is widely accepted that rules of general customary law are binding upon all States in the international community.⁴⁹ In this regard, the ICJ, in the *North Sea Continental Shelf* cases, stated that general or customary law rules and obligations ‘by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favor’.⁵⁰ Thus, rules of general customary law are also binding upon newly independent states, even though they did not participate in the formation of these rules concerned. Given that in the context of the sea, there is no treaty to which all states are parties, rules of general customary law continue to be important. Customary law also comes into play in a situation where there is no specific rule in relevant treaties.⁵¹

The second category involve special or local customary law, which is applicable only within a defined group of states. The well-known example of local customary law may be the practice of diplomatic asylum in Latin America. A special and local customary law may exist between only two states. In this regard, the ICJ in the *Right of passage over India Territory* case held that: ‘ It is difficult to see why the number of states between which a local custom may be established on the basis of long practice must necessarily be larger than two’.⁵²

Orthodox legal theory requires proof of two elements in order to establish the existence of a rule of customary international law. The first is general and consistent practice adopted by states (state practice). This practice need not be universal adopted, and in assessing its generality special weight will be given to the practice of states most directly concerned for example, the practice of coastal states in the case of claims to maritime zones, or of the major shipping states in claims to jurisdiction over merchant ships.⁵³ Concerning the first element, at least three issues arise. The first issue involves the question of what constitutes state practice. The second issue involves a degree of uniformity of states practice. Whilst generality cannot be determined in abstract, it is generally recognized that universality is not required to established a new rule of customary

⁴⁹ Tanaka, *Law of the Sea*, 9.

⁵⁰ *North Sea Continental Shelf* case, ICJ Report 1969, 38-39.

⁵¹ Tanaka, *Law of the Sea*, 9.

⁵² *Case Concerning Right of Passage Over India Territory*, (Portugal v. India), ICJ Report 1960, 39.

⁵³ R.R. Churchill and A.V. Lowe, *The Law of the Sea* (Manchester University Press, 1999), 7.

law.⁵⁴ According to the ICJ, in order to deduce the existence of customary rules, it is sufficient that the conduct of states should, in general, be consistent with such rules.⁵⁵ In this regard, the Court further specified that general states practices includes the practice of states whose interests are specially affected.⁵⁶

The second element is the so- called *opinion juris*- the conviction that the practice is one which is either required or allowed by customary international law, or more generally that the practice concerns a matter which is the subject of legal regulation and is consistent with international law.⁵⁷ An obvious difficulty concerning *opinion juris* involves finding the evidence for it. In spite of this difficulty, the majority opinion generally recognizes the need for the second element in order to make custom as law distinct from custom as a mere fact. As the International Court noted in the *Libya/Malta* case, the substance of customary law must be ‘looked for primarily in the actual practice and *opinion juris* of states.’⁵⁸

Article 125 of the LOSC grants the right of transit to LLSs which has been enforced through regional and bilateral agreements and state practice. In the *Right of passage over Indian territory case*,⁵⁹ Portugal claimed that there existed a right of passage over Indian territory as between the Portuguese enclaves, and this was upheld by the International Court of Justice over Indians objections that no local custom could be established between only two states. The Court declared that it was satisfied that there had in the past existed a constant and uniform practice allowing free passage and that the ‘practice was accepted as law by the parties and has given rise to a right and a correlative obligation.’⁶⁰ More generally, the Court stated that ‘Where therefore the Court finds a practice clearly established between two states which was accepted by the Parties as governing relations between them, the Court must attribute decisive effect to that practice for the

⁵⁴ Tanaka, Law of the Sea, 10.

⁵⁵ Case Concerning Military and Paramilitary Activities in and Against Nicaragua, (Nicaragua v. United States of America), ICJ Report 1986, 98.

⁵⁶ Ibid 43.

⁵⁷ Churchill and Lowe, Law of the Sea, 7.

⁵⁸ Continental Shelf, Libya v. Malta, Merits, Judgement, ICJ Report, 1985, 13.

⁵⁹ Case Concerning Right of Passage Over India Territory, (Portugal v. India), ICJ Reports, 1960, 6.

⁶⁰ Ibid, 40.

purpose of determining their specific rights and obligations. Such a particular practice must prevail over any general rules.⁶¹

Section B : General principles, judicial decisions and doctrine

Paragraph 1 General principles of law

The view of jurists and the agreement made between two or more countries have developed some solutions to the problem of LLSs. The views of jurists, bilateral agreement and multilateral conventions, principles and precedents are basic materials for the rights of LLSs.

The international legal experts have built up many theories concerning the rights on the sea. In accordance with Article 38(1)(d) of the Statute of the International Court of Justice, the general principles of law recognized by civilized nations are one of the sources of international law. The general principles are seldom applied to the disputing situation directly. In the respect the general principles of law vector the development of law and give a legal sense to normative sources.

Mostly general principles are related to the situations of lack of treaty and customary rules to resolve the disputing moments between the states. In such cases the general principles of law fulfill the gaps in international normative regulating playing the role of international law. The general principles which can be related to the formulation of the status of land-locked states with regard to their right of transit across the territory of transit states include, inter alia, basic principles of human rights, need for good faith, principle of good neighborliness, etc.⁶²

The International court of Justice in the *Corfu Channel case*,⁶³ when referring to circumstantial evidence, pointed out that ‘this indirect evidence is admitted in all systems of law and its use is recognized by international decisions’. International judicial reference has also been made to the concept of *res judicata*, that is that the decision in the circumstances is final, binding and without appeal.⁶⁴ In the *Effort of Awards of Compensation Made by the United Nations Administrative Tribunal (Advisory Opinion)* the ICJ referred to the ‘well established and generally recognized principle of law a judgement rendered by a judicial body is *res judicata* and has binding force

⁶¹ Ibid, 44.

⁶² P.W. Birnie, A.E. Boyle and C. Redgwell, *International Law and Environment* (Oxford University Press, New York, USA, 2009), 28.

⁶³ *Corfu Channel case (United Kingdom v Albania)*, ICJ Reports, 1949, 4, 155, 157.

⁶⁴ Ibid, 248.

between the parties to the dispute.’⁶⁵ The Court has also considered the principle of estoppel which provides that a party has acquiesced in a particular situation cannot then proceed to challenge it. In the *Temple case*⁶⁶ the International Court of Justice applied the doctrine, but in the *Serbian Loans case*⁶⁷ in 1929, in which French bondholders were demanding payment in gold francs as against paper money upon a series of Serbian loans, the Court declared the principle inapplicable.

Once crucial general principle of international law is that *pacta sunt servanda*, or the idea that international agreements are binding. The law of treaties rests inexorably upon this principle since the whole concept of binding international agreements can only rest upon the presupposition that such instruments are commonly accepted as possessing that quality.⁶⁸

Perhaps the most important general principle, underpinning many international legal rules, is that of good faith.⁶⁹ This principle is enshrined in the United Nations Charter, which provides in articles 2(2) that ‘all Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil good faith the obligations assumed by them in accordance with the present Charter’, and the elaboration of this provision in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States adopted by the general Assembly resolution 2625 (XXV), 1970, referred to the obligations upon states to fulfill in good faith obligations resulting from international law generally, including treaties.⁷⁰

The International Court declared in the *Nuclear Test cases*⁷¹ that : “One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith, trust and confidence are inherent in international cooperation, in particular in an age when this cooperation in many fields is becoming increasingly essential. Just

⁶⁵ Alina Kaczorowska, *Public International Law* (Routledge Taylor and Francis Group, London and New York, 2015), 49.

⁶⁶ *Certain Expenses of the United Nations* (Article 17, Paragraph 2, of the Charter) Advisory Opinion, ICJ Reports, 1962, 6,23,31, 32, 33.

⁶⁷ *Case Concerning the Payment of Various Serbian Loans Issued in France*, France v. Kingdom of the Serbs, Croats and Slovenes, Judgement 1929, PCIJ, Series A, 20: 5 AD, 466.

⁶⁸ *The Vienna Convention on the law of Treaties*, 1969, Article 26.

⁶⁹ G. Fitzmaurice , *The Law and procedure of the International Court of Justice* (Cambridge, 1986), 183.

⁷⁰ Shaw, *International Law*, 104.

⁷¹ *Nuclear Test cases* (Newzerland v. France), ICJ Reports, 1974, 253, 267.

as very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral obligation.”

Apart from the recourse to the procedures and institutions of municipal legal systems to reinforce international law, it is also possible to see in a number of cases reference to equity⁷² as a set of principles constituting the value of the system. The most of famous decision on these lines was that of judge Hudson in the *Diversion of Water from the Meuse case*⁷³ in 1937 regarding as dispute between Holland and Belgium. The International Court of Justice in the *North Sea Continental Shelf* cases directed a final delimitation between the parties West Germany, The Netherlands and Denmark ‘in accordance with equitable principles’⁷⁴ and discussed the relevance to equity in its consideration of the *Barcelona Traction cases*.⁷⁵

The use of equitable principles has been particularly marked in the 1982 Law of the Sea Convention. Article 59, for example provides that a conflict between coastal and other states regarding the exclusive economic zones is to be resolved on the basis of equity, while by article 74 delimitation of the zone between states with opposite or adjacent coasts is to effected by agreement on the basis of international law in order to achieve an equitable solution.⁷⁶ A similar provision applies by article 83 to the delimitation of continental shelf.⁷⁷

Rules such as the freedom of high seas and the exclusiveness of flag states jurisdiction over ships on the high seas are sometimes described as general principles of law, in the sense that in the absence of clear proof of, for example, a right under treaty for a state other than the flag state to exercise jurisdiction over ship on the high sea, no such right exist. Here any doubt over the existence of the non-flag states’ rights is settled in favor of the exclusiveness of the flag states jurisdiction, by reference of general principles.⁷⁸ Here are some principles relating to the rights of land-locked states:

⁷² Case Concerning Maritime Delimitation in the area between Greeland and Jan Mayen case (Danmark v. Norway), ICJ Reports, 1993, 38.

⁷³ Diversion of Water from the Meuse (Netherlands v. Belgium 1937), PCIJ, Series A/B, No 70, 73.

⁷⁴ North Sea Continental Shelf case, ICJ Reports, 1969, 3, 53.

⁷⁵ Case Concerning the Barcelona Traction, Light of Power Company Limited (New Application : 1962) (Belgium v. Spain) Second Phase, ICJ Reports, 1970, 3, 46.

⁷⁶ Malcolm N. Shaw, International Law (Cambridge University Press, 2008), 108.

⁷⁷ Article 140, LOSC.

⁷⁸ Churchill and Lowe, Law of the Sea, 12.

Natural law theory

The argument in support of the right of access to the sea by land-locked state was originally predicted on the principles of natural law held in the 17th century. It was believed that the right of free transit was conferred on every land-locked state by its sovereignty.⁷⁹ Every state has a right to go high sea and exploit their resources and conduct scientific research. Hugo Grotius generated this principle at first and developed by Thomas Jefferson.

Principles of freedom and ‘commonage’

For hundreds of years after Hugo Grotius the father of international law prevailed in his famous controversy with John Selden, international law saw the seas as belonging to everyone or to no one and *mare liberum* was the fundamental principle of the law of the seas. With that principle of freedom or beneath it has been the concept of commonage that the sea belonged to everyone, or to no one. In particular, unlike land, the sea could not be acquired by nations and made subject to national sovereignty. That status and that principle applied throughout the seas⁸⁰.

Marcel Silbert is of the view that the principle of freedom of the sea is the foundation of access. He states: Since all the High seas form an asset, the use of which is common to all it would appear that the right to navigate freely on the High seas should be enjoyed by all members of the international community, including those which have no coastline.⁸¹ The principles of freedom aims to ensure the freedom of various uses of the oceans, such as navigation, overflight, laying submarine cables and pipelines, construction of artificial islands, fishing and marine scientific research.⁸²

Principle of international servitudes

The concept of international servitudes had been developed from the ancient roman civil law. It was the condition of *jura in re aliena*. Such kind of condition might be established by practice of

⁷⁹ A.A Adedeji, “An appraisal of the Right of Access to the Accorded to Land-locked States under the 1982 Third United nations Convention on the Law of the Sea (UNCLOS III),” Jimma University Journal of Law Vol. 1, No 1 : 135, accessed July 4, 2017, <http://heinonline.org/HOL/License>.

⁸⁰ Lori Fisler Damrosch et.al, International Law, Cases and Materials (West Group, A Thomson Company, 2001), 1389.

⁸¹ Pradhan, Land-locked Countries and Nepal,11

⁸² Tanaka, Law of the Sea, 16.

the nations or international agreements. It placed till 19th centuries but modern international law doesn't give priority to this principle.⁸³

Principle of pacta sunt servanda

It is the important principle in international law. Every state should obey the treaty which is concluded by them. The concept of the high sea is based on the international customs and treaties. Land-locked states have right to access to and from the sea. Every coastal state has to respect this right as a good faith. Perhaps the most important principle of international law is that of good faith. It governs the creation and performance of legal obligations and is the foundation of treaty law.

Principle of geographical circumstances

Some jurists urge that because of the geographical circumstances certain rights and duties are established among nations. Land-locked states have no sea coast. Therefore the neighboring coastal state should help these states enjoying the freedom of transit to access to the sea.⁸⁴

Principle of freedom of transportation⁸⁵

It is old principle. Hugo Grotius, Lauterpacht and other naturalist advocated for this principle. According to this principle every land-locked state has right access to the high sea. Every state has absolute sovereignty on its territory, but such state cannot deny giving the transportation right to other countries for the fulfillment of their needs.

Principle of sovereignty

In contrast to the principles of freedom, the principle of sovereignty seeks to safeguard the interest of coastal States. This principle essentially promotes the extension of national jurisdiction into offshore spaces and supports the territorialisation of the oceans. It has been considered that the concept of the modern state was formulated by Vattel. Vattels conception represented a prototype of the law of the sea in a modern sense.⁸⁶ It may be said that the principle

⁸³ Madhav Paudel, Public International Law (Pairavi Prakashan, Kathmandu, 2053), 318.

⁸⁴ Ibid, 320.

⁸⁵ Ibid, 317.

⁸⁶ Tanaka, Law of the Sea, 18.

of sovereignty was a catalyst for development of the law of the sea after World war II. In any case, there is little doubt that the coordination of the economic and political interests of maritime states and coastal states has until recently been a central issue in the international law of the sea.

Principle of the common heritage of mankind

This principle is enshrined in Part XI of the LOSC. As will be seen in Chapter 5, the principle of the common heritage of mankind emerged as an antithesis against the principles of sovereignty and the principle of freedom. This principle is distinct from the traditional principles in two respects. First, while the principle of sovereignty and that of freedom aim to safeguard the interests of individual states, the principle of the common heritage of mankind seeks to promote the common interest of mankind as a whole. Second, the principle of the common heritage of mankind focus on ‘mankind’ as a novel in the law of the sea. ‘Mankind’ is not a merely abstract concept. As we shall see in chapter 5, under the LOSC ‘mankind’ has an operational organ, i.e. the International Seabed Authority, acting on behalf of mankind as a whole. To this extent, it can reasonably be argued that mankind is emerging as a new actor in the law of the sea. In this sense, the principle of common heritage of mankind introduces a new perspective. Which is beyond the state-to-state system, in the law of the sea.⁸⁷

Paragraph 2 Judicial decisions and doctrine

Judicial decisions fulfill the vacuum of law. Article 38 (1) (d) of the Statute of the ICJ refers to ‘Judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law’. This puts their role into a proper perspective. Judges and jurists cannot create law: only states can do that, through the formation of treaty and customary rules and general principles of law.⁸⁸ According to Article 59, of the Statute of the ICJ the decision of the court has binding force between the parties only and in respect of that particular case. Judicial decisions have had an important influence on the law of the sea and international law in general. Three functions of judicial decisions must, in particular, be highlighted.

First, the existence of rule of law, in particular, rule of customary international law is often a matter of discussion. By applying a specific rule to a particular case or determining the branch of

⁸⁷ Ibid, 19.

⁸⁸ Churchill and Lowe, Law of the Sea, 13.

the rule concerned, international courts identified the existence of rule in positive international law (the identification of rules). Second, it is not infrequent that the meaning of rules of international law, customary or conventional, become a subject of international disputes. International courts have a valuable role to clarify the meaning and scope of relevant rules through international adjudication (the clarification of rules). Third, judicial decisions may have a formative effect on the development of international law (the formation of rules).⁸⁹

The law of the sea has also been shaped by decisions of international court and tribunals. Since the ICJ first decision in *Corfu Channel Case*,⁹⁰ there has been a steady caseload of law of the sea matters, especially with respect to maritime boundary delimitation. This is highlighted in the period since 1969 and the decision in *North Sea continental Shelf*, when the ICJ has delivered 13 judgement on maritime boundary delimitation matters. Other ad hoc tribunals have also contributed to the development of the law,⁹¹ and with the establishment of ITLOS the capacity of international courts and tribunals to further expand upon the law has been enhanced even further.⁹² In the process of some of these decisions, it should be noted that reference has been made to the importance of equity as a principle of law recognized under Articles 38(1)(c) of the ICJ Statute also being influential upon development of law.⁹³

The most important aspect of court contributions to the law of the sea undoubtedly resides in the unification and clarification of the principles and rules governing maritime delimitation, particularly when applicable to adjacent and opposite states. A key development in that regard is without doubt the elaboration by the court of the ‘equidistance/relevant circumstances’ methodology, particularly with respect to the delimitation of the continental shelf and EEZ, with a view to achieving an ‘equitable solution’. In that respect, the extent of the court contribution cannot be overemphasized. However, before turning to the substantive rules governing maritime

⁸⁹ Tanaka, *Law of the Sea*, 13.

⁹⁰ *Corfu Channel case (United Kingdom v Albania)*, ICJ Report 1949, 4.

⁹¹ *Anglo- French Continental Shelf Arbitration* 1979, 18.

⁹² Rothwell and Stephens, *Law of the Sea*, 24.

⁹³ *Ibid.*

delimitation and their application in the jurisprudence of the Court, a few general principles underlying those warrant consideration.⁹⁴

ICJ creation in 1946, the Court has been seized of more than 160 cases, giving rise to the delivery of 121 judgments and 27 advisory opinions.⁹⁵

Chapter 2. Development of the rights of the land-locked States

This chapter is dedicated to the development of the right of the land-locked states, basically section A : the development until 1982 and section B : development after 1982.

Section A : Development until 1982

This section is dedicated to the development until 1982. In this section divided in to two paragraph, basically paragraph one : The regime prior to 1919 and paragraph two : The regime between 1919 and 1982.

Paragraph 1 : The regime prior to 1919

This regime concerns LLS because the geographical disadvantage state concept emerged from the third UN Conference of Law of the Sea. For the LLS, right of access to the sea became an issue of priority in the twentieth century. However, transit rights have been a matter of international concern for a long time. They were advocated by Grotius and Vettel.⁹⁶

As early as the eleventh century, a number of land-locked territories in Europe were able to secure right under bilateral treaties to gain access to the sea across neighboring territories, principally via international rivers. However the most of the early practice occurred in the twentieth centuries, beginning under the auspices of the League of Nations in the aftermath of World war 1.⁹⁷ While some writers contended that land-locked states enjoyed a right of transit on the basis of natural law principles,⁹⁸ as a logical consequence of the freedom of the sea or as an international servitude of necessity, in practice it was through bilateral and plurilateral treaties

⁹⁴ Peter Tomka, "The Contribution of the International Court of Justice to the Law of the Sea" *The Imli Manual on International Maritime Law*, Volume 1, General ed. David Joseph Attar (Oxford University Press 2014), 621.

⁹⁵ General Assembly Official Records Seventy-second Session Supplement No. 4, ICJ Report, 2016, 10.

⁹⁶ James L. Kateka, "Land-locked and Geographically Disadvantaged States" *The Imli Manual on International Maritime Law*, Volume 1, General ed. David Joseph Attar (Oxford University Press 2014), 431.

⁹⁷ Rothwell and Stephens, *Law of the Sea*, 193.

⁹⁸ Charles De Visscher, *Le Droit International des Communications* (Ghent and Paris Universite de Gand 1924), 6.

that access was sought and granted.⁹⁹ Early examples of such treaties included an 1816 agreement between Sardinia, the Swiss Confederation and the canton of Geneva that facilitated the transit of goods.¹⁰⁰

Before 1914 there was doubt as to whether under customary international law ships of a land-locked state had the right to sail on the sea and fly the flag of that state. Those who denied such a right, principally France, Great Britain and Prussia, argued that, since land-locked State had neither maritime port nor warships, they could not verify the nationality of merchant vessels nor exercise effective control over them.¹⁰¹

Prior to the 1900s coastal states did not generally recognize the right of land-locked states to sail ships flying their flag.¹⁰² In practice Switzerland started navigation on the high sea at first in 1864.¹⁰³ At that time Switzerland had not port. Right of navigation with own flag was not managed by International law. But Switzerland began ship transportation on the high sea.

During the nineteenth century the first attempts were made by the nationals of land-locked states to participate on their own in the uses of the seas as means of communication. In the course of the World War I, land-locked states like Switzerland clearly felt the great disadvantages of not having ships under their own flag in order to safeguard the supply of their population. After the close of the war the number of land-locked countries in Europe increased and thus further aggravated this problem. The Paris peace treaties first recognized the rights of land-locked countries of fly their flag on the seas, this was later confirmed by the “Declaration of Barcelona of 1921 recognizing the right to a flag of states having no sea-coast.” Furthermore, the Barcelona Convention and Statute on Freedom of Transit-1921 suffered from inherent deficiencies as well as from a limited number of ratifications. Before the Versailles treaty, 1919, most of the land-locked states were depend upon with contractual treaty, customs and state practice for the access to the sea. Some American and European countries were made bilateral treaty and used their right for the commercial purpose.

⁹⁹ Rothwell and Stephens, *Law of the Sea*, 193.

¹⁰⁰ UNCLOS I, Preparatory Document No 23.

¹⁰¹ Churchill and Lowe, *Law of the Sea*, 434.

¹⁰² Louis B. Sohn and John E. Noyes, *Cases and Materials on the Law of the Sea* (Transnational Publishers, 2004), 92.

¹⁰³ Subedi, “land-locked States and International law,” 359.

As early as the eleventh and twelfth century territories in Europe particularly Italy began giving treaty rights to land-locked territories and began the Internationalization of rivers, assuring access to the sea for land-locked states. By the diplomacy of Thomas Jefferson the Treaty of San Lorenzo, 1795 gave Americans the right to navigate the Mississippi river and other Spanish rivers to the sea. Jefferson's claim that "the ocean is free to all men and rivers to all their inhabitants"¹⁰⁴

Paragraph 2 : The regime between 1919 and 1982

The Treaty of Versailles, 1919

After First World War states were considering that they could not stay without depending with each other. They realized that they should take co-operation each other. And they made treaty of Versailles in 1919. The high contracting parties agree to recognize the seacoast which is registered at someone specific place situated in its territory, such place shall as the part of registry of such vessels.

The 1919 Versailles Treaty included provision which established a regime for transit for land-locked states on certain international rivers in Europe.¹⁰⁵ In the river Oder case the Permanent Court of International Justice affirmed that this regime effected the 'complete international' of the river Oder, a position that benefited land-locked Czechoslovakia.¹⁰⁶ Also of importance was the 1919 Covenant of the League of Nations, which in Article 23(e) required members to 'make provision to secure and maintain freedom of communication and of transit and equitable treatment of commerce of all members.' In an early acknowledgement of geographical disadvantage, the article went to on encourage members in making such provision to bear in mind 'the special necessities of the regions devastated during the war.'¹⁰⁷

Convention and Statute on Freedom of Transit, Barcelona, 1921

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

¹⁰⁴ Pradhan, Land-locked Country and Nepal, 13.

¹⁰⁵ Versailles of treaty, 1919, pt. XII, s II.

¹⁰⁶ Rothwell and Stephens, Law of the Sea, 193.

¹⁰⁷ Ibid.

1921.¹⁰⁸ It went into effect on 31 October 1922. The 1921 Barcelona Convention and its statute on Freedom of Transit was the first international instrument to establish freedom of transit. The drawback of the Barcelona regime is that it concerned only water and rail transport (Article 2). It did not apply to road and air transport. It was formulated mostly by European States. The Statute defines ‘traffic in transit’ to include ‘person’ and ‘goods’ (Article 1). It recognizes the granting of greater facilities than those provided in the Statute (Article11).¹⁰⁹ Moreover, it was not a treaty specifically aimed at addressing issues of access for land-locked states but was rather a more general system for promoting international communication.¹¹⁰

Convention and Statute on the International Regime of Maritime Ports, Geneva, 1923

Geneva Convention and Statute on the International Regime of Maritime Ports 1923, whereby port states agree to treat ships equally, regardless of the Flag. The Convention was concluded in Geneva on 9 December 1923 and entered into force on 26 July 1926. The states that ratify the Convention agree to allow all ships the freedom to access maritime ports and to not discriminate against ships based on the maritime flag the ship flies. The Convention remains in force and forms of the basis of the expectation at international law of equal treatment in maritime ports. Thailand ratified the Convention in 1925 but denounced it in 1973. The Convention was ratified in 2001, by Saint Vincent and the Grenadines.¹¹¹

General Agreement on Trade and Tariffs (GATT), 1947

Shortly after the end of the Second World War, the major trading nations of the world at the initiative of the United States of America, made a commitment to reduce tariffs and other barriers to trade for their mutual benefit and to facilitate post-war reconstruction, recovery and peace. The general principles of liberalized trade agreed upon by the participants and the specific

¹⁰⁸ League of Nations treaty Series, Vol.7, 12-33.

¹⁰⁹ James L. Kateka, “ Land-locked and Geographically Disadvantaged States” The Imli Manual on International Maritime Law, Volume 1, General ed. David Joseph Attar (Oxford University Press 2014), 435.

¹¹⁰ Rothwell and Stephens, Law of the Sea, 194.

¹¹¹ https://en.wikipedia.org/wiki/Convention_and_Statute_on_the_International_Régime._, Accessed on August 10, 2017.

undertaking by the participants, were embodied in the General Agreement on Tariffs and Trade (GATT) adopted at Geneva on October 30, 1947.¹¹²

The General Agreement on Tariffs and Trade (GATT), which was subsequently reproduced in the 1994 General Agreement on Tariffs and Trade, the first and most important of the ‘covered agreement’ of the World Trade Organization. Article V of GATT provide that ‘there shall be freedom of transit through the territory of each contracting party, via routes most convenient for international transit.’ The GATT provision, therefore, take a similar approach to the Barcelona regime, but deals with all methods of transit across territory, including by road and air. However, it is limit in so far as it apply only to, the transit of goods and not to the free movement of persons.¹¹³ 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 land-locked countries, never can into force.¹¹⁴

The Role of ECAFE on the context of the rights of LLS

A political attempt was made in the United Nations at the Economic Commission for Asia and the Far East (ECAFE) to solve the problem of land-locked states. The committee on Industry and Trade of ECAFE approved a resolution in 1957 which recommendation as follows: “That the needs of the land-locked member states and members having no easy access to the sea in the matter of transit trade are given full recognition by all member states and that adequate facilities therefore are accorded in terms of international law and practice in this regard.”¹¹⁵

The ECAFE as its 26th session held in 1970, created a special unit to give continuous attention to the problems of the land-locked and the least developed among developing countries of the region.¹¹⁶

The ECAFE Declaration on Development of Regional Co-operation for Asian Industrialization made on September 17, 1970 at Tokyo noted the difficulties of the region in developing

¹¹² Adedeji, “An appraisal of the Right of Access” 139.

¹¹³ Rothwell and Stephens, Law of the Sea, 194.

¹¹⁴ Kateka, “ Land-locked and Geographically Disadvantaged States” 435.

¹¹⁵ Pradhan, Land-locked Country and Nepal, 17.

¹¹⁶ Ibid, 45.

commercial infrastructure and their efforts in expanding their trade. The Executive Secretary of ECAFE was requested to take steps for the promotion of increased access for the less developed and land-locked countries of the region to reach any market region.¹¹⁷

The committee on trade, at its last (fourteenth) session recommended that the secretariat work out a plan to organize a mission of experts to identify the trade and economic problems of land-locked countries of the ECAFE region, and to find suitable solutions thereto. This recommendation was endorsed by the Commission at its twenty seventh session held at Manila in April 1971.

Geneva Conference on the Law of the Sea, 1958

The first specific treatment of transit rights for land-locked states to the sea in a multilateral treaty was found in the 1958 Convention on the High Sea. The key provision in this respect is article 3, the text of which was not drafted by the International Law Commission, as was most of the Geneva regime, but was instead based on a draft prepared by Switzerland and inserted with the support of the other land-locked states at UNCLOS I. In its comments on the ILCs draft articles, Nepal observed that the right of free access to the sea had been granted to land-locked countries in practice by common courtesy or convention, and that it was now time to codify this practice in legal form.¹¹⁸ The negotiation position taken by Switzerland and the other land-locked states at UNCLOS I was based upon a set of principles they had agreed prior to the conference. The most significant of these was the first principle, which stated that :‘The right of each land-locked state of free access to the sea derives from the fundamental principle of freedom of the High Seas.’¹¹⁹ The 1958 Convention on the High Sea did not give effect to this principle in any strict sense. Article 3 of the Convention read as follows:¹²⁰

“1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea. To this end States situated between the sea and a State having no sea coast shall by common agreement with the latter, and in conformity with existing international conventions, accord: (a) To the State having no sea coast, on a basis of

¹¹⁷ Ibid, 48.

¹¹⁸ Rothwell and Stephens, Law of the Sea, 194.

¹¹⁹ Ibid

¹²⁰ United Nations, Treaty Series, vol. 450, (2005) 2.

reciprocity, free transit through their territory; and (b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.”

As shown by the term ‘should’, this provision does not provide the right of the land-locked states to access to and from sea. Further to this, the transit relies on agreement between the states concerned on the basis of the principle of reciprocity.¹²¹ It must be noted with regard to Article 3 that the Fifth Committee did not adhere to the thesis of LLS (the right of free access), but rather that of coastal states (the possibility of access). In other words, the 1958 General Conference on the Law of the Sea failed to satisfy the demand of LLS for a “general law for free access”.¹²² It follows that the transit of land-locked states to and from sea depends on the goodwill of the coastal States concerned.

As land-locked states such as Czechoslovakia pointed out at the time, this provision fell short of a guarantee of transit, because the granting of free access to the sea was made contingent on common agreement between the states concerned.¹²³ Bowett noted that the 1958 Convention on the High Sea therefore endorsed the moral claim of land-locked states, but did not give them an enforceable legal right to access, a right that could only be made manifesto via a specific negotiated agreement.¹²⁴

The role of UNCTAD in the context of rights of LLS

The first United Nations Conference on Trade and Development (UNCTAD I) considered the problem of land-locked countries, both from the point of view of theory and practice under Item

¹²¹ Tanaka, Law of the Sea, 407.

¹²² Kishor Uprety, “From Barcelona to Montego Bay and Thereafter: A Search for Land-locked States Rights to Trade through Access to the Sea-A Retrospective Review”, Singapore Journal of International and Comparative Law 7 (2003) : 207-208, accessed July 4, 2017, <http://heinonline.org/HOL/License>.

¹²³ Rothwell and Stephens, Law of the Sea, 195.

¹²⁴ Ibid.

10 (a) of the Agenda. Some principles were adopted by the conference, relating to the land-locked states.

The second session of United Nations Conference on Trade and Development (UNCTAD II) unanimously adopted the resolution relating to special problems of land-locked Countries. The session emphasized for the co-operation relating to transport and communication infra-structure, promotion of the trade and economic development of the land-locked developing countries.

The UNCTAD Report of the Group of Experts, 1970 recommended specific policy measures of land-locked developing countries. The recommendations were divided into three road groups, namely administrative and other measures not requiring investment, measure requiring investment in the transport and communications infrastructure and measures directed towards adopting the economic structure of the land-locked developing countries to their land-locked positions.¹²⁵ The recommendations are also the new steps in the development of transit for land-locked states.

UN Convention on Transit Trade of Land-locked States, 1965

The 1965 New York Convention is to a significant extent modeled on the Barcelona regime, and Article V of the GATT.¹²⁶ However, it is notable that it included for the first time the recognition that land-locked states enjoy a legal right of free transit.¹²⁷ Article 2 provided that freedom of transit is to be granted to traffic in transit and means of transport on routes in use mutually accepted for transit.¹²⁸ No discrimination is to be exercised on the basis of the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration of flag of vessels, land vehicles or other means of transport used.¹²⁹ The Convention applies not only to river and rail traffic, but to all means of transport including seagoing and river vessels and road vehicles.¹³⁰ In addition, traffic in transit is not to be subject to customs duties or taxes, though fees for service for supervising and

¹²⁵ Pradhan, Land-locked Country and Nepal, 46.

¹²⁶ Rothwell and Stephens, Law of the Sea, 195.

¹²⁷ Preamble, Principle 1, New York Convention on Transit Trade of Land-locked States, 1965.

¹²⁸ Ibid art 2(1).

¹²⁹ Ibid.

¹³⁰ Ibid art 1 (d)(i).

administering transit can be imposed.¹³¹ Under Article 15, the provision of this Convention shall be applied on the basis of reciprocity.¹³² Article 11 also reserves the right of the transit state to prohibit transit on the grounds of public morals, public health or security or as a precaution against diseases of animals or plants or against pets and to take any action necessary for the protection of its essential security interests.¹³³ One of the strengths of the regime is its enforceability, in that Article 16 provides for the compulsory arbitration of disputes with respect to the interpretation or application of the Convention that cannot be settled by negotiation, or other peaceful means, within nine months.¹³⁴ The 1965 New York Convention was the baseline for negotiations at UNCLOS III on the question of rights of transit for land-locked states.¹³⁵

Although it was an important development, the relatively small number of ratifications of the 1965 New York Convention,¹³⁶ and in particular the failure of major transit states such as France and Pakistan to join the regime, makes it difficult to sustain an argument that the regime codified an existing, or generated new, customary right of free access for land-locked states to the sea. It was certainly not accepted at the time of its conclusion that the Convention reflected customary law on the point. The position has not changed substantially with the conclusion and widespread ratification of the UNCLOS, Part X of which includes similar provisions as the 1965 New York Convention that fall short of clearing guaranteeing a right of access.¹³⁷

Some general conclusions can be made concerning the pre UNCLOS conventional regime. According to Wani,¹³⁸ the regime has four elements : (i) each convention provides for transit as a non-self-executing right subject to arrangement with the transit State (ii) in each convention, the right of transit is subject to reciprocity (iii) the grant of transit right is not excluded from the most favored nation clause and (iv) certain means of transport are not permitted and safeguards are provided to protect the legitimate interests of the transit State. In short, in the pre UNCLOS

¹³¹ Ibid art 3.

¹³² Tanaka, *Law of the Sea*, 408.

¹³³ Ibid.

¹³⁴ Rothwell and Stephens, *Law of the Sea*, 195.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ IJ Wani, "An evaluation of the Convention on the Law of the Sea from the Perspective of the Land-locked Countries": 22 (*Virginia Journal of International Law* 1981-1982), 627.

conventional regime, there is no express declaration that freedom of transit is a general legal principle applicable to all States.¹³⁹ Although the New York Convention achieved only limited success, this Convention was later to provide a good basis for negotiations at UNCLOS III.¹⁴⁰

Declaration of the Ministerial Meeting of the Asian Group of 77

The Ministers of the Asian Group of the Group of 77 assembled in Bangkok from 5 to 7 October, 1971, having reviewed the disadvantaged states. The declaration is known as the Kampala Declaration. The declaration contained the right of free access to and from the area of the sea-bed in order to enable them to participate in the area of the sea-bed, in order to enable them to participate in the exploration and exploitation of the Area and its resources and to derive benefits there from, exercise the right to sail ships under their own flag and to use ports, coastal states shall respect the right of the land-locked states to use on an equal basis facilities, equipment and all other installations in the ports.

Section B : Developments after 1982

This section is dedicated to the development after 1982, basically dedicated to the paragraph one : Rights of land-locked states under UN convention on the law of the sea, 1982 and paragraph two : Outside the UN context to the World trade organization, regional organization and other efforts to address the practical problems of LLS.

Paragraph 1 : Within the UN context

Rights of land-locked states under UN Convention on the Law of the Sea, 1982

The LOSC was opened for signature on 10 December 1982 in Montego Bay, Jamaica. The Convention entered into force in accordance with its article 308 on 16 November 1994, 12 months after the date of deposit of the sixtieth instrument of ratification or accession. 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 ocean

¹³⁹ Kateka, “ Land-locked and Geographically Disadvantaged States” 436-437.

¹⁴⁰ Tanaka, Law of the Sea, 408.

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.¹⁴¹

When compared with the Geneva Convention on the law of the Sea, UNCLOS III has more comprehensive provisions geared towards maintaining the right of land-locked states in the freedom of the High Sea in a number of articles. In addition, a specific Part X was created to deal with measures that will facilitate the exercise of the right of access to the sea by land-locked states.¹⁴² These rights include right of access to the seas, freedom of transit, right of “innocent passage” and freedom of navigation in the seas, and right to exploit the living and non-living resources of the seas. LOSC has maintained right of land-locked states as follows:

Access to and from the sea and freedom of transit

Traditionally, LLS have had to fight for the right of free access to the sea in order to participate in international trade. The 1958 Convention on the High Seas in its Article 3, and in similar terms the 1965 New York Convention on the Transit Trade of Land-locked States in its Article 15, has secured to LLS the freedom of transit ‘on a basis of reciprocity’.

United Nations Convention of Law of the Sea, 1982, part-X (article124-132) has mentioned the right of access to sea and from the sea and freedom of transit of land-locked states. The most important of these articles is article 125. According to this Article ‘LLSs 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 high seas and the common heritage of mankind. This is end LLSs shall enjoy freedom of transit through the territory of transit states by all means of transport.’¹⁴³ ‘The terms and modalities for exercising freedom of transit shall be agreed between the LLSs and transit states concerned through bilateral, sub regional or regional agreements.’¹⁴⁴

Part X of the convention contains yet other provision with a positive and progressive character. Among them are articles 126, 127, 130 and 131 which deal with exclusion application of the

¹⁴¹ United Nations, Division for Ocean Affairs and the Law of the Sea, http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm, Accessed on August 15, 2017.

¹⁴² Adedeji, “An appraisal of the Right of Access” 145.

¹⁴³ Art 125(1), LOSC.

¹⁴⁴ Ibid, art 125(2).

MFN treatment clause, prohibition on imposition of customs, duties, taxes or other charges on LLSs' traffic in transit, imposition of duty to avoid or eliminate delays or other difficulties of a technical nature in traffic-in-transit and equal treatment of Ships flying the flag of LLSs in maritime ports.

Though provided by international legal instruments unrestricted "freedom of transit" is difficult to achieve. The international conventions provide that the freedom of transit and access to the sea cannot be restricted. However, the Conventions themselves allow space for the transit states to take measures in the pretext of protecting their sovereignty, security, public health hazards etc. The New York Convention even provides for restriction of freedom of transit on grounds of 'public moral' and 'plant and animal diseases'. There are restriction already on drugs and weapons. These conventions also allow the transit countries to suspend unrestricted transit to suspend the freedom of transit temporarily, such as during wars and emergencies. The transit states are authorized with the 'right' to take 'all dispensable measures' to protect their 'legitimate interest', not defined by LOSC¹⁴⁵ Article 125(3) of the LOSC reads:

"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 provided for in this Part for Land-locked states shall in no way infringe their legitimate interests."

The provision can undermine the transit rights of LLDCs, typically on security grounds. It is in this context that transit right of the LLCs is often defined as 'imperfect right', as much is dependent on the mercy of the transit states. Interestingly, the convention gives the LLCs 'freedom' to transit, while transit states are given 'right' to take all necessary measures to protect their legitimate interests. In that connection, it is worthwhile to note that all international conventions mentions 'freedom' of transit, not 'right of transit.'¹⁴⁶

Access to navigational rights of land-locked states

For most of the history of the law of the sea, nationality of the ships depended upon the state of registration. As land-locked states passes no sea ports, it was originally thought that land-locked states could not have their flag flown by vessels. However the situation changed in the early

¹⁴⁵ Madhu Raman Acharya, "Rights of LLDCs Bilateral, regional and multilateral Perspectives in relation to Nepal," : 14 (Camad, 2012), 5.

¹⁴⁶ Ibid, 6.

twentieth century in the early aftermath of World War 1. Switzerland pressed at the Paris Peace Conference for recognition of right of land-locked states to grant nationality to vessels, and to be accorded full rights of navigation upon the sea.¹⁴⁷ Without such rights, Switzerland argued, it would not be able to establish a commercial fleet in its own right. The Swiss request was agreed to in the 1919 Treaty of Versailles, which in Article 273 provided that recognition shall be accorded to the certificates and documents issued to their vessels by governments, whether or not they possessed a coastline. Vessels of land-locked states were to be registered in a specified place in their territory, which was to serve as the port of registry for such vessels.¹⁴⁸

Article 2 of the 1958 Convention on the High Seas makes clear that the high sea is open to all nations, and both coastal and noncoastal states enjoy freedom of navigation. Article 4 of the Convention clearly provides that : ‘Every State, whether coastal or not, has the right to sail ships under its flag on the high sea.’ Furthermore, Article 14(1) of the Convention on the territorial Sea and the Contiguous Zone stipulates that ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

These rights were affirmed in the LOSC. Article 17 provides that the ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea. The same is true for the other navigational rights, including the right of transit passage through straits used for international navigation,¹⁴⁹ the right of innocent passage through archipelagic waters,¹⁵⁰ the right of archipelagic sea lanes passage,¹⁵¹ and freedom of navigation of high seas.¹⁵² Article 90 affirms that every state, whether coastal or land-locked, has the right to sail ships flying on the high seas.

The final provision of the LOSC of relevance to navigational issues for land-locked states is Article 131, which is found in Part X. That article states that ships flying the flag of land-locked states enjoy treatment equal to that accorded to other foreign ships in maritime ports. This does

¹⁴⁷ SP Menefee, “ The Oar of Odysseus: Land-locked and Geographically Disadvantaged States in Historical Perspective” : 23 (California Western International law Journal, 1929-93), 34-35.

¹⁴⁸ Rothwell and Stephens, Law of the Sea, 199.

¹⁴⁹ Art 37, LOSC.

¹⁵⁰ Ibid, art 52.

¹⁵¹ Ibid, art 53.

¹⁵² Ibid, art 87.

not provide a right of access to ports which, as internal waters, remain under the complete control and sovereignty of coastal states.¹⁵³ Rather it is a provision of nondiscrimination, such that coastal states must not treat the vessels of land-locked states less favorably than the vessels of other states.¹⁵⁴

Access to land-locked and geographically disadvantaged states and use of the oceans

1. Access to fishing rights

Like other States, land-locked and geographically disadvantaged States have the freedom to fish on the high sea. In this regard, an issue to be examined involves the right of such states to participate in the fisheries of the EEZ of foreign States. The LOSC contains detailed provisions on this subject in Articles 69 to 72.¹⁵⁵

Article 69 provides for the fishing rights of land-locked states. Article 69 (1) stipulates that ‘land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZ of coastal States of the same sub region or region.’¹⁵⁶ Under Article 69(2), however, ‘the term and modalities of such participation must be established by the States concerned through special agreement taking into account, *inter alia*, the following factors :

- the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
- the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, sub regional or regional agreements in the exploitation of living resources of the EEZ of other coastal States;
- the need to avoid a particular burden for any single coastal State, and
- the nutritional needs of the populations of the respective States.¹⁵⁷

¹⁵³ Rothwell and Stephens, *Law of the Sea*, 200.

¹⁵⁴ Art 82(2), LOSC.

¹⁵⁵ Tanaka, *Law of the Sea*, 410.

¹⁵⁶ Art 69(1), LOSC.

¹⁵⁷ *Ibid*, art 69(2).

Whilst the participatory right of developed land-locked States is limited to the surplus of the living resources, this limitation does not apply to developing land-locked states by virtue of Article 69(3). Under Article 69(4), developed land-locked States can participate in the exploitation of living resources only in the EEZ of developed coastal States of the same sub region and region. It follows that the participatory right of developed land-locked States is more restricted than that of developing land-locked States.

Under Article 70, similar rules apply to geographically disadvantaged States. Article 70(1) provides that geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZ of the same sub region or region. The term and modalities of such participation must be established by the States concerned through special agreement taking into account similar factors already enumerated in connection with land-locked States.¹⁵⁸ Whilst the participatory rights of developed geographically disadvantaged States falling into the same category by virtue of Article 70(4). Under Article 70(5), developed geographically disadvantaged States can participate in the exploitation of living resources in the EEZ of the developed coastal States sub region or region.¹⁵⁹

The above rules are supplemented by two provisions applicable to both land-locked and geographically disadvantaged states. Under Article 71, Article 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its EEZ.¹⁶⁰ A typical example is Iceland. Article 72 further provides that the rights derived from Articles 69 and 70 may not be transferred to third States without consent of the coastal States concerned. The rule concerning the right of participation call for a number of comments.¹⁶¹

2. Access to mineral resources of the Area

¹⁵⁸ Ibid, art 70(3).

¹⁵⁹ Tanaka, Law of the Sea, 411.

¹⁶⁰ Art 71, LOSC.

¹⁶¹ Tanaka, Law of the Sea, 412.

Part XI of the LOSC declared that the international seabed, and the resources found within it, constitute the common heritage of humankind. The purpose of the establishment of the seabed beyond the limit of national jurisdiction referred to as ‘the Area’ by the Convention is to ensure that all states whether developed or not, coastal or land-locked benefit financially in the exploration and exploitation of the area.¹⁶² In addition, effective participation by developing States in the area is to be promoted, having regard in particular to the special need of the land-locked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location.¹⁶³

While emphasizing that LLGDS are not to be placed in an unfavorable position, Part XI of the LOSC, and the 1994 Agreement Relating to the implementation of Part XI (1994 Agreement) which amended its operation, do not grant any specific or preferential resource rights, despite the difficulties most are likely to face in exploring and exploiting the sources of the Area.¹⁶⁴ Hence LLGDS do not have in any priority in terms of the distribution of the financial and other economic benefits derived from resource exploitation in the area. Instead, Part XI is geared towards developing states generally, for which particular consideration must be given.¹⁶⁵ For instance elections to the council, the 36 member executive body of ISBA, are to ensure that land-locked and geographically disadvantaged States are represented to a degree which is reasonably proportionate to their representation in the Assembly.¹⁶⁶ And more specifically there is to be a chamber within the Council of six members representing developing states with special interests such as having the status of a LLGDS.¹⁶⁷

3. Access to marine scientific research

Like other states, land-locked and geographically disadvantaged states have interest in marine scientific research. In fact, Austria and Switzerland have been engaged in marine

¹⁶² Art 140(1), LOSC.

¹⁶³ Ibid, art 148.

¹⁶⁴ Rothwell and Stephens, *Law of the Sea*, 203.

¹⁶⁵ Art 160(2)(f)(i), LOSC.

¹⁶⁶ Ibid, art 162(2)(a).

¹⁶⁷ Rothwell and Stephens, *Law of the Sea*, 203.

scientific research for many years and have also been members of the intergovernmental Oceanographic Commission.¹⁶⁸

All states have right to conduct marine scientific research subject to relevant provisions of the LOSC.¹⁶⁹ When it comes to marine scientific research on the high seas LLGDS are in the same position as any other state, as provided for in Article 87(1)(f). Land-locked and geographically disadvantaged States also enjoy the freedom of marine scientific research on the high sea.¹⁷⁰ In this regard, the LOSC contains a special provision, namely Article 254, dealing with the rights of neighboring land-locked and geographically disadvantaged States. Under Article 254 9(1, (2) and (4) land-locked and geographically disadvantaged States are entitled to be informed of any proposed marine scientific research project. ‘The neighboring land-locked and geographically disadvantaged States referred to above shall, at their request, be given the opportunity to participate, whenever feasible, in the proposed marine scientific research project through qualified experts appointed by them and not objected to by the coastal State, in accordance with the conditions agreed for the project, in conformity with the provisions of this Convention, between the coastal State concerned and the State or competent international organizations conducting the marine scientific research.’¹⁷¹

The development of technology is of particular importance with a view to promoting marine scientific research.¹⁷² Article 266 thus requires States to promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration and exploitation of marine resources, marine environment protection and marine scientific research. Article 269 (a) requires States to ‘establish programmers of technical cooperation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, particularly the developing land-locked and

¹⁶⁸ Tanaka, *Law of the Sea*, 414.

¹⁶⁹ Art 238, LOSC.

¹⁷⁰ Tanaka, *Law of the Sea*, 414.

¹⁷¹ Art 254(3), LOSC.

¹⁷² Tanaka, *Law of the Sea*, 414.

geographically disadvantaged States.’¹⁷³ Article 272 places an obligation upon States to ‘endeavor to ensure that competent international organizations coordinate their activities, including any regional or global programmers, taking into account the interests and needs of developing States, particularly land-locked and geographically disadvantaged States.’¹⁷⁴

Access to ports

The right of land-locked states to the use of the sea and transit right would however be useless without access to the use of ports of a coastal state and a right of access the territory of states lying between land-locked states and the sea. Access in this respect includes, loading and unloading of cargo, embarking and disembarking of passengers as well as taking supplies and fuel on board. In addition, access also includes the possibility of conducting trade.¹⁷⁵ The question of access to open maritime ports has been regulated in several international agreements, apart from several bilateral agreements on shipping and commerce which generally provides for equal treatment concerning the access to ports. Some even create a right of access. The question is whether or not there exist a general and an absolute right of access in the absence of any agreement, is answered variously and divergently by scholars and jurist of international law.¹⁷⁶

Although UNCLOS III does not provide a general right of access to the port of coastal state for ‘ship flying the flag of land-locked states in line with that accorded foreign vessels in maritime ports.’¹⁷⁷ This provision, upon close perusal, however, seems to be ambiguous. Does treatment mentioned in the provision include as it does specially in 1923 Convention access to ports or does Article 131 simply deals with the treatment to be accorded a vessel of a land-locked state which already enjoys a right of access under some other agreement or provision. If the latter in the case, the provision in Article 131 would seem to be of little practical value for the obligation it contains already result from the 1923 Convention and from most, if not all bilateral treaties given access to ports of coastal states.

¹⁷³ Art 269(a), LOSC.

¹⁷⁴ Art 272, LOSC.

¹⁷⁵ Adedeji, “An appraisal of the Right of Access” 159.

¹⁷⁶ Ibid.

¹⁷⁷ Art 131, LOSC.

According to above mentioned provisions we can generalize the rights of land-locked states as follows:

1. Right to freedom of high sea,
2. Right to access to and from the sea,
3. Right to navigation,
4. Right to equal treatment in the port,
5. Right to innocent passage in the territorial sea,
6. Right to exploitation of living thing in the exclusive economic zone,
7. Exclusion of application of the most favored nation clause,
8. Right to pipeline of gas and wiring of telecommunication in the continental self,
9. Right to benefit from international seabed area.

Paragraph 2 : Outside the UN context

World Trade Organization

World Trade Organization is an organization for trade opening. It is a forum for governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates a system of trade rules. Essentially, the WTO is a place where member governments try to sort out the trade problems they face with each other.¹⁷⁸ It does not create special rights of LLS, but it has concerned with the LLS indirectly. The principles of non-discrimination, equal treatment, favor nation treatment, speedy dispute settlement are important to develop the trade of LLS.

The WTO Trade Facilitation Agreement sets out commitments that promote clear rules and procedures, many of which are of particular interest to LLDCs. The three most important provisions for LLDCs are Articles 11, 10, and 8. The first one deals specifically with freedom of transit, the second sets out obligations in relation to trade procedures including transit, and the third requires WTO members to cooperate with other members with which they share a common border.¹⁷⁹

¹⁷⁸ World Trade Organization, <https://www.wto.org/>, Accessed on August 18, 2017.

¹⁷⁹ Important Implications of the WTO TFA, on Land-locked Countries, <https://mpoverello.com/.../important-implications-of-the-wto-tfa-on-land-locked-count...>, Accessed on August 18, 2017.

Other efforts to address the practical problems of LLS

Parallel to the International legal developments outlined in the preceding paragraphs, efforts have been made within UNCTAD since its establishment to address the problems of Land-locked states at a more practical level. UNCTAD has indeed played a very important role in advancing the cause of developing land-locked states, especially the least developed.

UNCTAD has recommended measures for the improvement of transit transport infrastructures and devices for LLDC. It has also organized, beginning in 1993, biennial meetings of governmental experts from land-locked and transit developing countries, representatives of donor countries, and financial and development institutions.

The 1995 meeting adopted a Global Framework for Transit Transport Co-operation between Land-locked and Transit Developing Countries and the Donor Community, which inter alia, outlines a wide range of recommendations for the further appropriate action to improve transit transport system and enabling LLDCs to reduce their marginalization from world markets.

Resolution 46/212 of 22 December 1991, The UN General Assembly recognized that the lack of territorial access to the sea.¹⁸⁰

Many other UN bodies and specialized agencies support and supplement the activities of UNCTAD concerning the problems of LLS.

In 2003, the UN convened in Almaty¹⁸¹ (Kazakhstan) an international ministerial conference to enhance transit transport cooperation between land-locked and transit developing countries. The Almaty Programme of Action deals with infrastructure development and maintenance, transit policy issues, and trade facilitation measures. Within its mandate, UNCTAD participates in the implementation of the Almaty Programme of Action through analytical work on the transit transport and related development problems faced by LLDCs, and technical assistance to these countries in areas such as trade facilitation and electronic commerce.

In 2005, the first meeting of LLDC Ministers responsible for trade, in Asuncion (Paraguay), adopted the Asunción Platform for the Doha Development Round to harmonize the positions of LLDCs in the current round of multilateral trade negotiations.

¹⁸⁰ United Nations, A/RES/46/212, 79th plenary meeting, 20 December, 1991.

¹⁸¹ United Nations, www.un.org/en/development/devagenda/land-locked.shtm, Accessed on August 18, 2017.

The 2005 World Summit recognized the special needs of, and challenges faced by LLDCs, and reaffirmed the commitment by the international community to urgently address these needs and challenges through the full, timely and effective implementation of relevant internationally agreed programmes and objectives, in particular the Almaty Declaration and the Almaty Programme of Action. It encouraged ongoing work to establish a time-cost methodology based on indicators to measure progress in the implementation of the Almaty Programme of Action. The World Summit also recognized the special concerns of LLDCs in their efforts to better integrate their economies in the multilateral trading system.

6 March 2013, United Nations representatives and senior government officials from land-locked developing countries (LLDCs) in Europe, Asia and the Pacific met in Vientiane, Laos, to discuss how to fully participate in global trade and overcome isolation from world markets and other socio-economic consequences of not having access to a sea.¹⁸²

Participants are conducting the final regional ten-year review of the Almaty Programme of Action, a framework for cooperation between the land-locked and the transit access developing countries nations that have often been at odds due to their geographic configuration. It also sets the stage for strengthened national economies and greater convergence of national interests by cementing international and national commitment to upgrade rail, road, air and pipeline infrastructure in both the land-locked and the access countries. The meeting seeks to identify policy recommendations and actions in four priority areas transit policy issues, infrastructure development and maintenance; trade facilitation and market access, and international support measures.¹⁸³

The Vienna Programme of Action for Land-locked Developing Countries for the Decade 2014-2024 was adopted as the outcome document of Second UN Conference on LLDCs on 5 November 2014.¹⁸⁴

Thirty-two of the world's land-locked countries with a population of about 440 million, face an array of challenges mainly associated with their lack of direct territorial access to the sea and

¹⁸² UN News Centre, www.un.org/apps/news/story/asp, Accessed on August 17, 2017.

¹⁸³ UN News Centre, www.un.org/apps/news/story/asp, Accessed on August 17, 2017.

¹⁸⁴ International Think Tank for LLDCs, land-locked.org/history/, Accessed on August 18, 2017.

remoteness from world markets. Their dependence on other countries for international trade via transit is an element that adds on to these various challenges.¹⁸⁵

To address these particular constraints, there has been an increase in the recognition of land-locked developing countries and their specific needs at the United Nations. The Almaty Programme of Action: Addressing the Special Needs of Land-locked Developing Countries within a New Global Framework For Transit Transport Cooperation for Land-locked and Transit Developing Countries and the Almaty Ministerial Declaration, is amongst the first steps adopted in addressing the needs of land-locked developing countries. The Vienna Programme of Action, the new holistic document centered upon addressing the challenges faced by land-locked countries, aims to contribute to the eradication of poverty stemming from their land-lockedness, through the implementation of specific actions in the priority areas of the renowned document. Six Priorities in the Vienna Programme of Action are :¹⁸⁶

Priority 1: Fundamental transit policy issues

Priority 2: Infrastructure development and maintenance

(a) Transport infrastructure

(b) Energy and information and communications technology infrastructure

Priority 3: International trade and trade facilitation

(a) International trade

(b) Trade facilitation

Priority 4: Regional integration and cooperation

Priority 5: Structural economic transformation

Priority 6: Means of implementation

The main innovative feature of the Vienna Programme of Action is the particular focus to the development and expansion of efficient transit systems and transport development, enhancement

¹⁸⁵ UN-OHRLLS, UN Office of the High Representative for the Least Developed Countries, Land-locked Developing Countries and the Small Island Developing States, <https://unohrlls.org/en/about-lldcs/programme-of-action/>, Accessed on August 18, 2017.

¹⁸⁶ UN-OHRLLS, UN Office of the High Representative for the Least Developed Countries, Land-locked Developing Countries and the Small Island Developing States, <https://unohrlls.org/custom-content/uploads/2015/.../Vienna-Programme-of-Action.pdf...>, Accessed on August 18, 2017.

of competitiveness, expansion of trade, structural transformation, regional cooperation, and the promotion of inclusive economic growth and sustainable development to reduce poverty, build resilience, bridge economic and social gaps and ultimately help transform those countries into land-linked countries.

Regional efforts to address the problems of LLS

In some cases where transit transport involves more than two countries, separate bilateral agreements that may contain mutually incompatible provisions are likely to impede rather than facilitate transit transport. Transit transport involves issues and problems that should ideally be dealt with through multilateral agreements. In the ESCAP region, a growing number of trilateral, quadrilateral and sub-regional agreements have emerged. Some examples of these are the ASEAN Framework Agreement on the Facilitation of Goods in Transit,¹⁸⁷ the GMS Agreement for Facilitation of Cross-border Transport of People and Goods, the Transit Transport Framework Agreement of the Economic Cooperation Organization (ECO) and the Transport Corridor Europe-Caucasus-Asia (TRACECA), being developed with the support of the European Community's TACIS programme. These are usually framework agreements that lay out broad goals and policy directions.¹⁸⁸ Examples of sub regional agreements relating to transit transport are :

(a) ASEAN Framework Agreement on the Facilitation of Goods in Transit¹⁸⁹

The ASEAN Framework Agreement on the Facilitation of Goods in Transit was signed by nine of the ten countries of ASEAN, namely Brunei Darussalam, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam in December 1998. This agreement provides for the mutual granting of transit transport rights, as well as the right to load and discharge goods of third countries destined for or coming from contracting parties. The Agreement came into force in October 2000 but countries have yet to ratify a number of protocols under the agreement.

¹⁸⁷ ASEAN Framework Agreement on the Facilitation of Goods in Transit, [http://www.asean.org/storage/images / 2012/Economic/AFTA/Common_Effective_Preferential_Tariff/ASEAN%20Framework%20Agreement%20on%20the%20](http://www.asean.org/storage/images/2012/Economic/AFTA/Common_Effective_Preferential_Tariff/ASEAN%20Framework%20Agreement%20on%20the%20), Accessed on November 14, 2017.

¹⁸⁸ Transit Transport Issues in Land-locked and Transit Developing Countries, (Economic and Social Commission for Asia and the Pacific, Land-locked Developing Countries Series, No. 1, United Nations, New York, 2003), 6.

¹⁸⁹ Ibid, 7.

(b) GMS Agreement for Facilitation of Cross-border Transport of People and Goods¹⁹⁰

The Greater Mekong Sub region (GMS) Agreement for Facilitation of Cross-border Transport of People and Goods and the annexes that are currently being negotiated is an extension of the trilateral agreement signed between Lao People's Democratic Republic, Thailand and Vietnam in 1999. An integral part of the Asian Development Bank's GMS Program, the Agreement has now been signed by Cambodia and China, and Myanmar is expected to sign in the near future. The annexes and protocols are currently being negotiated with ADB assistance.

(c) ECO Transit Transport Framework Agreement¹⁹¹

The Economic Cooperation Organization (ECO) adopted the Almaty Outline Plan in 1993 and the Programme of Action for the ECO Decade of Transport and Communication (1998-2007) in 1998 for the development of the transport sector in the ECO sub region. The Transit Transport Framework Agreement envisages establishing a common regulatory framework for the development and facilitation of transit transport among member countries. The agreement provides for the freedom of transit through the territories of the contracting states for road and rail transport and inland water navigation, as well as access to maritime ports.

(d) Transport Corridor Europe-Caucasus-Asia¹⁹²

Six out of the ten signatories to the ECO Transit Transport Agreement are also signatories to the Basic Multilateral Agreement on International Transport for the Development of the Transport Corridor Europe-Caucasus-Asia (TRACECA) routes. Begun in 1993, the TRACECA programme is a European Union (EU) funded technical assistance (TA) to develop a transport corridor on a west-east axis from Europe, across the Black Sea, through the Caucasus and the Caspian Sea to Central Asia. The agreement provides a framework for the development of transport corridors linking these regions. The scope of the agreement extends to road, rail, maritime, air and multimodal transport, as well as transportation by pipeline, and covers cross-border and transit transport.

¹⁹⁰ Ibid, 7.

¹⁹¹ Ibid, 7.

¹⁹² Ibid, 7.

The international regional regime regulating the land-locked states' right of access to the sea is represented by the set of regional treaties covering the particular relationships of the coastal and land-locked states such as navigation through the international rivers, marine pollution from land-based sources, etc.¹⁹³ For instance, the Convention regarding the regime of navigation on the Danube, 1948¹⁹⁴ (1948 Danube Convention) establishes the regime applied to the navigable part of the Danube River that crosses a set of land-locked states in the Eastern Europe including, inter alia, Hungary, Slovakia and Serbia. In accordance with article 1 of the 1948 Danube Convention navigation on the Danube shall be free and open for the nationals, vessels of commerce and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. In this context the considered regional regime explicitly provides the exercise of right of access of land-locked states to and from the sea.¹⁹⁵

Nepal's membership of the SAARC has indeed helped Nepal to widen her diplomatic and trade contacts with other countries in the region. Nepal's contribution to the activities of the regional organization has been positive as it has provided Nepal with yet another important platform to project and preserve her sovereign status and independence. The need to have a free trading regime in South Asia is considered to be so vital that without this South Asia may find it difficult to promote intra-regional trade as well as to meet some fresh challenges from the developing countries at the global level.

¹⁹³ Ramesh Kumar Rana, "Right of access of land-locked state to the sea by the example of bilateral agreement between land-locked state- Nepal and port state – India" (Small Master's Thesis Masters of Laws in Law of the Sea University of Tromsø Faculty of Law Fall, 2010), 7.

¹⁹⁴ The Convention regarding the regime of navigation on the Danube, www.danubecommission.org/uploads/doc/convention-en.pdf, Accessed on August 18, 2017.

¹⁹⁵ Part X, LOSC.

PART TWO

THE CASE OF NEPAL

Chapter 1. Bilateral treaties for ensuring the rights of land-locked Nepal

The trade relations of Nepal with its neighboring countries had been influenced by both its geographical features and economic factors. The two neighboring countries the People's Republic of China on the north and India on the south have had trade relations with Nepal since the ancient time.¹⁹⁶ After 1st World War, there was much desire for increasing imports of certain commodities. In order to meet the needs of certain commodities a treaty of friendship between Great Britain and Nepal was signed in Kathmandu on December 21, 1923.¹⁹⁷

Once Nepal extended from Tista in the east to Kangada in the west and it also extended up to the course of the Ganges. At that time Nepal did not try to consider the problem of its land-lockedness and did not try to convince the British power for its transit trade even at the time when British were quitting.¹⁹⁸

The 1950-51 revolution brought an end to the Rana regime in Nepal. After that revolution, Indian influence had been increased on questions of external relation of Nepal. Nepal adopted a non-aligned policy and played an effective role in the United Nations. It became a member of the United Nations in 15 Dec. 1955. There are several treaties, arrangements, compacts and other mechanism for ensuring the rights of land-locked Nepal.

This chapter is dedicated to the bilateral treaties for ensuring the rights of land-locked Nepal, Basically section A : bilateral treaties between Nepal and India and Section B : is dedicated to the bilateral treaties between Nepal and others countries.

Section A : Bilateral treaties between Nepal and India

After India achieved independence in from England, a Treaty of Trade and Commerce was concluded by Nepal with India in 1950. India recognized in favor of Nepal 'full and unrestricted

¹⁹⁶ Pradhan, Land-locked Country and Nepal, 90.

¹⁹⁷ Ibid, 99.

¹⁹⁸ Ibid,77.

right of *commercial transit*'. The facilities provided for such transit were generally favorable to Nepal although this right was restricted to commercial transit. The Trade and Transit Treaty of 1960 between the two countries replaced the 1950 Treaty of Trade and Commerce. On 31 October 1970 when this treaty expired, Nepal wanted to conclude two treaties, one governing the right of transit and the other dealing with bilateral trade. India, however, wanted both these subjects to be dealt with within a single treaty, maintaining that both were interrelated. As the differences could not be sorted out, Nepal proposed that the status quo of the expired treaty be maintained for another year to enable both side to hold more talks towards concluding a new treaty. India declined this plea too and, according to Nepalese officials resorted to pressure tactics by imposing restrictions on the export and import trade with Nepal and even stopped the supply of essential 'economic commodities'. In Nepal, this action's by India's was characterized as a blockade¹⁹⁹.

Nepal and India concluded on 17 March 1978 two separate treaties, one governing transit facilities and the other governing trade. With the adoption of the treaties Nepal achieved some advantage. First, Nepal had secured a special treaty on transit, its long standing demand. Second, the new transit treaty recognized that Nepal as a land-locked country needs access to and from the sea to promote its international trade. Third, Nepal got the necessary overland transit facilities through Indian Territory (RadhikaPur route). Fourth, the transit treaty was for 7 years while the trade treaty was concluded for 5 years. It was assumed that this understanding would make future consultation easier and matters of bilateral trade would not creep in during negotiations for a transit treaty.²⁰⁰

The Transit Treaty signed on 6 December 1991 was the 2nd separate transit treaty concluded by Nepal with India and the first one after the over through of the Panchyat system. The 1978 Transit Treaty was the first treaty between these two countries solely concerned with transit. Prior to that, transit matters used to be incorporated in single treaties dealing with both trade and transit.

The 1991Treaty of Transit, came up for renewal in December 1998 and following bilateral talks, a renewed Transit Treaty was signed on January 5, 1999. This Treaty of Transit was extended for

¹⁹⁹ Surya Prasad Subedi, "land-locked States and International law," Nyaya Prashasanka Ayamharu Sopan (2061) : 109.

²⁰⁰ Ibid.

a further period of seven years with effect from 5 January, 2006. After 2006 the Validity of the Treaty of Transit in its existing form was extended for a further period of seven years with effect from 2006. The treaty was due to expire on January 5, 2013. The bilateral Treaty of Transit between Nepal and India is set to be renewed without the incorporation of any new provisions. The Treaty which has renewed fourth time for further seven years January 2020.

This section is dedicated to the bilateral treaties between Nepal and India. This section is divided into two paragraphs, basically paragraph one : bilateral treaties prior to 1990 and paragraph two : bilateral treaties since 1990. The 1990 people's movement was a multiparty movement in Nepal that brought an end to absolute monarchy and the beginning of constitutional democracy. It also eliminated the panchayat system.

Paragraph 1 : Bilateral treaties prior to 1990

This paragraph is dedicated to the 1923 Nepal and British India Friendly Relation Treaty, the 1950 Nepal and India Treaty of Trade and Commerce, the 1960 Nepal and India Treaty of Trade and Transit, the 1971 Treaty of Trade and Transit between Nepal and India, the 1978 Treaty of Trade between Nepal and India, and the 1978 Treaty of Transit between Nepal and India.

Nepal and British India Friendly Relation Treaty, 1923

After World War I, there was much desire for increasing imports of certain commodities.²⁰¹ In order to meet the needs of certain commodities a Treaty of Friendship between Great Britain and Nepal was signed in Kathmandu on December 21, 1923.²⁰² The Treaty was the first treaty between Nepal and Britain to be recorded in the League of Nations. The Treaty made clear the international status of Nepal. The treaty declared Nepal as an independent and sovereign nation. The Treaty was also the first treaty between Nepal and Britain which was concluded in mutual consultation between both nations. This Treaty was a treaty of friendship, but it provides some provisions relating to the trade of Nepal. Article V of the treaty allowed Nepal to import from or through British India whatever arms, ammunition, machinery, warlike materials or stores. Additionally, Article VI waived customs duties at British Indian ports on the goods imported by

²⁰¹ Pradhan, Land-locked Country and Nepal, 99.

²⁰² London : Printed and Published by His Majesty's Stationary Office, Treaties Series No. 31 (1925).

the Government of Nepal.²⁰³ The Treaty provisions were in force until 1950 when a Treaty of Trade and Commerce was signed in Kathmandu.

Nepal and India Treaty of Trade and Commerce, 1950

This Treaty was made with an emergent India as the British rule had been overthrown. The political atmosphere in neighboring countries changed and the Rana rulers in Nepal were in difficulty as the people were demanding more freedom. The Governments of Nepal and India concluded a Treaty of Trade and Commerce in May 31, 1950 with a view to facilitate and promote trade and commerce between the two countries. The Treaty contained provisions regarding Nepal's trade with third countries and those relating to bilateral trade between Nepal and India. It had 10 articles and a memorandum.²⁰⁴

In this Treaty, the Government of India recognized Nepal's "full and unrestricted right of commercial transit of all goods and manufactures through the territory and ports of India".²⁰⁵ It agreed to allow all goods imported at any Indian port and intended for re-export to Nepal to be transmitted to Nepal without breaking *bulk en route* and without payment of any duty at any Indian port.²⁰⁶ The Treaty also secured for Nepal the right of passage, free of export and import duties, for goods of Nepali origin in transit, through Indian territory, from one place to another within the territory of Nepal²⁰⁷. It further granted Nepal a "full and unrestricted right of commercial transit' from approved places in Nepalese territory, through the territories and ports of India, of all goods and manufactures of Nepalese origin, for export outside India.²⁰⁸ Article 5 of the Treaty provided that the Government of Nepal agrees to levy at rates not lower than those leviable, for the time being, in India, customs duties on imports from and exports to countries outside India. This article was completely in favor of India. There was full control of India on the Nepalese foreign exchange.²⁰⁹

²⁰³ Shodhganga: a reservoir of India Theses, <http://shodhganga.inflibnet.ac.in.>, Accessed on August 29, 2017.

²⁰⁴ Ibid.

²⁰⁵ Article 1, Government of India, Ministry of External Affairs, Treaty of Trade and Commerce between Government of India and Nepal,1950, <http://mea.gov.in/bilateral-documents.htm?dtl/6291/Treaty+of+Trade+and+Commerce>, Accessed on August 29, 2017.

²⁰⁶ Ibid, article 2.

²⁰⁷ Ibid, article 3.

²⁰⁸ Ibid, article 4.

²⁰⁹ Pradhan, Land-locked Country and Nepal,103.

As to Nepalese and Indies trade and commerce, the two governments agreed to assist each other by making available to the maximum extent possible commodities essential to the economy of the other,²¹⁰ to promote contacts between the trade interests of the two countries and to undertake to give every reasonable facility for the import and export of commodities, and in particular to facilitate the use of the routes and methods of transportation which are most economical and convenient.²¹¹ By a memorandum, the two Governments approved for the purpose of Articles 2, 3 and 4 convenient points within Nepalese territory contiguous to the following railheads: (1) Raxaul, (2) Jogbani, (3) Nepalgunj, (4) Nautanwa, (5) Jayanagar.²¹²

The Treaty was to come into force three months after the date of signing by both parties. It was to remain in force for a period of 10 years and was, unless terminated by either party by giving notice of not less than one year in writing, to continue in force for a period of 10 years.

Nepal and India treaty of Trade and Transit, 1960

This Treaty of Trade and Transit was concluded between Nepal and India on 11 September, 1960. This Treaty which deals with the transit needs of a land-locked state under a separate heading transit.²¹³

This Treaty was divided into three parts covering Trade, Transit and General Provisions, all divided into 14 Articles. It was supplemented by a protocol, letters exchanged at ministerial level and a memorandum, each designed to lay down specific terms and conditions and procedural arrangements to ensure the smooth working of the provisions of the Treaty. It clearly laid down that the “trade of the contracting parties with the third countries shall be regulated in accordance with their respective laws, rules and regulations relating to imports and exports.” Article V, thus giving Nepal full freedom of her trade with countries other than India.²¹⁴ It also secured for

²¹⁰ Article 6, Government of India, Ministry of External Affairs, Treaty of Trade and Commerce between Government of India and Nepal, 1950, [http://mea.gov.in/bilateral-documents.htm?dtl/6291/Treaty+ of+Trade+ and+Commerce](http://mea.gov.in/bilateral-documents.htm?dtl/6291/Treaty+of+Trade+and+Commerce), Accessed on August 29, 2017.

²¹¹ Ibid, article 7.

²¹² Friedrich-Ebert-Stiftung, Democracy Gateway Nepali Politics and civil Society, http://www.nepaldemocracy.org/documents/treaties_agreements/indo-nepal_treaty_trade&commerce.htm, Accessed on August 29, 2017.

²¹³ Pradhan, Land-locked Country and Nepal, 136.

²¹⁴ Article V, Commonwealth Legal Information Institute, Treaty of Trade and Transit between Government of India and Nepal, 1960, <http://www.commonlii.org>, Accessed on August 29, 2017.

Nepal complete independence of and control over her foreign exchange account.²¹⁵ The words “full and unrestricted right of commercial transit” of the Treaty of 1950 were dropped in the Treaty of 1960 but it laid more emphasis on Nepal’s transit facilities through Indian Territory and explained transit provisions more clearly and explicitly than the Treaty of 1950, and stipulated to conform them to relevant international conventions.²¹⁶ It defined “traffic in transit” and ensured that traffic in transit was not subjected to unnecessary delays or restrictions and was exempted from customs and transit duties or other charges in respect of transit.²¹⁷ It was agreed that the present arrangement of refund of central excise duties on Indian exports to Nepal be continued.²¹⁸

This Treaty has specially mentioned the geographically disadvantaged position of land-locked Nepal. Therefore the provisions of transit for Nepal as land-locked state have been mentioned in some of the articles. But freedom of transit has not been defined in the Treaty. At the beginning of the Treaty, Nepal felt that it was favorable to Nepal for third country business.

Treaty of Trade and Transit between Nepal and India, 1971

This Treaty of Trade and Transit between Nepal and India was signed on the 13th of August 1971. This treaty was effective from August 15, 1971.²¹⁹ The Treaty was divided into three parts covering Trade, Transit and General Provisions, all divided into 19 Articles. It was supplemented by a protocol, memorandum, export procedure and letters exchanged at ministerial level, each designed to lay down specific terms and conditions and procedural arrangements to ensure the smooth working of the Treaty provisions.

The Contracting Parties undertook to promote not only the expansion but also the diversification of mutual trade (Art. I) and agreed to accord the “most favoured nation treatment to each other goods” (Art. II). The Treaty also intended to increase the industrial production of Nepal. The Government of India, with a view to provide the primary producers of Nepal access to the Indian market agreed to exempt from customs duty and quantitative restrictions such primary products as were produced in Nepal and imported into India (Art. III). Similarly, the Government of India

²¹⁵ Ibid, article VI.

²¹⁶ Ibid article XII.

²¹⁷ Ibid, article VII and IX.

²¹⁸ Ibid, article IV.

²¹⁹ Pradhan, Land-locked Country and Nepal,143.

agreed to provide special treatment, on non-reciprocal basis, to imports into India of industrial products manufactured in Nepal in respect of customs duty and quantitative restrictions (Art. IV). Other manufactured articles which could contain third country material were to receive favourable treatment if the value of Nepalese material and labour added was at least 50 percent of the ex-factory value of the product. Concessions in excise duty available to small units in India were also made available to products imported from small units in Nepal. While the Nepalese Government was free to impose import duties on Indian products on the most favoured nation basis, this Treaty laid down that excise and other duties which were collected by the Government of India were to be refunded direct to the Nepalese Government to the extent of import duty chargeable in Nepal (Protocol with reference to Article IV).²²⁰

The two countries agreed to cooperate effectively with each other to prevent infringement and circumvention of foreign exchange and foreign trade laws and regulations (Art. VII). By this Treaty, Nepal gained increased warehousing space under Indian supervision in Calcutta port, together with facilities for operating barges in the port and for trucking commercial goods from the port area to their destination in Nepal (Protocol, Art. XI). The number of transit routes from Nepal to Calcutta were 18 in the 1960 Treaty. It was reduced to 10 in this Treaty.²²¹ All traffic in transit was to pass only through Calcutta to Galgalia, Jogbani, Bhimnagar, Jayanagar, Raxaul, Nautanwa, Barhni, Nepalganj Road, Gauri-Phanta and Banbasa (Protocol, Art. XII).²²² This Treaty promised to provide separate sheds for storage of transit cargo on lease for 25 years on agreed terms (Protocol, Art. XI).

The Treaty contained provisions for deflection of trade (Art. XIII). The import of goods like stainless steel and synthetic fabrics the import of which was inimical to India's interest, were restricted from getting into Indian market. Transport of arms, ammunition and cargo was restricted for road transport alone (Protocol, Art. XII). The transport of cargo by air through airports in India to Nepal became completely free. The goods transiting through Indian ports were neither checked for customs nor for licenses. Nepal's legitimate trade with third countries enjoyed complete freedom of transit. India retained certain safeguards for itself solely to ensure

²²⁰ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 30, 2017.

²²¹ Ibid.

²²² Friedrich-Ebert-Stiftung, Democracy Gateway Nepali Politics and civil Society, http://www.nepaldemocracy.org/documents/treaties_agreements/indo-nepal_treaty_trade&commerce.htm, Accessed on August 30, 2017.

that consumer goods purchased by Nepal from overseas were not diverted to India to be sold at exorbitant profits.²²³

The most important things as provided by the Treaty of 1971 are: warehouses and open space to be made available to the land-locked country for the storage of transit cargo meant for transit to and from Nepal through India, in accordance with the procedure contained in the Memorandum to the Protocol.

Separate Nepal and India Treaties on Trade and Transit, along with an Agreement on Cooperation to Control Unauthorized Trade came into force on March 25, 1978. They replaced the single Treaty signed in 1971 which expired in August, 1976.²²⁴

Treaty of Trade between Nepal and India, 1978

This Treaty had 12 Articles and was supplemented by a Protocol and Annexes A and B. The Treaty came into force on 25th March, 1978 for a period of five years. The aspiration of a developing land-locked State for the diversification of its trade to a third country has also been dealt in this Treaty.²²⁵

Under this Treaty, Nepal and India were to grant maximum facilities to undertake all measures for the free and unhampered flow of goods needed by one country from the other (Art. II). To help Nepal develop its industries, India agreed under the Treaty to grant non-reciprocal favourable treatment to imports to India of Nepalese industrial products (Art. IV).²²⁶

By Article III of the 1971 Treaty, the Government of India with a view to providing the primary producers of Nepal access to the Indian market agreed to exempt from customs duty and quantitative restrictions such primary products as were produced in Nepal and imported into India. The 1978 Treaty of trade withdrew this facility. However, Article II and IV were additional in 1978 Treaty and ensured free and unhampered flow of goods, needed by one

²²³ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 30, 2017.

²²⁴ Ibid.

²²⁵ Pradhan, Land-locked Country and Nepal, 161.

²²⁶ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 31, 2017.

country from the other, to and from their respective territories as well as exempt from basic customs duty and quantitative restrictions the import of primary products from each other.²²⁷

Annex B to the Treaty said that these products will only be liable to additional duty equal to the excise duty leviable on articles produced in similar units in India. Unlike the 1971 Treaty, this Treaty undertook all measures including technical cooperation to promote, facilitate, expand and diversify trade between the two countries. 21 routes were specified for carrying on mutual trade (Annex A).²²⁸

Treaty of Transit between Nepal and India, 1978

For the first time, trade was de-linked from transit and a separate Treaty was signed for transit on 25th March, 1978. The two Governments recognized that Nepal as a land-locked country needed access to and from the sea to promote its international trade and recognized the need to facilitate the traffic in transit through their territories. This Treaty of transit between Nepal and India is the first treaty of its kind made by Nepal with its bordering transit country.²²⁹ The two countries concluded this Treaty for a period of seven years. This Treaty had 11 Articles and was supplemented by a protocol, memorandum and export procedure.

This transit Treaty provided Nepal with better facilities in Calcutta and Haldia ports. 13 routes were specified for Nepal in the Treaty to facilitate its trade with third countries. The number of routes were 10 in the 1971 Treaty. Routes of Tikonja, Jarwa and Bhitamore were sanctioned in addition (Protocol Article VI). The first meeting of the Nepal and India Inter-Governmental Committee (IGC) approved that Kakarbhitta/Naxalbari and Sukhia Pokhari/Pashupatinagar be added as additional points of entry or exit on Nepal and India border for traffic in transit. It also suggested that Calcutta and New Jalpaiguri route be made available for Nepal's traffic for transit of bulk cargo such as cement and fertilizer.²³⁰

The provision of transit route to Bangladesh made Nepal's access to sea extensive. The provision allowing Nepal access to Bangladesh through India afforded Nepal an alternative to Calcutta port. On August 14, 1978, Bangladesh and India signed a "memorandum of understanding"

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Pradhan, Land-locked Country and Nepal, 166.

²³⁰ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 31, 2017.

providing Nepal transit facilities to Dacca and third countries through their respective territories.²³¹ This concept was recognized by the New York Convention on Transit Trade of Land-locked States 1965. But India a transit country has accepted the accepted the traffic-in-transit with Nepal.²³² The Treaty was renewed on 6th December, 1991 with mutually agreed modifications.

Paragraph 2 : Bilateral treaties since 1990

This paragraph is dedicated to the 1991 Treaty of Trade between Nepal and India, the 1991 Treaty of Transit between Nepal and India, the 1996 Treaty of Trade between Nepal and India, the 1999 Treaty of Transit between Nepal and India, the 2002 Treaty of Trade between Nepal and India, the 2009 Treaty of Trade between Nepal and India, and the 2013 Treaty of Transit between Nepal and India.

Treaty of Trade between Nepal and India, 1991

The Governments of Nepal and India being conscious of the need to fortify the traditional connection between the markets of the two countries mutually came up with this Treaty which came into force on the 6th December, 1991 for a period of five years and was renewable for a further period of five years by mutual consent. This Treaty was animated by the desire to strengthen economic cooperation between them, to develop their economies for their several and mutual benefit. Both Governments were convinced of the benefits of mutual sharing of scientific and technical knowledge and experience to promote mutual trade between their respective territories and encourage collaboration in economic development.²³³

This Treaty consisted of 12 articles, Protocol and Annexes A and B.²³⁴ This Treaty kept almost all the provisions same as were there in the Treaty of 1978. Article II of the Treaty provisioned of endeavoring to grant maximum facilities and to undertake all necessary measures for the free and unhampered flow of goods needed by one country from the other to and from their

²³¹ Ibid.

²³² Pradhan, Land-locked Country and Nepal,167.

²³³ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 31, 2017.

²³⁴ Government of Nepal, Ministry of Commerce, Trade and Export Promotion Centre, <http://www.tepc.gov.np>, Accessed on August 31, 2017.

respective territories.²³⁵ Two more products were added in the list of the primary products listed in the Treaty of 1978 and exempted from the basic customs duty on reciprocal basis (Protocol Art. IV), thereby increasing the numbers of primary products to a total of 13. Moreover, in respect to Protocol relating to Article V, the term “auxiliary” was added in making it “basic and auxiliary” for exempting customs duty and quantitative restrictions for all manufactured articles which contained not less than 80% of Nepalese materials or Nepalese and Indian materials. In case of other manufactured articles in which the value of Nepalese and Indian materials including labour added in Nepal was at least 40% of the ex-factory price, the Government of India agreed to allow the articles treated on a case by case basis for preferential treatment. This preferential treatment was in die form of tariff concessions to the extent of 50% of the duty charged to the most favoured nation where the value added in such articles is less than 80% but more than 40% of the ex-factory price.²³⁶

Treaty of Transit between Nepal and India, 1991

The Treaty of Transit signed on 6 December 1991 was the second separate transit treaty concluded by Nepal with India and the first one concluded after the overthrow of the Panchayat system. The 1978 transit treaty was the first treaty between these two countries solely concerned with transit. It should be stated at the outset that the 1991 Transit Treaty repeated, with minor alterations, the provision of the 1978 Treaty.²³⁷ This Treaty of transit had 11 articles besides a Protocol and Memorandum containing import and export procedures.

The Treaty of Transit 1991 like the earlier treaty was of seven years duration, at the first instance, but renewable for a further period of seven years by mutual consent. The preamble of this Treaty of Transit pointed out the desire of both the states to maintain, develop and strength on the existing friendly relations and co-operation between the counties, recognizing that Nepal as land-locked country needs access to and from the sea, freedom to transit, facilitate the traffic in transit through their territories to promote international trade. This Treaty of 1991 was similar

²³⁵ Government of India, Directorate General of Performance Management, <http://dgicce.nic.in/indoneptreaty.pdf>, Accessed on August 31, 2017.

²³⁶ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 31, 2017.

²³⁷ Subedi, “*Land-locked States and International Law*,”111.

to the previous Treaty of 1978 in import and export procedure. Besides the elements include in the earlier treaty, several new facilities and concessions were also incorporated in this treaty.

Recognizing the fact that Nepal is a land-locked country and it needs to have access to and from the sea to promote its international trade, the Treaty made the provision in its Article I that the Contracting Parties shall accord to traffic in transit freedom across their respective territories through routes mutually agreed upon. No distinction shall be made which is based on flag of vessels, the places of origin, departure, entry, exit, destination, ownership of goods or vessels. Further, exemption from customs duties and from all transit duties or other charges were made, except reasonable charges for transportation and such other charges as needed to commensurate with the costs of services. In addition, for the convenience of traffic in transit the Contracting Parties agreed to provide points of entry or exit warehouses or sheds and open space for the storage of goods in transit awaiting customs clearance before onward transmissions. As such the requirements in course of import and export of goods and articles from Nepal was well established in this Treaty.²³⁸

Two new routes for the traffic in transit to pass were added in this Treaty as compared to the earlier Treaty. These new routes were Calcutta-Naxalbari (Panitanki) and Calcutta-Sukhia-Pokhari (Protocol Art. VI).²³⁹

Treaty of Trade between Nepal and India, 1996

This Treaty, signed on December 3, 1996 at Kathmandu, sets a landmark in bilateral trade relation between Nepal and India. It gave a new direction in the trade related areas as well as a scope for the trade improvement especially to Nepal. Some of the provisions made in the earlier treaties were replaced and modified. It made the procedures simple and straight so as to remove the procedural delays. Moreover, the Treaty committed the cooperation in a more specific and extended manner. Some of the provisions of the Treaty are stated below:²⁴⁰

²³⁸ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on August 31, 2017.

²³⁹ Ibid.

²⁴⁰ Gyanu Raja Shrestha, "Nepal-India Bilateral Trade Relations Problems and Prospects," Research and Information System for the Non- Aligned and other Developing Countries (RIS), India (2003), 31-31, https://www.ris.org.in/images/RIS_images/pdf/dp54_pap.pdf, Accessed on August 31, 2017.

- access to the Indian market free of customs duties and quantitative restrictions for all articles manufactured in Nepal.
- import of articles in accordance with (i) above shall be allowed by the Indian customs authorities on the basis of a Certificate of Origin (CoO) to be issued by the agency designated by the Government of Nepal in the format prescribed at ‘ B’ for each consignment of articles exported from Nepal to India. But this facility is not provided to the negative list of articles mentioned in “C”.
- on the basis of a certificate issued by the Government of Nepal, for each consignment of products manufactured in the small scale units in Nepal, that the relevant conditions applicable to the products manufactured in similar Small Scale Industrial Units (SSIU) in India for relief in the levy of applicable excise duty rates are fulfilled for such a parity, the Government of India will extend parity in the levy of additional duties on such Nepalese products equal to the treatment provided in the levy of effective excise duty on similar Indian products under the Indian Customs and Central Excise Tariff.
- In regard to Indian additional duty collected by the Government of India in respect of manufactured articles other than those manufactured in “small” units: whenever it is established that the cost of production of an article is higher in Nepal than the cost of production in a corresponding unit in India, a sum representing such difference in the cost of production, but not exceeding 25 per cent of the “additional duty” collected by the Government of India, will be paid to Government of Nepal provided the Government has given assistance to the same extent to the (manufacturers) exporters.
- Export of consignments from Nepal accompanied by the Certificate of Origin (CoO) will normally not be subjected to any detention or delays at the Indian customs border check posts and other places en route. In case any need for clarification arises, this will be obtained expeditiously by the Indian Border Customs authorities from the Indian and Nepalese authorities, as the case may be.

Negative list of articles that are not allowed preferential entry from Nepal to India on the basis of Certificate of Origin (CoO) include:²⁴¹

- Alcoholic Liquors/ Beverages and their concentrates except industrial spirits,
- Perfumes and Cosmetics with non-Nepalese/ non-Indian Brand names, and
- Cigarettes and Tobacco.

²⁴¹ Ibid.

With regard to the validity of the Treaty, it was mentioned that it would remain in force up to December 5, 2001. In accordance with the provision made in the Treaty (8) it would be automatically extended for further period of five years on the condition that unless either of the parties gives to the other a written notice of its intention to terminate the Treaty. But the notice should be given three months in advance. Furthermore, the scope for amendment and modification of the Treaty was provisioned upon the mutual consent of both the countries.

This Treaty facilitated to a greater extent in favor of Nepal. By virtue of this Treaty Nepal can export to India without any quantitative restrictions on the one hand and, free of custom duties on the other. These provisions were definitely the positive aspects and also creating an appropriate environment for boosting up the Nepalese export trade.

Treaty of Transit between Nepal and India, 1999

This Treaty was signed on 5th January 1999 between the Government of Nepal and India with a desire to maintain, develop and strengthen the existing friendly relations and cooperation between the two countries, recognizing the need to facilitate the traffic-in-transit through their territories. It was stated in the Treaty that it would remain in force up to the 5 January 2006 and would, thereafter, be automatically extended for a further period of seven years at a time unless either of the parties gives to the other a written notice, six months in advance.²⁴²

In Article 1 of the Treaty provision was made that the Contracting Parties shall accord to “traffic-in-transit” freedom of transit across their respective territories through routes mutually agreed upon. No distinction shall be made which is based on flag of vessels, the places of origin, departure, entry, exit, destination, ownership of goods or vessels.²⁴³ Article II stated that each Contracting Party shall have the right to take all indispensable measures to ensure that such freedom, accorded by it on its territory, does not in any way infringe its legitimate interests of any kind.²⁴⁴

According to Article IV of the Treaty, traffic- in- transit shall be exempted from customs duties and from all transit duties or other charges except reasonable charges for transportation and such

²⁴² Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on September 1, 2017.

²⁴³ Article 1. Nepal- India Chamber of Commerce and Industry, Treaty of Transit between Nepal and India, 1999, <http://www.nicci.org>, Accessed on September 1, 2017.

²⁴⁴ Shrestha, “ Problems and Prospects,”34-35.

other charges as are commensurate with the costs of services rendered in respect of such transit. Article V of the treaty specially provides:

*“For convenience of traffic-in-transit the contracting parties agree to provide at point or points of entry or exit on such terms as may be mutually agreed upon and subject to their relevant laws and regulations prevailing in either country warehouse or sheds for storage of traffic-in-transit awaiting custom clearance before onward transmission.”*²⁴⁵

The Treaty does not lack to mention the freedom of the high seas relating to navigation, entry into and departure from the ports, use of ports and harbor facilities, as well as loading and unloading dues, taxes and other levies except that the provisions shall not extend to coastal state.

According to the Protocol to the Treaty of Transit between Nepal and India the storage facilities as mentioned in the reference shall be given on lease by the Trustee of the Port of Calcutta to the undertaking incorporated in accordance with the relevant Indian laws and designated by the Government of Nepal for the above purpose. It also mentions the nature of the lease and kidderpore Dock berth No.27. With reference to article VI of the Treaty there are 15 routes connecting Calcutta.

The Protocol and Memorandum have diluted the concept of freedom of transit as there are several issues that are mutually agreed rather than guided by international law on transit. There is no strong dispute settlement mechanism in the treaty.

Though the LOSC recognizes the “freedom of transit” as a right of LLS, the same is usually applied through agreed modalities under the bilateral agreements. Since most of Nepal’s trade traffic to and from the sea is directed through India, the bilateral arrangement between the two countries is of crucial importance to ensuring the smooth flow of Nepal’s traffic in transit. Though both Nepal and India are signatories of the LOSC, they have yet to fully apply all provisions of the LOSC in the bilateral transit treaty.

Treaty of Trade between Nepal and India, 2002

This Treaty is a continuation of the Treaty of Trade of 1996 rather in a revised form with the inclusion and exclusion of some of the provisions in the Articles. After a series of meetings in Delhi from 27th February to 2nd March 2002, an agreement was reached to extend the validity

²⁴⁵ Article V. Nepal- India Chamber of Commerce and Industry, Treaty of Transit between Nepal and India, 1999, <http://www.nicci.org>, Accessed on September 1, 2017.

of all the twelve Articles of the Nepal and India Treaty of Trade, and Protocols to Articles I, II, III, IV and VI in their present form for a period of five years with effect from 6th March 2002. It was also agreed that the revised Protocol to Article V and the new Protocol to Article IX of the Treaty would also be valid for the same period.²⁴⁶

Treaty of Trade between Nepal and India, 2009

The Government of Nepal and India signed a new trade Treaty on 27th October, 2009 at Kathmandu. This Treaty comprises of 12 Articles and Protocol to the Treaty of Trade and would be valid for a period of seven years.²⁴⁷ The main highlights of the Treaty of 2009 are:²⁴⁸

- The validity of the Treaty has been increased from five to seven years, along with the provision of automatic extension for further periods of seven years at a time. This will provide a more stable framework for bilateral trade and an assurance to the investors as they could be able to predict the situation. Thus, this new Treaty has additional feature of long term predictability.
- No discrimination will be made in respect of tax, including central excise, rebate and other benefits to exports merely on the basis of payment modality and currency of payment of trade. This will bring the bilateral trade conducted in Indian Rupees at par with trade in convertible currencies and will end the existing mechanism of Duty Refund Procedure (DRP) which was procedurally cumbersome. It will provide Nepal a direct control on the customs duty revenues on import of manufactured goods from India. It will also allow Indian exports to avail benefit of export promotion schemes prevailing in India, making these products more competitive for further sale or value addition in Nepal.
- The time limit for temporary import of machinery and equipment for repair and maintenance has been raised from 3 to 10 years.
- Several new items of export interest to Nepal have been added to the list of primary products giving these items duty free access to India without any quantitative restrictions.

²⁴⁶ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on September 1, 2017.

²⁴⁷ Government of India, Ministry of Commerce and Industry, Department of Commerce, <http://commerce.nic.in/trade/nepal.pd>, Accessed on September 1, 2017.

²⁴⁸ Shodhganga: a reservoir of India Theses, http://shodhganga.inflibnet.ac.in/bitstream/10603/67540/11/11_chapter%202.pdf, Accessed on September 1, 2017.

These include floriculture products, atta, bran, husk, bristles, herbs, stone aggregates, boulders, sand and gravel.

- Criterion for calculating value addition for gaining preferential access to India has been changed from ex-factory basis to Free On Board (FOB) basis.
- India has agreed to consider waivers, on request from Government of Nepal, of any additional duty that may be levied over and above Countervailing Duty (CVD).
- Both sides have agreed to exempt exports of goods, which are already covered under forward contract, from imposition of restrictions on exports.
- Both sides will grant recognition to the sanitary and phyto-sanitary certificates issued by the competent authority of the exporting country based on assessment of their capabilities.
- The provisions regarding safeguard measures in case of serious injury to the domestic industry have been streamlined.
- A joint mechanism, comprising local authorities, has been established to resolve problems arising in clearance of perishable goods.
- An Inter-Governmental Sub-Committee (IGSC) at the joint secretary-level has been established. Existing Inter-Governmental Committee (IGC) at the Secretary-level will meet once in six months and the IGSC will meet at the interval of the two IGC meetings.
- Four additional Land Customs Stations (LCSs) will be established to facilitate bilateral trade: Maheshpur/Thutibari (Nawalparasi); Sikta- Bhiswabazar; Laukha-Thadi; and Guleria/Murtia, bringing the total number of Land Customs Stations to 26. Likewise, international airports of Nepal (Tribhuvan International Airport) and India (New Delhi, Kolkata, Mumbai and Chennai) are also incorporated as the trade air route in this Treaty.
- Bilateral trade will be allowed by air through international airports connected by direct flights between Nepal and India (Kathmandu/Delhi, Mumbai, Kolkata and Chennai).
- The Indian side has agreed to review and simplify the existing administrative arrangements for operationalization of fixed quota for acrylic yam, copper products and zinc oxide.
- India has agreed to consider several additional products as wholly produced or manufactured in Nepal for the purpose of gaining preferential access to the Indian market. It includes articles collected in Nepal fit only for recovery of raw materials and waste and scrap resulting from manufacturing operations in Nepal.

- India has agreed to assist Nepal to increase its capacity to trade through improvement in technical standards, quarantine and testing facilities and related human resource capacities.

Treaty of Transit between Nepal and India, 2013

This Treaty has been renewed periodically and was renewed on January 5, 2013 for a period of 7 years. The Treaty has a provision of automatic renewal, until and unless either side needs to add or remove certain provision. Extended for a period of seven years until 5th January 2020 by the letters of exchange between Government of Nepal and Government of India. This Treaty has 11 articles, Protocol and annexes.

The Preamble of the treaty recognize that Nepal as a LLS needs access to and from the sea to promote its international trade. However, this recognition is diluted by the inclusion in the Treaty of the principle of reciprocity. Moreover, the treaty fails to specify that as a LLS Nepal has the right to free access to and from the sea or needs access to and from the sea in order to enjoy the freedom of the high seas.²⁴⁹ This Treaty specially deals with transit between two countries India and Nepal. In the preamble of this Treaty it is mentioned that Nepal is recognized as a LLS in which it is felt that Nepal needs freedom of transit including permanent access to and from the sea to promote its international trade.²⁵⁰ This Treaty is the landmark mentioning transit as special needs of a LLS like Nepal. This Treaty shall accord to traffic in transit, freedom of transit across their respective territories through routes mutually agreed upon. Transit is the most essential need for LLS. Article 1 makes the transit right of Nepal subject to reciprocity which is not consistent with the very concept of a right of free access of LLS. According to article 125 of the LOSC the right of free access to and from the sea is not subject to reciprocity but it is unilaterally and solely available to LLS.²⁵¹

The Treaty has explained the meaning of traffic in transit. The definition is narrower even than that provided for in the Barcelona statute on freedom of transit, let alone the LOSC. Among other things the definition excludes persons accompanied baggage and most importantly the means of transport.

²⁴⁹ Subedi, "*Land-locked States and International Law*," 111.

²⁵⁰ Pradhan, *Land-locked Country and Nepal*, 176.

²⁵¹ Subedi, "*Land-locked States and International Law*," 111.

Article IV exempts traffic in transit from customs duties or other charges except reasonable charges for transportation and such others charges as are commensurate with the costs of services rendered in respect of such transit. This Treaty is of permanent nature but the provision as mentioned in the Treaty are related to Protocol which leads to traffic in transit.

Article V of the Treaty binds the countries to abide by the relevant laws and regulations prevailing in either country. The laws of exercising transit through a transit country are binding to a LLS, though it mentions prevailing in either country. It does not bind the transit state.²⁵²

Article II, VIII and IX of the Transit Treaty impose several types of limitation on the freedom of transit accorded to traffic in transit. While the limitations of articles VIII and IX seem justifiable as being broadly in line with international practice. The limitations imposed under article II raise some questions. The vague words all indispensable measures and legitimate interests of any kind might allow, obdurate government and especially during friction between two countries to impose unnecessary limitations on Nepal transit rights. They should be more specific on measures. In the absence of any indications of what may be regarded as indispensable measures and legitimates interests, India may consider itself free to impose any restrictions deemed necessary by it to protect its legitimate interests.²⁵³

In fact, the limitations imposed under the article II (b) suffice to encompass the main purpose of limitations. The limitation imposed under article II (a) is arbitrary, undesirable and ambiguous. As a restrictions imposed under articles VIII and IX of the transit treaty are designed to protect those interests of India which could appropriately be called legitimate interests, it is not clear what other interests are intended to be protected under article II (a).²⁵⁴

Article IX of the treaty also add to the provisions as stipulated by articles V, VI, VII, and VIII the provisions draw the attention of contracting party and say in order to facilitate effective and harmonious implementation of the Treaty the contracting party should consult each other regulatory. This Treaty especially draws the attention that the treaty shall be effective only when they consult each other regulatory in harmoniously situations.²⁵⁵ This Treaty is the skeleton only

²⁵² Pradhan, Land-locked Country and Nepal, 177.

²⁵³ Subedi, "*Land-locked States and International Law*," 112.

²⁵⁴ Ibid.

²⁵⁵ Pradhan, Land-locked Country and Nepal, 178.

as existing between India and Nepal Memorandum and Protocol to the treaty play a pivotal role to trade relating to third country.

Details of port facilities and transit routes are incorporated in a Protocol to the Treaty of Transit and exports and imports procedures applicable to Nepal traffic in transit are outlined in Memorandum attached to the Treaty.

In Summary, the Treaty of Transit outlines the rights, duties and obligations of Nepal and India in relation to transit movement of goods, and details the *modus operandi* of such movements. The Transit Treaty specifies mutually agreed 15 entry-exit points and specified routes from Kolkata and Haldia to Sukhia Pokhri, Naxalbari (Panitanki), Galgalia, Jogbani, Bhimnagar, Jayanagar, Bhitamore (Sitamarhi), Raxaul, Nautanwa (Sonauli), Barhni, Jarwa, Nepalgunj Road, Tikonia, Gauri-Phanta and Banbasa; describes the warehouses and open spaces to be provided, and gives detailed guidelines on the simplified administrative procedures. Traffic in transit is exempted from customs duties and all transit duties or other charges except reasonable charges for transportation and such other charges commensurate with the costs of services rendered. It has also been agreed that Nepal can use the facilities at Jawaharlal Nehru Port (JNPT), Vishakhapatnam and Kandla Port for third-country trade. However, modalities for the operationalization of the decision are yet to be agreed upon.²⁵⁶

India and Nepal entered into a Rail Services Agreement in 2004 (renewable every ten years) for operating and managing rail services for Nepal's transit trade as well as bilateral trade between the two countries. Specifically, it allows movement of third country traffic through the railway wagons and containers, specifies transit trade between Kolkata/Haldia ports in India and Birgunj in Nepal, via Raxaul in India; as well as between stations on Indian Railways and Birgunj, via Raxaul, for bilateral trade.²⁵⁷

A trilateral transit understanding between Bangladesh, India, and Nepal is in place in order to facilitate the overland trade between Nepal and Bangladesh through India. The Treaty of Transit and the Operational Modalities for Additional Transit Route between Nepal and Bangladesh govern transit through the Phulbari-Banglabandh point and Radhikapur-Birol point.

²⁵⁶ Nisha Taneja, Samridhi Bimal and Isha Dayal, "An Analysis of Nepal's Transit through India" Indian council for Research on International Economic Relations, Working Paper 316 (2016), 1-2, http://icrier.org/pdf/Working_Paper_316.pdf, Accessed on September 1, 2017.

²⁵⁷ Ibid.

Evaluation of the transit treaty 2013 with LOSC 1982 relating to LLS

On the surface, Nepal seem to have achieved a satisfactory transit treaty with India as the latter conceded to the Nepalese demand for a separate treaty on transit and for 15 transit routes. In contrast to the stance taken by India during the Nepal and India stalemate that under the international law Nepal was entitled to only one transit route. India agreed to continue to provide overland transit facilities through Radhikapur for Nepal trade with or via Bangladesh. This could well be hailed as a success. However, the reality is that the entire exercise on the right of land-locked states during UNCLOS III and the incorporation in the resulting 1982 Law of the Sea Convention of the right of free access of land-locked state doesn't seem to have influenced the latest treaty.

As the 1991 Treaty is intended to provide transit facilities to Nepal for her access to the sea, the reciprocity requirement seems, in practical terms, meaningless, as land-locked Nepal, by definition, lacks the means to reciprocate. In fact India's transit trade through Nepal is nil, it does not actually need to use Nepalese territories for its international trade. India seems to have employed this reciprocity clause merely as political leverage. Moreover, the requirement of reciprocity incorporate in article (1) of the transit treaty is in conflict with India's own admission in the preamble to the treaty that Nepal as a land-locked country needs access to and from the sea to promote its international trade.²⁵⁸

So far as the Nepal and India relationship is concerned, the concept of reciprocity raises numerous issues, as stated earlier, India wishes to tie Nepal's transit rights to other issue like bilateral trade, treatment of Indians living in Nepal, India strategies interests. This is because Nepal and India have a very complex bilateral relationship governed by a number of treaties, some of which are quite ambiguous and outmoded.²⁵⁹

Nevertheless, the new Transit Treaty represents some success for Nepal in the sense that India a regional superpower and a conservative transit state, agreed after all this legal wrangling to conclude a separate treaty on transit and conceded to the Nepalese demand to have 15 transit routes reinstated by the new treaty. The separation of transit matters from other bilateral issues

²⁵⁸ Subedi, "*Land-locked States and International Law*,"114.

²⁵⁹ Ibid.

is vital to Nepal and the new Transit Treaty has achieved this objectives. From this, Nepal can hope that India will not try again in the future to exert pressure on Nepal by mixing the questions of transit facilities with others bilateral matters. In the case Nepal's right of access will have been strengthened as a legal right rather than facilities dependent on the transit state's goodwill.²⁶⁰ Right of free access to and from the sea and right of freedom of transit is a guaranteed by international law and it is unilaterally and solely available to LLS. Article I of the Transit treaty 2013 provides these rights but makes it subject to reciprocity which is against the very core principle of the LOSC 1982.

- According to preamble of Transit Treaty India recognized the needs of freedom of transit and permanent access to and from the sea to promote its international trade as a LLS in treaty. This Treaty does not mention that Nepal needs this rights in order to enjoy the freedom of high seas and common heritage of the mankind which is guaranteed by the Article 125(1) of the LOSC 1982.
- According to Article 124(1) (c) of LOSC 1982 gives complete definition of traffic in transit. Traffic in transit means transit of person, baggage's, goods and means of transport. But Article III of the Nepal and India Transit Treaty 2013 gives an incomplete and narrow definition by totally excluding persons, accompanied baggage's and means of transport.
- Article 126 of the LOSC, the LLS are to be provided all rights and facilities relating to the right of free access to and from the sea by the transit state independently of the application of MFN clause but the Transit Treaty does not mention this principle.
- Article 128 of the LOSC, clearly provides the free zones in the ports but the Transit Treaty 2013 totally excludes this facility.
- Article 130 of the LOSC provides measures to avoid or eliminate delays or others difficulties of a technical nature to traffic in transit. This provision is neglected in the Transit Treaty in one hand and other hand Indian custom officials created obstacles and unnecessary delays especially if the same Indian goods are to be exported to the world marked. The transit treaty does not contain effective safeguard against such incidents.

²⁶⁰ Ibid.

- Article 131 of the LOSC accords equal treatment of the ships flying the flag of LLS and to other foreign ships in a maritime port. But the Transit Treaty does not accord equal treatment which is against the international law and limits the rights and facilities of Nepalese vessels in such way. (a) All these facilities are made subject to Indian laws and regulation. (b) Only merchant vessels are given such facilities but Nepalese government ships and fishing vessels are not included in this Transit Treaty. (c) According to Article VII of the Nepal and India Transit Treaty, this right provided to merchant vessels only in order to enjoy the freedom of high seas but according to article 125 (1) of LOSC besides this freedom of high seas the LLS has the right relating to common heritage of mankind, right of fishing in EEZ and a limited right to conduct marine scientific research. But this Transit Treaty does not include fishing vessels as being eligible to exercise these rights.
- Principle of carriers' liability is totally neglected in the Transit Treaty. It is an internationally accepted basic rule. But Nepalese goods are transported on the Indian Railways they have to pay insurance against any pilferage or damage on Indian territories while this is a sole carrier liability i.e. Indian Railway liability.
- The LOSC 1982 mention the provision of dispute resolution but the Nepal and India Transit Treaty is the absence of a dispute resolution provision.

The questions of transit have always been in a form of discussion since First World War. Since 1982 the transit of LLS has been commonly mentioned in the context of the law of the sea. The principle of transit rights for LLS has been broadly accepted in the world community. There is still a question of the sovereignty and territorial integrity of transit states as commonly raised by the transit state. It seems quite necessary therefore to analyze and examine several possible ways to establish the transit rights of LLS as a right in the development in the international law.²⁶¹

Transit states have so far accepted that rights of access to or from the sea are to be exercised as a freedom of transit. The concept of freedom of transit depends upon the concept of sovereignty. The concept of sovereignty has been accepted not as an absolute theory of sovereignty. International law as binding on all state is the necessary concomitant of statehood.²⁶²

²⁶¹ Pradhan, Land-locked Country and Nepal, 198.

²⁶² Ibid, 215.

The Charter of Economic Rights and Duties of States has accepted free access to and from the sea by land-locked countries.²⁶³ It further provides that a state has no right to interfere, lay obstacles and prescribe different cumbersome processes and hurdles for all commercial goods of a state.

The Treaty of Transit of 1950 signed between Nepal and India provided the full and unrestricted rights of commercial transit for Nepal a land-locked state. The Charter Economic Rights and Duties of States have mentioned free access to and from the sea which has been accepted by an absolute majority.²⁶⁴ The free access means unrestricted freedom. Therefore the right of access to and from the sea cannot be exercised without unrestricted right of transit. The proposal of the common heritage of mankind has recognized the rights of the LLS to exploit in the area of the ocean. The right of exploitation is not possible without the right of access to that part. The right of access to and from the sea is not subject to bilateral agreements. Only the modalities of transit are related to bilateral agreements. The transit of land-locked states is an unrestricted right of transit.²⁶⁵

The Transit Treaty with India has particular importance. Nepal has obtained membership status of WTO in 2004 as a 147th member. As a member of WTO, Nepal has right of transit facility. Article V of General Agreement on Tariff and Trade (GATT) which constitutes mandatory provisions to all member countries of WTO, deals with freedom of transit. It is clearly stated that, “there shall be freedom of transit to all contracting party, via routes most convenient for international transit for traffic in transit to or from the territory of other contracting parties.”²⁶⁶ It is further stated that, “no distinction shall be made based on the flag on vessel, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods, of vessels or other means of transport,”²⁶⁷ and traffic shall not be any unnecessary delays or restrictions. As Nepal and India both are members of WTO, above this provision of WTO

²⁶³ United Nations, General Assembly, Twenty-ninth session, Agenda item 48, Resolution adopted by the General Assembly, 3281 (XXIX), Charter of Economic Rights and Duties of States, Chapter 1, <http://www.un-documents.net/a29r3281.htm>, Accessed on November 16, 2017.

²⁶⁴ Ibid.

²⁶⁵ Pradhan, Land-locked Country and Nepal, 216.

²⁶⁶ World Trade Organization, Article V, the General Agreement on Tariff and Trade (GATT 1947), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm, Accessed on November 16, 2017.

²⁶⁷ Ibid.

guides the Transit Treaty between Nepal and India. The Transit Treaty between Nepal and India objectives strengthen the existing friendly relationship and cooperation between the two countries.

The development of harmonious bilateral relationship between the land-locked and transit countries concerned is a basic necessity for the solution for these problems. Transit problems of land-locked countries is a perpetual problem and this perpetual problem must be solved perpetually on the basic of equity and justice and good conscience.²⁶⁸

Section B : Bilateral treaties between Nepal and others countries

This section is dedicated to the bilateral treaties between Nepal and others countries (Likes China and Bangladesh). In this section divided in to two paragraph, basically paragraph one : bilateral treaties prior to 1990 and paragraph two : bilateral treaties since 1990.

Paragraph 1 : Bilateral treaties prior to 1990

The accepted principles and practices made with third countries cannot be minimized in the development of customary international law relating to transit and trade of land-locked countries. The concept of limitation theory in the treatment of transit to third countries through transit country cannot be challenged. It will not be of less significance for a land-locked state if a transit country accepts the unrestricted transit through its territory.

The relations between Nepal and the People's Republic of China are age old and deep rooted. Nepal-China relations have always remained friendly and cordial.²⁶⁹ Nepal is a land-locked country situated between two emerging and fast-growing economies India and China. Nepal shares 1,415 Km. border with China in the north. Nepal and China have a long history of political and economic relations. The first recorded official relations between Nepal and China dated from the middle of the seventh century, although unofficial contracts between these two countries began in the fifth century. Some of the most prominent figures who immortalized

²⁶⁸ Dr. Lakshman Kumar Upadhyaya, "*Reflection on the problems and prospects of Land-locked countries*", Nepal Law Review, Vol.1, Nepal Law Campus : 53.

²⁶⁹ Government of Nepal, Ministry of Foreign Affairs, Kathmandu, Nepal, Nepal-China Relations, <http://mofa.gov.np/nepal-china-relations>, Accessed on September 1, 2017.

Nepal-China relations are Fa-hsien, Hsuan-tsang, Wang Hsuan-Tse, Buddhahadra and Arniko.²⁷⁰

These centuries old traditional relations were formalized with the establishment of diplomatic ties between the two countries in 1 August 1955. Nepal has established Consulate General's Offices in Hong Kong and Lhasa and an honorary consul has been appointed in Shanghai.²⁷¹

Nepal-China relations are based on the five principles (Panchsheel): (a) respect to each other's sovereignty and territorial integrity (b) non-aggression (c) non-interference in each other's internal affairs economically, politically and ideologically (d) equality and mutual benefit (e) peaceful co-existence. Nepal and China are supporting each other in many regional and international forums, including the United Nations.²⁷²

The Nepal and China boundary is as old as the history of the two countries. Many believe that the demarcation of Nepal and China boundary had been a problem in the past, mainly because more than 90 percent of the frontiers run through high altitudes with rocks and snow. The few territorial disputes that existed over rival claims for the settlements of Kimathanka in the Sankhuwasahba and Taplejung districts, the area adjoining the boarder of Rasuwa, and Nara Nangla of Humla district with the origin of dispute dating back to 1815, 1818 and 1843 respectively. However, these disputes and the whole demarcation of Nepal and China boundaries were resolved by the Nepal and China Joint Boundary Commission on 5 October 1961.²⁷³

Economic cooperation is one of the most important dimensions of Nepal and China bilateral relations. Nepal and China economic relation was established in ancient times as a local trade between Tibet and Kathmandu. The first attempt to enhance the economic cooperation between Nepal and China was legally made only after the signing of agreement on trade between two countries on October 1956.²⁷⁴ The establishment of the Inter-Governmental Economic and Trade

²⁷⁰ Uma Shankar Prasad, "Study of Nepal's Economic Relations with China" *The Journal of Development and Administrative Studies (JODAS)* 2015, Vol. 23(1-2), 23-32, <http://www.nepjol.info/index.php/JODAS/article/download/15446/12479>, Accessed on September 11, 2017.

²⁷¹ Ibid.

²⁷² External Publicity division, Ministry of External Affairs, Government of India, http://www.mea.gov.in/Uploads/PublicationDocs/191_panchsheel.pdf, Accessed on September 12, 2017.

²⁷³ Prasad, "Relations with China", 23-32.

²⁷⁴ Government of Nepal, Ministry of Foreign Affairs, <http://mofa.gov.np/nepal-china-relations/>, Accessed on November 21, 2017.

Committee (IGETC) in October 1982 was the next step to increase the trade between two countries. The IGETC meetings have become the main forum for discussions on Nepal and China bilateral economic and technical cooperation. Nepal and China economic cooperation can be broadly analyzed under four categories: trade, grant aid, investment and tourism.

The Trade and Payments Agreement between Nepal and China, 1974 is based on the exchange of goods and principle of equilibrium. The trade is considered to be conducted through the state trading organizations of Nepal and China. The agreement provides the trading points in order to develop overall trade between the two countries. The Agreement provides the most favoured nation treatment in respect to custom duties, other taxes, fees and charges to be levied on exportation and importation of commodities. The restrictive provisions as to the most favoured nation treatment are advantages resulting from any customs union or other agreement on customs free trade to which either contracting party is or may become in the future a party and advantages accorded by multilateral economic agreement relating to international commerce. The agreement provides the trading points in order to develop overland trade between the two countries.²⁷⁵ This agreement does not spell out the transit provisions of a land-locked state. The agreement is silent on the transit problem of Nepal through China's territory. Nepal does not have bilateral transit agreement with China, mainly owing to long distances to the sea ports in the Chinese coasts.

The Transit Agreement between Nepal and Bangladesh, 1976 is the first of its kind made by Nepal with a third country. This Agreement has not only considered the concept of transit which is related to trade with third country as well as it has also related to bilateral trade. By the agreement the freedom of transit across their respective territories through certain routes is accorded to traffic-in-transit. The transit right for a land-locked state has been accepted on the basis of reciprocity.²⁷⁶

Traffic-in transit is exempted from customs duty and transit duties or other charges except reasonable charges for transportation and such other charges as are commensurate with the cost of services rendered in respect to such transit. The provision is left open to mutual agreement in defining the reasonable charges for transportation and costs of services. The term reasonable is always a question of interpretation. The agreement does not say anything as to how reasonable

²⁷⁵ Pradhan, Land-locked Country and Nepal,120.

²⁷⁶ Pradhan, Land-locked Country and Nepal,122-123.

can be decided. The Government of the People's Republic of Bangladesh agreed to provide the points of entry, exit or breakpoints as well as storage and port facilities including warehouses or transit sheds for the speedy movement of the transit cargo. But the terms were to be mutually agreed upon the procedure to be followed for traffic-in transit to or from third countries are laid down in the protocol.

The points of entry and exit as designated by Bangladesh are Khulna- Chalna port, Chitagong port, Biral, Banglabandhs, Chilhati and Benapole.

The above points of entry and exit are provided for movement of traffic- in-transit through ports and other areas by all means of transportation. Warehousing, transit sheds and open space at the port and agreed points of entry and exit are provided on long-term lease for storage, handling and breaking bulk of traffic-in- transit. In respect to points of entry and exit in Nepal for her trade with third countries through Bangladesh, Nepal government has authorized all the points which she has been using to conduct her trade with third countries through India. The trucks and other vehicle are allowed to carry the traffic-in transit other than those mutually agreed prohibited cargo. The port facilities such as the free period of storage, port charges and clearance shall not be less favorable than the prevailing rates and practices.

Paragraph 2 : Bilateral treaties since 1990

Nepal's trade relation with China is guided by a number of bilateral agreements and understandings. These are the 1981 Trade and Payment Agreement, the 1994 Promoting Nepalese Trade and Investment Relations with India and China Agreement on Road Transportation, the 2002 Agreement on Trade and other Related Matters, the 2009 MoU on Establishment of Nepal-Tibet Trade Facilitation Committee, the 2010 Letter of Exchange for granting Special Preferential Tariff Treatment and the 2012 Cooperation on Developing Border Infrastructures. The quantum of economic cooperation and trade between Nepal and China has been increasing over the past one and half decade.²⁷⁷

The Trade and Payment Agreement concluded between Nepal and People's Republic of China in 1981 has become obsolete as this agreement is framed on most favored nation (MFN) basis and also provides the list of few tradable items between the two countries. This stands no more

²⁷⁷ Dr. Rishi Raj Adhikari (edit.), Promoting Nepalese Trade and Investment Relations with India and China, Institute of Foreign Affairs (IFA) Kathmandu, Nepal, (2015) : 2-3, www.infa.org.np, Accessed on September 12, 2017.

relevance in context of both countries as the members of WTO are bound to provide MFN treatment on a reciprocal basis. The memorandum signed on 2010 and 2014 on availing duty free tariff preferences to Nepalese products is basically the extension of unilateral preferences extended by China to all least developed countries in line with the Ministerial in announcement made in Hong Kong 2005.²⁷⁸ This arrangement provides no special dispensation for Nepal beyond the similar preferences extended to all least developed countries.

On 21st March 2016, the Governments of Nepal and China signed ten agreements and memorandums of understanding (MoUs), including the much talked transit transportation agreement with China for its third-country commerce, exploring the possibilities of signing a bilateral free trade agreement, and building a regional international airport in Pokhara. The joint statements released on 23 March 2016, to carry out major projects under the framework of the one Belt and one Road (OBOR) Initiative, strengthening connectivity, support each other's tourism promotion activities, and hold dialogue on energy cooperation.²⁷⁹ The Key Points of the Joint Statement are :²⁸⁰

- The two sides agreed to “synergize each other’s development planning, formulate appropriate bilateral cooperation programs and carry out major projects under the framework of the one Belt and one Road Initiative.”
- Nepal and China agreed to strengthen land and air connectivity and improve the limits to land transport infrastructure.
- Both sides agreed to accelerate the feasibility study on the repair and opening maintenance project of Aranik and Syaphrubesi- Rasuwagadhi highways. They also agreed to accelerate the upgradation of Kathmandu Ring Road.
- The concerned authorities of the two sides will exchange ideas and proposals on constructing cross border railways and railway network in Nepal. They also agreed to support enterprises to start related preparatory work as soon as possible.

²⁷⁸ Ibid.

²⁷⁹ Government of Nepal, Ministry of Foreign Affairs, <http://mofa.gov.np/joint-press-statement/>, Accessed on November 21, 2017.

²⁸⁰ Dr. Amit Kumar, India Council for World Affairs, Joint Statement between the People’s Republic of China and Nepal, <https://www.mofa.gov.np/joint-press-statement/>, Accessed on September 13, 2017.

- Nepal and China exchanged views on facilitating Chinese investment in key areas including infrastructure. The two sides agreed “to explore establishing cross border economic cooperation zones via existing frontier ports and speed up opening up other frontier ports and trade points as mutually agreed upon.”
- Both sides agreed to commence the joint feasibility study of China-Nepal Free Trade Agreement and to conclude the study at an early date.
- The two sides agreed to wrap up a commercial oil deal. For the same, they will encourage oil companies to speed up negotiations.
- China welcomed Nepal’s decision to establish a Consulate General of Nepal in Guangzhou. It was also agreed to study Nepal’s proposal to establish another Consulate General in Chengdu.
- The two sides agreed to “enhance coordination and cooperation within Shanghai Cooperation Organization (SCO), SAARC (South Asian Association for Regional Organization) and other regional cooperation mechanisms within the agreed frameworks and guidelines.”
- To facilitate trade, tourism and investment between the two countries, they agreed to open Chinese-funded banks in Nepal in accordance with relevant policies and regulations.

Transit- Transport Agreement

The signing of the 2016 Transit Transportation Agreement with China is being considered as Nepal’s endeavour to diversify its trade away from India and lessen its dependency on India. Nepal’s transit agreement with China will enable land-locked Nepal to use the Tianjin port in China the nearest from Nepal about ‘3000 Km away from Nepal border’.²⁸¹ However, the present condition of Tianjin-Kathmandu road infrastructure denies the economic feasibility of Nepal’s trade to any third countries through Tianjin transit port. The common perception among the analysts is that the agreement is a mere psychological gain for Nepal at least till the extension of Tibet Rail at the Nepal border. At present, Nepal has no other options than to rely on Indian ports for trade with third countries. However, Nepal and China trade through overland routes is bound

²⁸¹ Ibid.

to augment with the improvement of road and rail connectivity between the cities of Nepal and Chinese main land, if other transit procedures such as visa, documentation, custom rule, use of technology, etc., are business friendly.

Chinese Rail to Nepal

To enhance the connectivity in the region, China is ready to consider Nepal's request of a *rail* link between the two nations. As poor overland connectivity has been a key obstacle in Nepalese and Chinese trade, both sides are now looking firm to improve the connectivity and bilateral trade. Improved infrastructures in Nepal's northern mountainous region and the 2016 Transit Trade Treaty will subsequently reduce Nepal's dependency on India for trade and economy to a certain extent, and, further, it will also alter the current dynamics of trade cooperation in the region.

The Chinese Qinghai-Tibet Railway Network has already reached Xigatse and there is a plan to further extend it to Jilong at Nepalese border, 540 kilometres south-east to Xigatse and just a few kilometres away from the Tibetan border town Kerung by 2020. In the past, its further extension to Kathmandu has been a subject of discussion in bilateral meetings.²⁸² The plan to extend Qinghai-Tibet Railways up to Nepal border and further connecting Kathmandu with Qinghai-Tibet Railways is being considered as a part of 'Chinese long term vision' to enhance connectivity between Nepal and China and further with India.²⁸³ If the plan to connect Lhasa with Kathmandu becomes a reality, it will be a boost for Nepalese and Chinese trade, tourism, people-to-people connect and cultural ties.

The expansion of the Qinghai-Tibet Railway network near Kerung will provide Nepal an opportunity to augment its trade with China as the Kerung route is not only directly connected with Kathmandu via road, but is also linked with major cities of China. At the same time, the construction of Inland Container Depot (ICD) at Timure, 2.5 kilometres from Rasuwagadhi, will be an added advantage for Nepalese and Chinese trade.²⁸⁴

The current status of Nepal's trade with China is heavily skewed towards import. Nepal's total export to China is about three percent of its import from China. There is enormous gap in the value of import from and export to China and, in the future, as Nepalese and Chinese trade will

²⁸² Rail Network can be Extended up to Kathmandu, Say Chinese Officials," *The Kathmandu Post*, Kathmandu, July 19, 2015, <http://kathmandupost.ekantipur.com/category/news>, Accessed on September 14, 2017.

²⁸³ Ibid.

²⁸⁴ Dr. Kumar, "World Affairs", 5.

grow, the gap will remain huge as Nepal has its own limitation to augment the export with China. As far as Nepal's export to China is concerned, tanned skin, handicraft items and woollen crafts are key commodities in terms of export volume.²⁸⁵ The low export amplifies the transportation cost as most of the bogies of Kathmandu bound goods trains return empty to Lhasa or Golmud. But, in the case Nepal is using the Tianjin transit port, the scenario may be different. Although, the export and import statistics of Nepal and distance of Tianjin port from major cities of Nepal does not encourage Nepal's trade with third countries via Tianjin transit port.

Although Nepal's trade with China is in increasing trend, it is far below than potential. Due to less developed transport system, the trade between two countries could not flourish. There is also the absence of dry port in Nepal for Nepal and China bilateral trade. As many believe that Nepal could play as a transit point not only between India and China but with whole South Asian countries, it is necessary to interlink the region with road and railway network which will enhance the trade between Nepal and China in future.

Chapter 2. State practices and challenges and solutions for land-locked Nepal

This chapter is dedicated to the state practices, challenges, and solutions of land-locked Nepal, Basically the state practices and challenges section A, I have describe State practices and challenges of land-locked Nepal. Solution and learning lesson for land-locked Nepal section B, I have describe Solutions of best practices other two countries and learning lessons for land-locked Nepal.

Section A : State practices and challenges of land-locked Nepal

Paragraph 1 : State practices (regulatory and policy framework)

The domestic trade and investment policies and the policies adopted by the neighboring countries naturally shapes up the bilateral trade and investment relations between those countries. The domestic trade and investments policies of Nepal are embedded in a number of policy papers and documents like the 2006 Aviation Policy, the 2009 Trade Policy, the 2010 Nepal Trade Integration Strategy (NTIS), the 2010 Industrial Policy, the 2015 Foreign Investment Policy, the 2016-19 Fourteenth Plan and initiatives to introduce trade facilitation reform.

²⁸⁵ Spotlight Nepal, <http://www.spotlightnepal.com>, Accessed on September 14, 2017.

The Goal of the 2006 Aviation policy²⁸⁶ is to develop the air transport system, by enhancing the participation of the private sector, as well, based on the concept of open sky policy, while making air services safe, reliable, standard, easy available, accessible for the general public, sustainable and effective.

The 2009 Trade Policy²⁸⁷ replaced the 1992 Trade policy. The policy attempts addressing the emerging challenges in trade sector by the globalization of Nepalese trade. The main objective of this policy is to increase the contribution of trade sector in the national economy, reduce poverty and accelerate economic growth. The trade policy, besides emphasizing trade in goods, also duly recognizes trade in services and intellectual property as equally potential areas of trade sector development. The policy includes an exhaustive list of measures from institutional to legal and procedural reforms in way of creating conducive environment for trade and investment in the country. These measures and provisions are supposed to enhance country's trade internally and externally. The policy has broadly classified potential Nepalese exports into two categories Special Focus Area and Thrust Area products. Four products are included under the Special Focus Area, most of which have already been established in the export markets. The emerging fifteen products have been listed under the category of Thrust Area Products (WTO-2012).

The Trade Policy has focused on developing north-south railway and road corridor for facilitating trade with India and China. It has further subsumed to develop special economic zones and the Inland Clearances Depots at the major border customs in North and South in order to enhance the export of Nepalese goods and facilitate trade. The review and revision of the bilateral Rail Services Agreement and the exploration of other potential ports for movement of transit traffic are also well presented in the policy document.²⁸⁸

The 2010 Nepal Trade Integration Strategy (NTIS)²⁸⁹ charts out a possible course for the development of the country's export sector over a period of three to five years together with

²⁸⁶ Civil Aviation Authority of Nepal, Aviation policy-2006, <https://www.caanepal.org.np/civil-aviation-policy>, Accessed on October 4, 2017.

²⁸⁷ Government of Nepal, Ministry of Commerce and Supplies Singh Durbar, Kathmandu, Nepal, Trade Policy, 2009, <http://www.tepc.gov.np>, Accessed on October 4, 2017.

²⁸⁸ Dr. Adhikari "Relations with India and China," 8.

²⁸⁹ Government of Nepal Ministry of Commerce and Supplies, Nepal Trade Integration Strategy 2010, Singh Durbar, Kathmandu, Nepal, http://eifnepal.gov.np/publication/628ffNTIS%202010%20Background%20Report_052411.pdf., Accessed on November 22, 2017.

possible capacity development actions and selected short to medium term priorities that are supportive of ‘inclusive growth’. The strategy has identified four major challenges in building a competitive export sector in Nepal, first, ensuring proper market access through enhanced trade negotiation capacity, second, building domestic support institutions that can create a more business friendly environment and help the Nepalese exporters address the challenges of Non-Tariff Barriers (NTBs), third, enhancing supply side capacity for the products and services that are considered to be of export potential and fourth mobilizing overseas development assistance and aid for trade for implementing the previous three strategies. The document has identified 12 products (Large cardamom, Ginger, Honey, Lentils, Tea, Instant Noodles, Medicinal herbs/oils, Handmade paper, Silver jewelry, Iron and steel products, Pashmina products, Wool products) and 7 services (Tourism, Labour services, IT services, health services, Education services, Engineering services, Hydropower) as the export potentials and suggested actions for their development and export promotion.²⁹⁰ The strategy is on the process of review and revision in order to make it flexible and adjustable to the changing need of market and product.

The 2010 Industrial Policy²⁹¹ aims at enhancing the contribution of industrial sector in the national economy and reducing poverty through the harmonized actions and interventions of the public, private and cooperative sector. Moreover, the policy emphasizes on increasing the export of industrial products, use of local resources, skills and raw materials in production, adoption of environmental friendly production process, effective protection of intellectual property rights and improvement of human resources skills and knowledge for creating business friendly environment. Thus, the 2010 Industry Policy aims at transforming the country as preferred destination for foreign direct investment (FDI).²⁹²

The 2015 Foreign Investment Policy²⁹³ replacing the 1992 Foreign Investment and One Window Policy. The new policy attempts to address the challenges in promoting foreign investment through prioritizing the areas of investment, managing the investment of Non Resident Nepalese (NRN), promotion of portfolio investment, utilization of domestic capital markets, facilitation of

²⁹⁰ Ibid.

²⁹¹ Nepal Law Commission, Industrial Policy-2010, <http://www.lawcommission.gov.np>, Accessed on October 4, 2017.

²⁹² Ibid.

²⁹³ Government of Nepal, Ministry of Industry, Singh Durbar, Kathmandu, Nepal, Foreign Investment Policy 2015, <http://www.moi.gov.np>, Accessed on October 4, 2017.

investment in special economic zones and providing physical securities to the industries.²⁹⁴ The high level Board of Investment (BoI) under the chair of Prime Minister has been brought under the radar of this policy.²⁹⁵ The Foreign Investment Policy aims at making the national economy competitive and dynamic by attracting the foreign capital, technology, skill and knowledge for increasing the output and export of the industrial products.²⁹⁶

The 2016-19 Fourteenth Plan²⁹⁷ of the Government of Nepal aims at bringing down the poverty level to 17 percent at the end of the plan with the projected annual growth of 4.7 percent in the agriculture sector. Export products identified in the 2010 Nepal Trade Integration Strategy²⁹⁸ is supposed to provide significant contribution to this ambitious target. Each of these products (Large cardamom, Ginger, Honey, Lentils, Tea, Instant Noodles, Medicinal herbs/oils, Handmade paper, Silver jewelry, Iron and steel products, Pashmina products, Wool products) will expand the export coverage to reach at least 1 billion Rupees at the end of the plan period. Trade development strategies mentioned in the documents implies on mainstreaming trade in the development program and harmonization of sector specific policies, enhancing participation of the public and private sector and cooperatives, promotion of the products having comparative and competitive advantages, promotion of specific products in the value chain and mobilization of aid for trade for trade facilitation, trade infrastructure development and trade capacity building. The Fourteenth Plan focuses more on generic issues for trade development rather than enhancing export to specific countries.

The above presents generic legislative and policy framework in the areas of industry and trade. Nepal has concluded a number of agreements with India that has direct bearing on trade and investment engagement between the two countries. These are, Treaty of Transit, signed in 1991 and gradually evolving with periodic revisions, agreement of cooperation to control unauthorized trade (2016), rail services agreement, double tax avoidance treaty, motor vehicle agreement, and bilateral investment protection and promotion agreement, among others. A bilateral air services

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Government of Nepal, National Planning Commission, Fourteenth Plan (2016-19), <http://www.npc.gov.np>, Accessed on October 4, 2017.

²⁹⁸ Government of Nepal Ministry of Commerce and Supplies Kathmandu, Nepal Trade Integration Strategy-2010, <http://www.moc.gov.np>, Accessed on October 4, 2017.

agreement has also been signed between Nepal and India in 2010 that liberalizes the air transport services for passenger as well as for cargo services. Similarly, agreement with the Government of China includes, the 1981 trade and payment agreement, the 1994 transport agreement, the 2002 agreement on trade and other related matters, the 2009 memorandum on formation and operation of Nepal-Tibet trade facilitation committee and the 2012 agreement on border post development. Nepal is now developing border posts facilities in the major border crossings in the south and north with the financial and technical assistance of India and China respectively. These infrastructures will go a long way in facilitating cross border trade with the neighboring countries.

Paragraph 2 : Challenges of land-locked Nepal

Land-locked countries, i.e. countries without direct coastal access to the sea and thus also to maritime trade, face very specific challenges. Compared with their coastal neighboring countries, they start their trading “career” with numerous disadvantages from the outset. The situation is almost always aggravated when being land-locked 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, land-locked countries generally face a difficult situation.

Adam Smith in his “The Wealth of Nations”²⁹⁹ noted that, apart from having a free-market economy, location and access to the sea, and, therefore, to trade routes, played a significant role in a country’s economic performance. Over time, rail, land and air transport, as well as telecommunications and information technology, have reduced the advantages of coastal over land-locked countries. However, shipping still plays a central role in global trade and geographic location also remains significant.

Although being land-locked is a challenge, it is not destiny. There are practical solutions to many of the problems faced by land-locked countries ranging across comprehensive approaches to transit corridors, overall regional integration efforts, legal and regulatory reforms, institutional and administrative overhauls, specific international protection mechanisms and including an in-depth analysis of each land-locked country’s foreign trade composition and its adequacy with

²⁹⁹ Adam, Smith, An inquiry into the Nature and the causes of the Wealth of Nations, (Chicago University Press, 1776).

regard to transport constraints.³⁰⁰

Today, wide-reaching multilateral and regional trade agreements (in economic regions, customs areas, free trade areas or developing trade regions) stipulate the steady lowering of tariffs. The international exchange of goods and services and the integration of production and distribution modes is more and more encouraged, and it, therefore, becomes all the more important to improve the physical movement of goods, i.e. the actual transport within, across and through countries' sovereign territories (example EU). It is no longer so much access to world markets that is a problem but actually getting the goods there without major delays and cost increases due to legal, administrative, customs or technical barriers. This is the real challenge for all countries but even more so for land-locked countries, and particularly for developing or remote land-locked countries.³⁰¹

The developing land-locked states, however, find themselves in a different situation, many of them facing severe challenges to growth and development.³⁰² Lack of territorial access to the sea, poor physical infrastructure, remoteness and isolation from world markets, as well as high transit costs continue to impose serious constraints on their overall socioeconomic development.³⁰³ In 2003, an international ministerial conference convened by the United Nations in Almaty, Kazakhstan, adopted a Deceleration and Programme of Action to enhance transit transport cooperation between land-locked and transit developing countries.³⁰⁴ The so-called Sao Paulo Consensus adopted by the United Nations Conference on Trade and Development (UNCTAD) in 2004, also deals with the special problems of land-locked developing countries as well as the related challenges faced by transit developing countries. The document outlines the goals of UNCTAD in addressing these problems within a new global framework for transit transport cooperation between the States concerned.³⁰⁵

The LLDC face special challenges that stem from their lack of territorial access to the sea,

³⁰⁰ The Global Facilitation and partnership for Transportation and Trade, <https://gfptt.org>, Accessed on September 26, 2017.

³⁰¹ Ibid.

³⁰² United Nations Conference on trade and development (UNCTAD), UN Recognition of the problems of Land-locked Developing Countries, www.unctad.org, Accessed on September 27, 2017.

³⁰³ Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott and Tim Stephens, *The Oxford Handbook of The Law of the Sea* (Oxford University Press, 2015), 339.

³⁰⁴ Ibid.

³⁰⁵ United Nations secretary General, Report of the Secretary-General on Oceans and the Law of the Sea, UN DocA/59/62/Add.1(2004)[17]=[18].

geographical remoteness and isolation from major world markets. For them, global trade has to inherently transit through other countries, mostly also developing countries. This is a process which involves dealing with cumbersome border crossing procedures and inadequate transit transport infrastructure. These difficulties substantially increase transport and trade transaction costs for the LLDC. On average, LLDC pay more than double what the transit countries incur in transport costs and take longer time to send and receive merchandise from overseas markets.³⁰⁶ In 2014, the World Bank estimated that LLDC spent \$3,204 to export a container of cargo, compared with \$1,268 for transit countries and \$3,884 for importing a container against \$1,434 for transit countries.³⁰⁷ The High transport costs erode LLDC competitive edge, discourage investors, reduce economic growth and subsequently limit the capacity of LLDC to promote and achieve sustainable development. Overall, the level of development in LLDC is about 20 percent lower than it would have been if they were not land-locked. The Economics of LLDC are also characterized by dependence on a limited number of commodities and minerals, a large informal sector, weak human and institutional capacities, high unemployment and low productivity.³⁰⁸ Furthermore, LLDC manifest a high trade concentration ratio when compared with other groups of countries, meaning their exports are highly concentrated in a limited number of products.

The problem of transit of Nepal is one of the problems that are typically inherent for LLS. Nepal is situated between China on the north and the Indian union on the east, west and south. All the land-locked states of Asia have common borders with China. This is not an exception to Nepal. Therefore Nepal a very small country has been sandwiched between the two countries, China and India. Nepal being situated between the two big states has only two options for transit. The third option is through Bangladesh. Bangladesh is not bordered by Nepal. In order to utilize the route through Bangladesh the government of India agreed to provide necessary overland transit

³⁰⁶ UN Office of the High Representative for the Least Developed Countries, Land-locked Developing Countries and Small Island Developing States (UN-OHRLLS), Land-locked Developing Countries, things to Know, Things to Do. The Vienna Programme of Action for Land-locked Developing Countries for the Decade 2014-2024, www.unohrlls.org, Accessed on September 26, 2017.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

facilities through Radhikapur. The transit procedures as laid down in the treaty of transit between Nepal and India apply mutatis mutandis in respects of traffic in transit.³⁰⁹

The three transit routes are related to India, China, and Bangladesh. But the traffic in transit via Bangladesh is not independent because there is a little distance of overland route in crossing India from Bangladesh to Nepal. During such traffic in transit with the specified overland route covering a little distance, the procedure as mentioned in the Treaty of Transit between Nepal and India are the same. Therefore the barrier of the third route should be removed for the traffic in transit for the third country trade of a land-locked state.³¹⁰

The two routes are very important for the traffic in transit. These two routes are on the north through the China and on the south through the India. The traditional business of Nepal is mostly related to India. All the manufactured goods and other modern things are imported and from through India to Nepal. The transit routes to the sea coast of India are far shorter than the route through China. The approximate distance between the main towns of land-locked Nepal and the sea port is 710km within the transit country via Calcutta and Kathmandu, the capital is 180 km in land. This distance is not very long compared to the over land routes of most of the landlocked states of Africa and Asia.³¹¹

Nepal has separated transit agreement with Bangladesh concluded in 1976 and thereafter a separate Treaty of Transit with India concluded in 1978. India has already recognized the freedom of transit in accordance with the Convention on Transit Trade of Land-locked states, 1965. But India has neither ratified nor signed the procedures as described in the Protocol and the Memorandum is not free from problems. The problems which to be solved by the Treaty of Transit are still there. These problems have affected the economy of developing land-locked states. Sometimes such problems have threatened the peace and development, and have not ceased even to challenges the very existence of Nepal in the 21st century.³¹²

³⁰⁹ Pradhan, Land-locked Country and Nepal,182.

³¹⁰ Ibid, 183.

³¹¹ Ibid,184.

³¹² Ibid.

The challenges and problems of Nepal are one of the challenges and problems that are typically inherent for LLSs. There are several economic, political, procedural, infrastructural, legal, and attitudinal constraints towards realizing the transit rights of the LLCs, including in South Asia.

Challenges of geographical

One of the most striking features of LLCs is their dual vulnerability, i.e. they are vulnerable on their own account and on account of being dependent on one or more transit countries. Not only are they deprived of access to the sea but their neighbouring countries often have little interest in making the flow of goods across their borders easy for them. In fact, their neighbouring countries may additionally have economic or military incentives to block their access to the sea or transit through their territory.

Furthermore, coordinating infrastructure in one country is already a huge task: doing it across borders is even more difficult. No wonder then that high transport costs caused by whatever infrastructure deficiencies, delays, fees or procedures are encountered in the transit country making the land leg of the shipping of goods to LLCs very costly and obliging the land-locked country to maintain high levels of inventory. For most LLCs, high transport costs remain the single most important obstacle to their equitable access to global markets and competition with other countries.³¹³

The land-locked situation and mountain terrains have made the transportation of goods highly expensive and burdensome in our country. Our nearest port, which is not even a part of the main sea lanes of the world, is over a thousand kilometers away from our border. Our focus has been to further improve and upgrade transit facilities and infrastructures through an integrated approach to ensure a smooth and efficient transit transport system to facilitate trade.

Modern economic progress requires rapid, reliable, and cost-effective international trade. Freedom of transit is thus vital for LLS that are working to progress toward trade diversification and economic development but are obstructed by distance to the sea and resultant high cost of transportation.³¹⁴

³¹³ The Global Facilitation and partnership for Transportation and Trade, <https://gfptt.org>, Accessed on September 27, 2017.

³¹⁴ Kishor Upreti, *From Barcelona to Montego Bay and Thereafter: A Search for Land-locked State's Right to Trade through Access to the Sea-A Retrospective Review*, Singapore Journal of International and Comparative Law (2003), 201.

Challenges of political relations

The development of the law of the sea has managed rights of LLSs. Recognized the access to and from the sea as a right of access but the right of access is to be exercised as a freedom of transit. Being a land-locked Nepal has to use the land of India to access and from the sea. In 1989 India, Nepal's sole transit neighbor, blockaded the border between the two countries in an action cited as a major cause of trade and political issues.

In 2015, the widely vaunted unofficial blockade against Nepal has created a humanitarian and medical crisis, this embargo indicated to the bordering disturbances because of open border status between two countries. Terai people are in movement bordering area with India since the promulgation of new constitution in 2015. They have the claim that new constitution has discriminated on the issues of province demarcation or electoral and inclusive rights of Madesh people. This blockade created humanitarian crisis and medical problem in Nepal as it has fully relied for the energy to India. As the issue of blockade has been discussed in the parliament of India, it is no longer the issues of unofficial blockade rather a matter of official blockade. However, India has raised the issue that it will be solved since the bordering people have stopped their movement and protest in those areas.³¹⁵ “The ongoing protests led to an effective blockade of trade and transit. By November 2015, fuel and medical supplies were in shortage. The Nepali government accused the Indian government of imposing an economic sanction on Nepal, which India denied. Some supplies came in through China, but not in sufficient quantities to meet nationwide demand.”³¹⁶

While the principle of transit right for LLS has been broadly accepted in the world community, there is still a question of the sovereignty and territorial integrity of transit states as commonly raised by transit state. It has been the most challenges issue on the application of the rights of LLS. The question of sovereignty needs discussion in the concept of international law. A state cannot escape from subjection to international law. International law is the necessary concomitant of statehood. Most of the international law experts are of opinion that International law is in fact, binding on states.

Challenges of trade and transit

³¹⁵ Suman Acharya, Rights of Nepal as Land-locked Country in Reference to the Transit Relation with India and China (December 24, 2015), SSRN: <https://ssrn.com/abstract=2707947>, Accessed on September 27, 2017.

³¹⁶ World Report 2016, <https://www.hrw.org/world-report/2016>, Accessed on September 27, 2017.

The geographical proximity, Nepal has not been able to reap benefits from the rising economic clout of China and India. Both of these countries provide duty free market access to the Nepalese goods either under the bilateral trade agreements or under the unilateral tariff preferences schemes. The bordering province of Tibet Autonomous Region of China is still a small market in terms of the number of population. Mainland China is located far away and transport connectivity is the inhibiting factor for the growth of bilateral trade and investment relations. Meanwhile, highly populated states of India like Uttar Pradesh, Bihar and West Bengal are bordering Nepal, but the export trade is restricted due to a high non-tariff wall, lack of proper connectivity and regulatory barriers. Some important issues on bilateral trade and investment relations are as follows:

Losing existing trade agreements

The Trade and Payment Agreement concluded between Nepal and People's Republic of China in 1981 has become obsolete as this Agreement is framed on most favored nation (MFN) clause and also provides a list of few tradable items between the two countries. This is not relevant any more since both countries are members of the World Trade Organization (WTO) and are bound to provide MFN treatment on a reciprocal basis. The Memorandum signed on 2010 and 2014 on availing duty free tariff preferences to Nepalese products is basically the extension of unilateral preferences extended by China to all least developed countries in line with the announcement made in Hong Kong Ministerial Conference in 2005.³¹⁷ This arrangement provides no special dispensation for Nepal beyond the similar preferences extended to all least developed countries.

Similarly, the Preferential Trade Agreement with India provides duty free access to all Nepalese goods in the Indian markets, except a very small negative list. The preferences available under the Agreement are being eroded as the government of India has also announced duty free tariff preferences to all LDC around the world with some products in the negative list. Preferences available to south Asian LDC are more attractive in comparison with the provisions laid in the Nepal-India bilateral Agreement. No substantial provisions are made in the Agreement for addressing non-tariff and para-tariff barriers and trade facilitation issues.

³¹⁷ Dr. Adhikari (edit.), Relations with India and China, 11.

The preferences available under the bilateral agreement or unilateral preferences are thus insufficient to address the growing challenges of export development in the wake of globalization and liberalization of trade and investment regimes.

Issues of choice of transit route

Nepal we know this only two options for transit. The two options are on the north through China and on the south through India. The transit route to the sea-coast of India is far shorter than the route through China. The third option as explored over a few years is through Bangladesh. Bangladesh is not bordered by Nepal. In order to utilize the route through Bangladesh the government of India agreed to provide necessary overland transit facilities through Radhikapur. Without the help of India Nepal cannot use this route effectively.

Issue of transport and border infrastructure

Many production areas in Nepal are scattered in small townships and hamlets, and still deprived of connection with the national road network. In fiscal year 2016-17, Nepal has a total road network reached to 29,157 Km with the construction of additional 849 Km road in the first eight months. Of this, the share of black topped road is 42.2 percent. Likewise, the length of local level roads reached 57,632 Km with the additional construction of 4,332 Km roads in this category. Of this road network, the share of earthen road stood at 74.2 percent.³¹⁸ The road density is around 5.57 km per square kilometer, less even from the standards of South Asia.³¹⁹ The rural roads constructed by the District Development Committee and Village Development Committees (53143 km) outnumber the length of strategic road networks under the Department of Roads but those rural roads are mostly unserviceable round the year due to lack of maintenance. Lack of connectivity has discouraged production due to constraint in supplying inputs and providing market access to the agricultural, non-timber forest products and the SME products. The development of border infrastructure is limited to four major border posts namely Kakarbhitta, Biratnagar, Birgunj and Bhairahawa, in the southern border. Two border posts in the northern border at Tatopani and Rasuwagarhi are in disarray due to the heavy damages caused by the

³¹⁸ Government of Nepal, Ministry of Finance, Economic Survey, Fiscal Year 2016/17, <http://www.mof.gov.np>, Accessed on September 29, 2017.

³¹⁹ Government of Nepal, Ministry of Finance, Economic Survey, Fiscal Year 2015/16, <http://www.mof.gov.np>, Accessed on September 21, 2017.

earthquake of April and May 2015.³²⁰ Some other strategic border posts still lack proper physical facilities for operation. Congested spaces, lack of warehouses and parking facilities for containers and vehicles, insecure operation and choking traffic has caused delays, inefficiencies and high turnaround time for the vehicles and containers, increasing the cost of operation.

The rail transport, road transport, ports, inland waterways, pipelines, air transport and communication has an important role to play in the transit transport corridors system linking seaports with Nepal. Rail transport, especially over long distances, is associated with an operating cost advantage and shorter border-crossing waiting time than road transport. Railways, as well as waterways, could serve Nepal exports of low-value bulk commodities particularly well. However, railway infrastructure and services are not operated in Nepal. Road transport is an increasingly important mode of transport for the imports and exports of Nepal. The river corridor suffers from outdated and insufficient infrastructure, inadequate channel markings and numerous non-physical barriers to movement.³²¹ However, inland waterways infrastructure and services are not operated in Nepal. Pipelines provide a cost-effective means of transport for both oil and natural gas.³²² The planning and construction of pipelines require close cooperation between Nepal and India. However, pipelines services are not operated in Nepal and India. Air transport offers Nepal a means of avoiding the transit problems associated with overland and overseas freight movements. Only very high-value-added and low-bulk commodities can support the costs of air freight rates. The remoteness of Nepal from seaports and overseas markets is compounded by inadequate communication links with various ports and commercial centers. This continues to be a major handicap inhibiting the rapid movement of transit cargo.³²³

Non-tariff barriers taking away the benefits of tariff preferences

Non-tariff barriers are the major causes behind the low performances of Nepalese trade. Lack of test laboratories at the land customs stations, non-accreditation of the Nepalese laboratories, prevalence of state taxes and various surcharges in export items are debilitating the export trade of Nepal. A burning example at the current stage is the imposition of transit fee by the

³²⁰ Dr. Adhikari (edit.), Relations with India and China,13.

³²¹ UN Office of the High Representative for the Least Developed Countries, Land-locked Developing Countries and Small Island Developing States (UN-OHRLS), Land-locked Developing Countries, things to Know, Things to Do (2013), www.org/unohrlls, Accessed on September 26, 2017.

³²² Ibid.

³²³ Ibid.

Government of Uttar Pradesh on medicinal and aromatic plant products from Nepal while crossing their borders.³²⁴ Besides, the applications of additional countervailing duties over and above the normal Countervailing Duties (CVD) are also deterring the export of readymade garments from Nepal. Similarly the application of Additional Duty of Customs (ADC) on some products including the ready-made garments is still unresolved.

Cost of transport and logistics is high

Nepal is facing high transit transportation and logistics cost. The current system of transit movement through the port of Kolkata is heavy and burdensome as emerging concept on transit transportation and technologies provide for secure, fast and reliable transit services. Enormity of documents and complex procedures followed in clearance of cargo at the seaport and hassles in transit movement combined with the inadequacy of physical infrastructures poses greater challenges in reducing the overall transaction cost.³²⁵ The use of Visakhapatnam port, Singhabad-Rohanpur corridor, and simplification of the procedures for rail movement (pending review and revision of rail services agreement) and simplified operation of Kakarbhitta-Phulbari corridor are important in facilitating transit traffic, but yet no serious attention has been given by the Government of Nepal and India.³²⁶ Nepal ranks 108 out of 189 countries in the Doing Business Report of the World Bank-2015³²⁷ which is one position higher from the overall ranking in 2014.

Physical infrastructures in the northern border crossings are in a very primitive stage and needs enhancement. Narrow roads over the fragile slopes frequently damages the road and bridges almost every year during the monsoon season. Lack of modern facilities equipped with the warehouses, parking space and equipment's in handling the traded cargo is making the task of trade and logistics expensive and ineffective.

Issues related to railways

Rail appears to be the dominant mode for transit exports from Nepal, while transportation by road is the dominant mode for transit imports, accounting for 63 percent and 60 percent shares in

³²⁴ Dr. Adhikari (edit.), Relations with India and China, 11-12-.

³²⁵ Ibid, 14.

³²⁶ Ibid.

³²⁷ The World Bank, Annual Report, 2015, <http://www.worldbank.org>, Accessed on October 2, 2017.

total containerized transit exports and imports respectively.³²⁸ Even though the share of rail in total containerized transit imports has fallen over the years, the tonnage carried by rail has rather been rising.

Two different Indian agencies are involved in the movement of transit goods by rail between Kolkata and Birgunj. The Container Corporation of India Limited (CONCOR), a Government undertaking, is responsible for operating container trains between Kolkata and Birgunj, while the Indian Railways are responsible to manage the trains, arrange for availability of locomotives, wagons, rakes and rolling stock, and on deciding the freight rate.³²⁹ Even in Indian Railways, three zonal railways i.e Eastern Railway (ER), East Central Railway (ECR) and South Eastern Railway (SER) are involved when it comes to managing rail services with Nepal.

Consultations revealed that there are three major reasons for delay rail transport. First, there are unscheduled restrictions imposed by Indian railways to manage congestion on railway lines. Second, there is no fixed schedule for movement of trains. Third, sometimes there is a delay of 2 to 3 days in order to meet the requirement of completing a rake containing 92 wagons before it can be moved.³³⁰

Issues of harmonization of customs and border agency cooperation

It has been a much debated issue at the bilateral, regional and multi-lateral forums and also reflected in the WTO trade facilitation agreement. The bilateral mechanisms between Nepal and India at the commerce secretary level and customs Director General (DG) level have discussed this issue at length in the past. Limited progress is achieved in terms of harmonization of working hour and work days between cross-border customs and the documents, work processes and regulatory mechanisms still stands in different settings.³³¹ Moreover, the introduction of electronic lodging of the documents for speedy clearances of cargo and reliability of data is still under discussion, reeling under slow process. Mutual recognition of inspection, test and certification of the traded products could eliminate the need of repeating the same test across the borders. Border agency collaboration is not well defined in the bilateral Trade Agreement and the mechanisms built in the Nepal-India Treaty of trade also does not function effectively.

³²⁸ Taneja, Bimal and Dayal, “ Transit through India” 15.

³²⁹ Ibid, 16.

³³⁰ Ibid.

³³¹ Dr. Adhikari (edit.), Relations with India and China, 15.

Erosion of preferences disproportionately affected the Nepalese exports

Nepal has been enjoying duty free market access in India for all products, except a small negative list. Nepalese export to India substantially increased during 1996 to 2002 which is mainly attributed to the arrangement made through amendment in Protocol V to the Treaty of Trade in 1996. The first decade of the current century witnessed a paradigm shift in the pattern of global trade triggered by the removal of tariff barriers by various countries. The preferences available to Nepal under the bilateral treaty have been eroded, primarily due to reduction in MFN tariffs. Secondly, preferential market access provided to other free trade area partners and third on account of India's Duty Free Tariff Preferences (DFTP) schemes for least developed countries (LDCs) that came into effect in August 2008.³³² The scheme with its full operation since April 1, 2014, allows duty-free market access on about 96 percent of India's tariff lines and 2.2 percent of the lines under preferential duties. Only 1.8 percent of the tariff lines have been retained in the Exclusion List, with no duty concession.³³³

India has extended tariff advantages to South Asian LDCs well ahead of trade liberalization program under South Asian Free Trade Area (SAFTA) Agreement. Accordingly, all the South Asian LDCs are entitled to get duty free access to Indian markets except the alcohol and tobacco products. This has necessarily dragged Nepal in competition with the rest of South Asian LDCs in the Indian markets and also diluted the preferences available under the bilateral treaties.³³⁴ Given the low level of competitive capacity, Nepalese exporters are disproportionately affected from erosion of available preferences.

Issues of transit with and through Bangladesh

A host of transit problems stymies cargo movement for Nepal's trade with and through Bangladesh:³³⁵

- Cargo movement is allowed only at specified times in daylight hours in weekdays.
- Trucks carrying cargo-in-transit must move in convoys of a maximum of 20-25 trucks.
- Security escort is mandatory and provided only when there is a convoy of 25 trucks.

³³² Ibid.

³³³ World Trade Organization, Trade Policy Review of India-2015, https://www.wto.org/english/tratop_e/tpr_e/tp413_e.htm, Accessed on November 30, 2017.

³³⁴ Dr. Adhikari (edit.), Relations with India and China,16.

³³⁵ Taneja, Bimal and Dayal, " Transit through India" 18.

- Poor implementation of a one-time lock system is combined with the poor state of infrastructure on the Indian side of the border.
- Indian insurance companies enjoy monopoly power, goods have to be trans-shipped at the Bangladesh-India border, and there is no provision of through bill of lading (TBLs) by shipping lines.
- The involvement of Indian customs is an additional burden.

The major problem with the Agreement is that there is no provision for guarantees. All problems emanate from the lack of a system that would ensure the safety, and security of goods and payments of duties.

Issues of institutional mechanisms

The Nepal-India Treaty of Trade has constituted the bilateral consultation mechanisms at the level of the Secretary of Commerce and a Joint Secretary, called the Inter-Governmental Committee (IGC) and Inter-Governmental Sub-Committee (IGSC) that are supposed to meet at least once in a six month period. The meeting of IGC and IGSC is already overdue by one and half year.³³⁶ Given the number of issues cropping up for various goods and processes, it is very important to maintain the regularity of the meetings to get the problems addressed before it is too late. The institutional arrangements made under the bilateral Treaty of Trade are not functioning very much effectively. Some crucial issues like the CVD on readymade garments, requirement of country of origin for transited goods and review of the Rail Services Agreement could be settled without much chorus of wrangling if the consultations were held as frequently as provisioned in the Bilateral Agreement.

The current coordination mechanism is mostly limited to central level and no effective sub-national level mechanism has been construed to discuss the trade and economic cooperation issues.³³⁷

Nepal and China concluded an agreement in September 2009 that established the Nepal-Tibet Trade Facilitation Committee (NTTFC). This Committee was mandated to coordinate and

³³⁶ Dr. Adhikari (edit.), Relations with India and China, 16.

³³⁷ Ibid.

facilitate cross-border overland trade between Nepal and Tibet, China.³³⁸ But, this coordination body has not yet been able to make any tangible accomplishment, following its terms of reference stated in the agreement.

Issues of insurance policy

The goods shall be covered by an insurance policy. There is an alternative way also. According to the insurance policy scheme the goods to be imported to and from Nepal shall be covered by an insurance policy for an amount equal to the Indian customs duty on such goods. The policy shall be assigned to the Collector of Customs, Calcutta. Thus the importer or exporter of a LLS is compelled to take an insurance policy to be assigned to the collector of customs. This system looks odd and on the other side it helps the unnecessary costs of goods in Nepal.³³⁹

Section B : Solutions and learning lessons for land-locked Nepal

This section is dedicated to the solutions and learning lessons for land-locked Nepal. In paragraph one: solutions of best practices in other countries like Switzerland and Hungary. European countries, Switzerland and Hungary are best practices of LLCs in the world. Paragraph two: learning lessons for land-locked Nepal.

Paragraph 1 : Solutions of best practices in others countries

Learning lessons from Switzerland

Introduction

Switzerland is definitely the most successful land-locked country in the world and, as the success of the Swiss economy and especially of the Swiss export industry indicates, a country that is neither suffering from nor affected by its land-locked status.³⁴⁰ The ingredients for such a success story are particularly “Swiss” and not readily transposed into other areas or other countries of the world. However, they are worth a closer look as they can certainly provide ideas of use to other LLCs. Indeed, the geographical location of Switzerland is rather seen as a positive challenge and an incentive for creative solutions both in transport, economic and trade policies. It should also be noted that Switzerland, an alpine state, is not only land-locked but also one of the

³³⁸ Ibid.

³³⁹ Pradhan, Land-locked Country and Nepal, 189.

³⁴⁰ The Global Facilitation Partnership for Transportation and Trade (GFP), <https://gfptt.org>, Accessed on October 6, 2017.

most important transit countries in Europe.

Switzerland – The economic and trade answer to being land-locked

Switzerland is one of the world's leading export countries with very high export quotas, reaching up to 95% in the watch-making industry, 85% in chemicals and pharmaceuticals and 76% in engineering and vehicle manufacturing.³⁴¹ In 2015, Switzerland was the EU's 3rd largest trading partner after the US and China. The EU accounts for around 55 % of Switzerland's exports in goods and for 75 % of its imports. Switzerland accounts for more than 8 % of the EU's exports and 6 % of its imports.³⁴² Switzerland was the United States' 14th largest goods export market and 15th largest supplier of goods imports in 2013.³⁴³

Today, Switzerland is not only a leading supplier of watches, chocolate and cheese but also of machinery, elevators, escalators, high tech, pharmaceutical and biotech products and packaging equipment (with, today, many of the components produced abroad). These exported goods, and also services, have in common that they are high value and high value-added. Therefore, transport costs matter much less for both required imports and subsequent exports. Switzerland has thus managed to develop economic sectors that perform very well despite land-lockedness.

Trading in the middle of Europe

Industrial and trade developments, however, do not explain all. Switzerland has a very stable political climate and, although being land-locked, Switzerland is in the middle of Europe and in the middle of its most important trading partners, the member states of the EU. Major trading customers and suppliers are today Germany, the US, Japan and China. Switzerland is a member of the European Free Trade Association (EFTA) and enjoys preferential trade arrangements with the EU, including the elimination of important customs duties and the integration into common customs procedures, which also aim at facilitating transit procedures. Since 1987, Switzerland is a party to the (EU) Convention on Common Transit, which was amended in 2001 to include the increased use of the New Computerized Transit System (NCTS) already launched in Switzerland on a trial basis in 2000. The important volume of trade between Switzerland and the EU made

³⁴¹ Osec, Business Network Switzerland: Swiss Foreign Trade 2001/2002.

³⁴² European Union, External Action, Brussels, Belgium, https://eeas.europa.eu/headquarters/headquarters-homepage_en/7700/Switzerland%20and%20the%20EU, Accessed on October 6, 2017.

³⁴³ Office of the United States trade Representative, Executive Office of the President, <https://ustr.gov/countries-regions/europe-middle-east/europe/switzerland>, Accessed on October 6, 2017.

the conclusion of preferential trade, customs and transit agreements possible.³⁴⁴ The bilateral treaties between Switzerland and the EU are a further indication of this. Switzerland is linked to its major markets by an excellent infrastructure and to the sea via railways, roads and an excellent navigable waterway. These means are used for both transport from Switzerland to abroad, especially to seaports, and transit through Switzerland.³⁴⁵ The Swiss-EU bilateral agreements show that compromises between sovereignty and economic integration are possible.³⁴⁶

The right of LLCs to a commercial maritime fleet is codified in the 1921 League of Nations Declaration recognising the Right to a Flag of States having no sea-coast and was later taken up by the 1958 UN Convention on the High Seas and the subsequent 1982 UN Convention on the Law of the Sea.³⁴⁷ Considered a necessity during the two World Wars, the merchant fleet was maintained to give Swiss transport companies possibilities for expansion. The merchant fleet, initially government property, has been sold to private investors and shipping companies, and continues to operate successfully.

The Rhine- Switzerland natural access to sea

Switzerland is located on Europe's most important inland waterway, the Rhine. In 1815, the final act of the Congress of Vienna established the principle of the freedom of navigation on international waterways and gave birth to the Central Commission for Navigation on the Rhine. In 1868, the Convention of Mannheim updated the main rules that had governed the Rhine navigation since 1831 and included the latest technical, economic and political developments. In 1963, the Mannheim Convention³⁴⁸ was again amended to become the Revised Convention for Rhine Navigation. The main principles contained in the Mannheim Convention and never abrogated by subsequent amendments are freedom of navigation, equal treatment of all fleets, exemption from navigation duties, freedom of transit for all goods, obligation of the member

³⁴⁴ Switzerland and the European Union, Federal Department of Foreign Affairs FDFA, [https://www.eda.admin.ch/dam/eda/en/documents/publications/Europaeische Angelegenheiten/Schweiz-und-EU_en.pdf](https://www.eda.admin.ch/dam/eda/en/documents/publications/Europaeische_Angelegenheiten/Schweiz-und-EU_en.pdf), Accessed on October 6, 2017.

³⁴⁵ Ibid.

³⁴⁶ John Springford, *Brexiting Swiss-style: The best possible UK-EU trade deal*, Centre for European Reform, 2017, http://www.cer.eu/sites/default/files/pb_swiss_style_21april17.pdf, Accessed on October 6, 2017.

³⁴⁷ United Nations, Division of Ocean Affairs and Law of the Sea, <http://www.un.org/depts/los>, Accessed on October 6, 2017.

³⁴⁸ Revised Convention for Rhine Navigation of 17 October 1868 as set out in the text of 20 November 1963, <http://www.portofbasel.ch/en/news-wissenswertes/mannheimer-akte.php>, Accessed on October 6, 2017.

states to maintain the waterways, uniform safety regulations for vessels and navigation, uniform jurisdiction in navigation affairs and navigation courts for the Rhine and the establishment of the Central Commission for Navigation on the Rhine.³⁴⁹ The Central Commission³⁵⁰ (member states: Switzerland, Germany, France, Belgium and the Netherlands) is among the oldest still existing governmental organisations and continues to ensure the freedom of navigation on the Rhine and to maintain a uniform legal regime which governs the full length of the river.

Switzerland - A land-locked transit country

Geography has not only made Switzerland a LLC but also a major alpine transit country. Indeed, there are not many possibilities for freight forwarders to cross the Alps in the North/South and vice-versa direction. Switzerland together with France, Italy and Austria has, therefore, a very particular role as a transit country and its negotiating powers with regard to transit permits and truck weight is rather broad. The Gotthard railway tunnel, which opened in the late 19th century, marked Switzerland's beginning as a transit country. Throughout the last century infrastructure was improved and transit agreements³⁵¹ concluded such as the 1992 Transit Agreement with the then European Economic Communities in which Switzerland committed to construct high-capacity axes for rail-goods traffic. The EEC accepted the 28 ton limit for transiting trucks. In 1998, within the framework of the EU-Switzerland bilateral treaties,³⁵² a transit agreement was signed. For the EU, Switzerland has a strategic position with regard to alpine traffic and the alleviation of traffic in the EU member states of Austria and Italy.

In Summary

The example of Switzerland leads to an important conclusion: being land-locked does not have to be considered a problem and does not necessarily have to be treated as such. Switzerland found solutions to transport bottlenecks by giving more attention to transport policy and transport alternatives. The country decreased the impact of possible high transport costs, which

³⁴⁹ Ibid.

³⁵⁰ Central Commission for Navigation on the Rhine (CCNR), Palais du Rhin, <http://www.ccr-zkr.org>, Accessed on October 6, 2017.

³⁵¹ European Parliament, Directorial General for International Policies, Policy Department A : Economic and Scientific Policy, International Market and Consumer Protection, Internal Market beyond the EU: EEA and Switzerland, [http://www.europarl.europa.eu/RegData/etudes/note/join/2010/429993/IPOL-IMCO_NT\(2010\)429993_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2010/429993/IPOL-IMCO_NT(2010)429993_EN.pdf), Accessed on October 6, 2017.

³⁵² Bilateral agreements Switzerland–EU, 2009, Integration Office FDFA/FDEA, http://www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/2203_07/2203_07en.pdf, Accessed on October 6, 2017.

are often associated with being land-locked, by an industrial and trade policy that favours the export of high value and high value-added products as well as services. Switzerland sought alternatives and answers within the regional context, but without actually joining the pre-dominant regional grouping. And very importantly, transport routes were traced and transport agreements were concluded according to economic and not political considerations.

Learning lessons from Hungary

Introduction

Hungary, a land-locked country, is located in the middle of rich markets and close to the country's primary and most important trading partners. A land-locked country, Hungary is home to Lake Balaton, the largest in central Europe, and to a large number of spa towns and hot springs.³⁵³ Hungary is certainly one of the best examples for why being land-locked is neither a real obstacle to the transition process nor to trade expansion or economic well-being. The keys to overcoming its land-locked status are both given, i.e. geographical proximity to western Europe, its location astride main land routes between western Europe and the Balkans as well as Ukraine and the Mediterranean basin, the absence of topographical barriers, navigable waterways i.e. the Danube and the Tisza rivers, and negotiated i.e. trade agreements or bilateral and multilateral transit conventions.³⁵⁴

Access to the sea – rail and road

Hungary can access the sea via inland waterways, rail and road, with roads being the most important, followed somewhat closely by rail and inland waterway traffic being by far the least important.³⁵⁵ The railway network covers the whole country and is an integral part of the international railway network, thus providing easy access by international express trains from the neighbouring and numerous other European countries. Several scheduled block train lines connect Hungary with the sea ports of Hamburg (D), Bremen (D) and Rotterdam (NL) on the North Sea, with Koper (SI) and Trieste (I) on the Adriatic and soon with Constantza (RO) on the

³⁵³ Country Profile BBC News, <http://www.bbc.com/news/world-europe-17380792>, Accessed on October 6, 2017.

³⁵⁴ The Global Facilitation Partnership for Transportation and Trade (GFP), <https://gfptt.org>, Accessed on October 6, 2017.

³⁵⁵ Commission of the European Communities, *Energy and Transport in Figures: Goods Transport, other European Countries, Performance by Mode in 1998*, Brussels, 2001.

Black-Sea.³⁵⁶ Hungary is land-locked but has access to the Black Sea and the North Sea via the river Danube. The opening of the Danube-Rhine-Main channel in 1992 made possible the performance of export-import traffic with the countries along the Rhine and the maritime ports in the North, too.³⁵⁷

The development of new roads and continued efforts to maintain the already existing road system within Hungary will further strengthen its access to sea outlets. The legislative framework which regulates Hungary's transit and access to the sea are codified in bilateral inter-governmental agreements which often also regulate road freight quotas through a system of permits. A particular and inherent failure of such a system is, of course, the possible and actually often quite real shortage of permits and, therefore, a limitation in transit traffic through certain countries. Therefore, in July 2000, Hungary and the EU signed the bilateral Road Goods Transit Agreement³⁵⁸ which aims at facilitating transit across the territory of the contracting parties, particularly through the mutual exchange of road transit authorisations. These authorisations are in addition to those already exchanged within the framework of bilateral agreements between EU Member States and Hungary.

In addition, Hungary is also a party to several multilateral agreements including the TIR Convention.³⁵⁹ Customs transit procedures are regulated by the (EU) Convention on Common Transit of 1987 (amended in July 2001) to which Hungary is a party and which is broadly in line with the provisions of (EU) Community Transit. It has similar rules, the same documentation and procedures and similar guarantee arrangements. Hungary also has bilateral agreements on transit and related subjects with other countries, including those that are important for the country's access to the sea. Customs cooperation is also included in the Free Trade Agreements concluded within the framework of CEFTA (Bulgaria, Czech Republic, Poland, Romania, Slovakia and Slovenia), as well as with Croatia and others.

³⁵⁶ Hungarian Chamber of Commerce and Industry, <http://www.mkik.hu/en/magyar-kereskedelmi-es-iparkamara/infrastructure-and-transport-2631>, Accessed on October 6, 2017.

³⁵⁷ Ibid.

³⁵⁸ 2000 Regular Report, From the Commission on Hungary, 8 November 2000, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/2000/hu_en.pdf, Accessed on October 6, 2017.

³⁵⁹ Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-A-16&chapter=11&clang=_en, Accessed on October 6, 2017.

Transit

Hungary is also an important transit country; four of the ten Transeuropean Network corridors run through Hungary and this gives the country a significant role in Europe as well as sub-regional integration. Though, the excessive use made of roads for the transport of goods and the shortcomings in the rail system have seen a sharp increase in congestion on main arteries and border crossings. It is in the common interest of the transit and the transiting country that there be a good infrastructure and an equilibrium between traffic volume, traffic mode and environmental harm.

The Danube – Hungary’s natural connection to the sea

Since 1992, Hungary has been connected to both the Black Sea and the North Sea. It was then that the 170 km connection between the Rhine and Danube rivers, the Rhine-Main-Danube Canal, was inaugurated and established a navigable waterway of 3,500 km across Europe. The Danube had always been a very important link for Hungary’s access to world markets and trade. The Paris Peace Treaty of 1856, which ended the Crimean War, recognized the principle of free navigation on the Danube River. The Paris Convention of 1921 regulated navigation on the Danube from Ulm to the Danube’s mouth and established an International Commission (with, today, 11 member states³⁶⁰) with authority over the Danube from Ulm to Breila. Since 1948, the Belgrade Convention³⁶¹ on the Navigation of the Danube is in force. In its articles 1 and 25 the Belgrade Convention states that the “Danube is free and open for the nationals, merchant vessels and goods of all states, on a footing of equality in regard to port and navigation dues and conditions for merchant shipping except for traffic between ports of one and the same riparian State.”³⁶² The Convention also defines, in detail, maintenance commitments and the development of navigational channels as well as the defraying of relevant costs.³⁶³

Apart from this multilateral Convention, Hungary has also signed two bilateral agreements, one with Germany (1989) and the other with the Netherlands (1991) just prior to the opening of the

³⁶⁰ The members of the Danube Commission include 11 countries (Bulgaria, Germany, Yugoslavia, Croatia, Moldova, Austria, Romania, Russian Federation, Slovakia, Ukraine and Hungary). Decisions of the Commission are only recommendations and not legally binding for the member states.

³⁶¹ Convention Regarding Regime of Navigation on the Danube, 1948, <http://www.danubecommission.org/uploads/doc/convention-en.pdf>, Accessed on October 6,2017.

³⁶² Ibid

³⁶³ Ibid.

Rhine-Main-Danube canal in 1992.³⁶⁴ They cover the reciprocal use of inland waterways by vessels for the carriage of goods and passengers and for transit and the equal participation of these countries in their respective bilateral trade. Ships of these countries are guaranteed the same treatment while on the territory of the other contracting party.

The sea ports –access to the sea

In the light of increased overseas container traffic and a possible future eastward expansion of the EU, there are once again arguments for developing the Budapest-Constanza (Romania) waterway to the Black Sea. The new free port of Constanza is being developed and at one point it might be possible to link Port Said at the Suez Canal with Constanza and Budapest (with ocean and then river vessels). Another competitive link would be the Port Said- Gioia Tauro (Italy) - Koper (Slovenia)-Budapest route with ocean vessels, feeder ships and trains.

In summary

In summary, being land-locked matters only little to Hungary. In fact, Hungary attempts to take advantage of this given situation by emphasizing service sector development and exploiting the advantages of its role as a transit country. Hungary managed to lure away high-tech investment from Ireland, so far considered as one of the best manufacturing sites in Europe. This is all the more interesting, as one of the reasons for these moves was also Ireland's geographical situation that requires over water shipments to get to the EU.³⁶⁵ Hungary's land-locked location, together with its borders with seven countries and connections to the emerging economies eastwards was exactly what attracted investors.

Paragraph 2 : Learning lessons for land-locked Nepal

The above two countries case studies, in the following, some of the main points that we identified in this paragraph summarized.

Legal action

There is a need to enact necessary concession laws to permit the participation of the private sector or to overhaul transport laws to harmonize them, whenever possible, with regional or international practice. Privatization, liberalization and deregulation should be fostered to establish more competition, improve efficiency and reduce costs. It is very important to enlist the

³⁶⁴ The Global Facilitation Partnership for Transportation and Trade (GFP), <https://gfptt.org>, Accessed on October 6, 2017.

³⁶⁵ Ibid.

political will to address the issue of implementation of laws, agreements and institutional reform.

Trade and economic policies

Assuming that there is an interaction, or even dependence, between being land-locked and appropriate economic policy or reform, it is important for a LLC to re-examine its composition and direction of foreign trade, its main suppliers and customers. Economic and trade policies in LLCs should therefore only follow this direction if the basic conditions that actually exist. Being land-locked will then no longer be such a problem as land, sea and airports will become gateways at the origin and destination of real trade corridors.

Cost reduction

Many of the costs related to shipping, freight handling, transit or customs are the avoidable consequences of, for example, complicated and lengthy customs clearance procedures, poorly coordinated control services, high fees, too much red tape, inadequate capacities, poor infrastructure, and poor packaging or loading technologies. Governments, either alone or in coordination with their neighbours, can therefore take concrete steps to reduce the high transport cost burden for local companies. It would, for instance, be useful to revisit regulations and procedures of LLCs and, wherever possible, harmonize them with regional/international practice.

Infrastructure development

Infrastructure development remains a high priority for both land-locked and transit countries. To build new roads or railway lines, regular maintenance work, improving transport supply capacities, strengthening facility management systems including through information technology, in port or railway companies, and a coherent transport policy. Building real “trade corridors” to link land-locked countries with world markets. Governments should be prepared to include such concepts in their transportation policies.

Institutional framework and capacity building

Port administrations and government institutions need to be up-to-date with the latest developments. Therefore, institutional and staff capacity building is an important aspect in the improvement of a land-locked country’s state. Trade facilitation, in the broad sense, requires: institutional capacity building, training measures, awareness raising on technical and broader aspects and the strengthening of trade facilitation bodies and the participation of the business community on the national level.

Regional/subregional coordination

Bilateral and multilateral agreements between neighbouring countries are central to any reform and any improvement of LLCs situation. The cooperation between neighbouring countries is the most essential ingredient in this regard as it makes the coordination of cross-national issues possible. More regional support for such agreements including monitoring and regular review mechanisms, e.g. in the case of transit agreements, is an important aspect in this regard. Trans-border agreements should make borders less of an impediment to the movement of goods.

International organizations

The plight of LLCs is no longer hidden and many international agencies within and outside the United Nations system are today addressing the issue of LLCs. The United Nations General Assembly holds regular progress reviews and the lead agency, the United Nations Conference on Trade and Development (UNCTAD), has a specialized unit dealing with land-locked countries. Regional commissions (e.g. ECA, ESCWA, ESCAP, UNECE) too, are paying increased attention to transit, development, customs reform and trade facilitation in LLCs. Multilateral donor agencies including the World Bank and the EBRD are funding projects destined to improve the situation of land-locked countries.

Public-private cooperation and partnerships

Private companies can also play a substantial role in financing certain projects or in entering in to concession agreements which can help governments in LLCs in many ways. The input of the business sector is also fundamental in defining and implementing trade facilitation procedures.

CONCLUSION

1.1 In summaries

The right of free access to and from the sea for LLSs and the principles of freedom of transit are now a part of customary international law, binding on all states. Most of the LLSs are developing or least developing. They have not been able to take advantages of those rights provided by international law. The right of LLSs is based on the views of jurists, bilateral agreement and multilateral conventions, principles and precedents.

The Barcelona Convention and the Statute on Freedom of Transit (1921), Geneva Conventions on the Law of the Seas (1958), the New York Convention on Transit, Trade of Land-locked States (1965) and The UN Convention on Law of the Sea (1982) are important international conventions. The rights of LLS provided in the LOSC are: the right to freedom of High Sea, the right to access to sea and from the sea, the right to navigation, the right to equal treatment in the port, the right of innocent passage in the territorial sea, the right to exploitation of living resources in the exclusive economic zone, the exclusion of application of the most favored nation clause, the right to lay submarine cables and pipelines on the continental shelf, and the right to benefit from the exploitation international seabed area.

Right to access and from the seas or transit right is most important for LLS. LLS cannot enjoy the other rights without accessing the seas. But LLS by depends on bilateral agreement with coastal states for the access to and from the sea.

The New York Convention on Transit Trade of Land-locked States (1965) in its Article 15, has secured to LLSs the freedom of transit 'on a basis of reciprocity.' Article 125 (2) of the United Nations Convention on the Law of the Sea (1982) has mentioned "the terms and modalities for exercising freedom of transit shall be agreed between the LLS and transit States concerned through bilateral, sub regional or regional agreements." These provisions restricted the right of transit of LLSs. Article 125(3) of the LOSC has secured the "sovereignty right" and "legitimate interest" of transit rights. This provision can undermine the transit rights of LLSs. The European LLSs have fewer problems than the Asian and African LLSs of utilizing the right of access. Within Europe the land-locked and transit states have managed to devise a system of transit rights and other arrangements for the free flow of goods and people between the LLSs and the sea.

The United Nations Convention on the Law of the sea (1982) is very important from the point of view of Nepal as a land-locked country. This Convention is a part of customary international law. Nepal and India both are party of this Convention. India has an obligation to respect Nepal's transit rights. Nepal, India and China are members of WTO, this provision of WTO guides the transit treaty. As a member of WTO, Nepal has right to transit facilities. There are several multilateral resolutions, conventions and agreements to deal with the problem of LLCs. This issue has also been recognized by regional organizations like SAFTA, BIMSTEC etc. These resolutions and agreements emphasize the right of access to sea for LLCs.

Nepal and India have an old in cultural, geographical and economical makes relationship. Nepal had transit right through India since the British regime in the Friendship Treaty of 1923. Nepal and India signed a bilateral comprehensive treaty including trade and transit in 1950. The Trade and Transit Treaty was renewed in 1960 and in 1971. The Trade and Transit Treaty was bifurcated and a separate Transit Treaty was signed in 1978. The new Treaty recognized the transit right of Nepal. In 1989 the Transit Treaty of 1978 was unilaterally abrogated by India refusing to sign a separate Transit Treaty. However, in 1991 Nepal and India continued the Transit Treaty with major provisions of renewal. In 1999 the Transit Treaty was signed with the provision of automatic renewal after every seven years. The right to access to and from the sea has been established by new a transit treaty 2013. In reality, India too is entitled to assure transit facilities under the general principle of the freedom of transit. In principle India has not denied the transit rights of Nepal but in practice India has violate Nepal's rights of free access to and from the sea.

The Nepal and India Transit Treaty of 2013 does not accommodate different significant transit facilities that are guaranteed and available to Nepal by international law. The Treaty of Transit between Nepal and India is a cardinal document for the very basic right of Nepal to free access to and from the sea and also some others rights over the sea. As the Transit Treaty 2013 is a cardinal document for the very basic rights of Nepal, but does not provide the transit rights foreseen in the LOSC (1982). Any transit arrangement renewal or conclusion with India should need overall consideration of transit rights mentioned in the LOSC. A new transit treaty should contain those rights and facilities that are available to Nepal by LOSC and other international law instruments/sources. The LOSC 1982 a guideline principles for making any transit treaty between LLS and transit states in respect of the LOSC.

The transit route of China is impossible for Nepal to access the sea, because of the geographical structure and long distance. Nepal depends on India to access the sea. Nepal has a separate Transit Agreement with Bangladesh (1976) and thereafter a separate treaty of transit with India (1978). India has already recognized the freedom of transit in accordance with the Convention on Transit Trade of Land-locked States in 1965. But India has neither ratified nor signed the procedures as described in the Protocol and the Memorandum to this treaty. The problems which were to be solved by the Treaty of Transit are still there. These problems have affected the economy of LLDC, sometimes threatening the peace of development and even to challenges the very existence of Nepal in the 21st century.

The dependency, Nepal on transit state's infrastructure, political relations, peace stability and administrative practices have been a challenge for LLSs. Nepal faces many problems with this transit, such as high transport costs and long waiting time, high custom tax charges, procedural problems an long procedures, high demurrage charge, no electronic data interchange, lack of clear policy, lack of transit policy that furthers competitiveness, lack of infrastructure, lack of coordination, lack of alternate transit routes, institutional weakness, administrative weaknesses etc. Nepal need an alternative port and additional routes and should enhance its negotiating capacity, to secure its transit rights. Nepal should participate actively in the LLDC forum and use multilateral and regional forums to impose its transit facilities. Transit problem of the LLCs are perpetual problem and this perpetual problem must be solved on the basic of equity, justice and good faith.

The UN convened an Almaty Programme of Action (2003), which deals with infrastructure development and maintenance, transit policy issues, and trade facilitation measures for LLDCs. The Vienna Programme of Action for Land-locked Developing Countries (2014), which deals with fundamental transit policy issues, infrastructure development and maintenance, international trade and trade facilitation, regional integration and cooperation, structural economic transformation, means of implementation for LLDCs.

Bilateral, regional, sub regional and multi-lateral mechanism have been adopted for ensuring the rights of LLS, but challenges and difficulties remain. Kakarvitta-Fulbari-Bangabandhu is the alternative short transit route for Nepal. Bilateral negotiation have been conducted for the additional transit route of Bishakhapattanam in India and Mongolaport conducted in Bangladesh. But this is not sufficient for expanding access to international markets. There is an urgent need to better develop transport system between the two countries and to construct a dry port in Nepal in

order to enhance the bilateral trade between Nepal and China. Nepal is regarded as transit point between China and India as well as among all South Asian countries.

1.2 Recommendations

In the following, some of the main points that I have identified in this research are summarized. This brief list of recommendations is by no means exhaustive, but it is intended to provide incentives for further discussion and, hopefully, for action.

Reforms of the fundamental transit policy issues

- Implement international and regional conventions and bilateral agreements on transit transport and trade facilitation.
- Enhance coordination and cooperation between and among national agencies responsible for border and customs controls.
- Create bilateral or regional mechanisms to address bottlenecks in the implementation of bilateral, regional and/or multilateral agreements.
- Nepal and India and Nepal and China should promote simplification, transparency and harmonization of legal and administrative regulations and requirements related to transit systems.
- Enhance Public-Private Partnerships (PPP) and encourage the private sector to participate in knowledge sharing and implementation of transit cooperation initiatives.
- Collaborate and share trade and transport related data.
- Formulate national transit policies and mechanisms for the participation of all stakeholders.

Reforms of the infrastructure development and maintenance

A. Rail transport

- Nepal-India and Nepal-China should expand the railway network.
- Establishment inter-railway agreements.
- Nepal and India have a dedicated railway line for transit cargo so that there are no unnecessary delays.
- Nepal and India should adopt five cross-border railway link (a) New Jalpaigudi (NJP)-Kakarbhitta, (b) Jogbani-Biratnagar (c) Jaya Nagar-Bardibas (d) Nautanawa-Bhaiahawa and (e) Nepalgunj Road-Nepalgunj to create better transport linkages for cross border flow of goods and people.
- Nepal and China railway network connects Xigatse, the second largest city in Tibet, south-west from Lhasa. Government of Nepal should seek support from the government

of China to connect this railway network to the northern border of Nepal which would help to enhance physical connectivity between the two countries.

B. Road transport

- Nepal- India and Nepal-China ensure expansion of roads.
- Nepal- India and Nepal-China improve the maintenance of existing roads.
- Cross border movement of Nepalese transport vehicles into India involves complex procedures and formalities. Improving transport operation along the transit corridors combined with upgrading of port and border infrastructure is essential to promote bilateral as well as overseas trade with Nepal.
- Ensure implementation of international conventions related to road transport along with transit developing countries.

C. Ports

- Nepal and India should improve their port facilities and services for transit goods, including the modernization of existing terminals and the establishment of new ones.
- Nepal and India should improve the quality of handling and storage facilities for transit cargo.
- Enhance cooperation and coordination between public and private institutions dealing with transit traffic in ports.
- Nepal and India should improve dry ports facilities and services.
- To develop transport system between two countries and construct a dry port in Nepal in order to enhance the bilateral trade between Nepal and China. Nepal is regarded as transit point between China and India.

D. Inland waterways

- Nepal and India should develop new inland waterways on kosi, Gandaki and Karnali river.
- Establish an appropriate Nepal and India legal framework to govern river navigational operations and expand river infrastructure facilities.

E. Pipelines

- Nepal-India and Nepal-China should strengthen planning and construction of pipelines.
- Enhance cooperation between Nepal, India and China to construct and maintain pipelines along the most cost-effective and suitable or shortest routes.

F. Air transport

- Nepal-India and Nepal-China and other countries expand and improve physical infrastructure facilities (aircraft, runway, air navigation systems, airport handling and storage).
- Promote the establishment and implementation of relevant transport agreements at the regional, sub-regional and national levels.

G. Energy information and communications technology infrastructure

- Nepal-India and Nepal-China should modernize transit, transport, customs and other border facilities by utilizing ICTs.
- Develop a national broadband policy to improve access to international high-capacity fiber-optic cables and high bandwidth networks.
- Invest in ICT infrastructure and integrate it in all relevant areas for competitiveness enhancement.

Reforms of the International trade and trade facilitation

(A) International trade

- Develop a national trade strategy and integrate trade policies into national development strategies.
- Create an environment for integration of national firms into regional and global value chains; and support national firms, especially SMEs, to participate in international trade.
- Improve market access for Nepal products without arbitrary or non-tariff barriers.

(B) Trade facilitation

- Establish/strengthen national committees on trade facilitation.
- Implement/scale up trade facilitation initiatives such as integrated border management systems, one-stop border posts, joint processing of legal and regulatory requirements with India and China, modernization of border posts and customs services, etc.
- Develop policies and regulations to promote PPPs and facilitate involvement of private sector in trade facilitation initiatives.
- Harmonize, simplify and standardize rules, requirements and procedures, enhance collaboration among customs and border-crossing agencies, improve transparency, establish one-stop border posts, joint customs controls and integrated border management at borders with Nepal.
- Enhancing border agency cooperation, maintaining transparency and predictability in application of rules and regulations, introduction of cross border electronic data

interchange for border control are some important measures for facilitating trade with the neighboring countries and beyond.

- As the important trade partners, India and China could be the best sources of trade related technical assistance and trade capacity building for Nepal and in a position to leverage the assistance for enlarging market access opportunities to the Nepalese products and services.

Review and revise the bilateral treaties

- Nepal-India and Nepal-China review and revise the trade and transit related bilateral treaties.
- The provisions enshrined in the Almaty Program of Action-2003, Vienna Program of Action-2014, and WTO trade facilitation agreement has necessitated reviewing the provisions of Treaty of Transit framed back in 1991.
- Automation should be introduced at all levels for all processes and procedures. The Nepal Customs Automation System ASYCUDA and India's ICEGATE need to be harmonized for seamless electronic exchange. This should be discussed bilaterally and a Working Group should be set up to monitor the progress. This has been emphasized in the UN's Vienna Program of Action and WTO's Trade Facilitation Agreement.
- As required under the WTO Trade Facilitation Agreement Article 11 Para 17, India and Nepal must set up national transit coordinators to ensure good functioning of transit operations and redressal of all transit related queries and grievances.
- In the Nepal and India Transit Treaty 2013 there are no dispute resolution provision. A dispute resolution provision should be added to the Transit Treaty.
- Nepal has already signed the Bilateral Investment Promotion and Protection Agreement (BIPPA) with India. BIPPA is also necessary between Nepal and China to increase Chinese investments in Nepal.

Reforms of the regional integration and cooperation

- Prioritize South Asia regional integration by strengthening regional trade, transport, communication and energy networks.
- Promote harmonization of South Asia regional policies to strengthen regional synergy, competitiveness and regional value chains.
- Examine how transit is being conducted under the Cross-Border Transport Facilitation Agreement (CBTA) of the Greater Mekong Sub-region (GMS), and the two ASEAN

Agreements facilitating transit and transport, namely, ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) and ASEAN Framework Agreement on the Facilitation of Inter-state Transport (AFAFIST), that have been designed using international best practices and are based on international conventions.

Reforms of the structural economic transformation

- Nepal-India and Nepal-China should develop a structural transformation strategy.
- Develop PPPs and encourage innovative solutions, entrepreneurship and the use of modern technologies.
- Harmonization of standards, tests and certification between the exporting and importing countries are needed in order to address the large part of non-tariff issues.
- Border infrastructure including warehousing parking, etc. needs to be upgraded.
- Insurance companies recognized by Insurance Regulatory and Development Authority of India (IRDA) other than Indian National Insurance Company and the Oriental Insurance Company should also be allowed to provide duty insurance. This will encourage competition and will help to lower the premium rate thereby reducing trade costs.

Promote trilateral cooperation on transit, transport and energy

- Promote trilateral cooperation on transit, transport and energy between Nepal, India and China.
- All Nepali registered commercial vehicles should be given unrestricted entry to India for the transportation of the transit cargoes.
- Nepal could serve as land link for revival of traditional trade route and meeting place for investment in tourism, hydropower, mineral and agro-based industries for the investors from India and China.
- The process of trilateral economic cooperation would be a win-win game for the Nepal, India and China.
- Allocations of transit corridors on both sides of the borders would be in the best interest of Nepal, for the longer run, though there may not be a immediate gain in the short term.
- Hydropower provides potential wherein the Indian and Chinese investors could be invited for development of the project and sharing of benefits. Similarly, development of key infrastructures like express way, tunnel road, bridges, airport, exhibition ground, transmission lines, reservoir dam and dry port are important for enhanced trade

opportunities. Nepal should seek development of such key infrastructures from the foreign direct investment, equity investment or loans.

- Recommendations for transit with and through Bangladesh basically the transit corridor for trade between Nepal and Bangladesh needs to be improved. Physical infrastructure at border and quality of roads needs to be improved. There is a need to automate customs procedures in Nepal, Bangladesh and India. A suitable guarantee system needs to be devised to take care of safety and security of cargo.

Promote public-private cooperation

- Enhancing public-private dialogue in broader economic issues.
- Governments should consider organizing trade fairs in Nepal as regular calendar of event and also encourage participation in the trade fairs in both neighboring countries with a view to promote Nepalese export potentials.
- Government to government collaboration at sub-national or provincial level, regular exchange of business delegations and formation of a business council with wider participation both from government and business sector could be considered in facilitating the works of government to government mechanism.

References

Constitutional Document

1. The Constitution of Nepal, 2015, Nepal Law Commission (NLC), www.nepalcommission.gov.np.

Legislative Enactment

2. Nepal Treaty Act, 1991, Nepal Law Commission (NLC), www.nepalcommission.gov.np.

Treaties

1. The Barcelona Convention and Statute on Freedom of Transit, 1921, United Nations, Treaty Collection, <https://treaties.un.org>.
2. The Geneva Convention and Statute on the International Regime of Maritime Ports, 1923, United Nations, Treaty Collection, <https://treaties.un.org>.
3. The four Geneva Conventions on the Law of the Sea, 1958, United Nations, Treaty Collection, <https://treaties.un.org>.
4. The New York Convention on the Transit Trade of Land-locked States, 1965. United Nations, Treaty Collection, <https://treaties.un.org>.
5. United Nations Convention on the Law of the Sea (LOSC), 1982, United Nations, Division for Ocean Affairs and the Law of the Sea, <http://www.un.org/depts/los>.

Books

1. Anton Donald K, Mathew Penelope, Morgan Wayne, *International Law, Cases and Materials*. Australia : Cambridge University Press, 2005, p. 995.
2. Attard David Joseph, General ed. *The IMLI Manual on International Maritime law*. Vol 1, United Kingdom :Oxford University press, 2014, p. 723.
3. Birnie P.W., Boyle A.E. and Redgwell C., *International Law and Environment*. USA : Oxford University Press, New York, 2009, p. 881.
4. Churchill R.R. and Lowe A.V. *The Law of the Sea*. UK : Juris Publishing, Manchester University press, 1999, p.494.
5. Henkin Louis, Pugh Richard Crawford, Schacher Oscar . *International Law, Cases and Materials*. West Publishing Company, 1980, p. 1152.
6. Glassner Martin Ira. *Access to the Sea for Developing Land-locked States*. Netherlands : Martinus Nijhoff, The Hague, 1970, p. 298.
7. Kaczorowska Alina. *Public International Law*. London and New York : Routledge Taylor and Francis Group, 2015, p 834.
8. Pradhan Gajendra Mani. *Transit of Land-locked Countries and Nepal*. Nepal : Pairavi Prakashan, 2013, p. 222.
9. Proelss Alexander (ed.). *United Nations Convention on the Law of the Sea*. USA : North America (USA and Canada) by Hart Publishing, 2017, p. 2617.

10. Reutter, P. *Introduction to the Law of Treaties*. London and New York, Kegan Paul International, 1995, p.295.
11. Rothwell, Donald R, Kaye Stuart, Akhtarkhavari Afshin and Davis Ruth. *International Law, Cases and Materials with Australian Perspectives*. Australia : Cambridge University Press, 2014, p. 880.
12. Rothwell Donald R and Stephens Tim. *The International Law of the Sea*. United Kingdom : Oxford and Portland, Oregon, 2010, p. 499.
13. Rothwell Donald R, Oude Elferink Alexg, Scott Karenn and Stephens Tim. *The Oxford Handbook of the Law of the Sea*. United Kingdom : Oxford University Press, 2015, p. 997
14. Shaw Malcolm N. *International Law*. United Kingdom : Cambridge University Press, 2008, p. 1542.
15. Shaw Malcolm N. *International Law*. United Kingdom : Cambridge University Press, 2017, p. 1033.
16. Sinjela A. Mpazi. *Landlocked States and the UNCLOS Regime*. United States Of America : Ocean Publications, Inc./London , 1983, p. 495.
17. Smith Adam, Cambell Roy Hutchenson, *An inquiry into the Nature and the causes of the Wealth of Nations*. Part VII, Oxford: Clarendon Press, 1776, p. 1080.
18. Sohn, Louis B. and Noyes John E. *Cases and Materials on the Law of the Sea*. United States of America :Transnational Publishers, Inc., 2004, P. 884
19. Tanaka, Yoshifumi. *The International Law of the Sea*. United Kingdom : Cambridge University Press, 2015, P. 472.
20. Uprety Dr. Kishor. *Land-locked States and Access to the Sea. Nepal* : Nepal law Society, 1989, P. 157.
21. Vasciannie S.C. *Land-locked and Geographically Disadvantaged States in the International Law of the Sea*. New York : Clarendon Press, Oxford, 1990, P. 244.
22. UN Office of the High Representative for the Least Developed Countries, Land-locked Developing Countries and Small Island Developing States (UN-OHRLLS), New York, USA, *Land-locked Developing Countries, things to Know, Things to Do*. The Almaty Programme of Action 2003, <http://unohrlls.org>.

23. United Nations Office of the High Representative for the LDCs, LLDCs and SIDS, *The Impact of the Global Financial and Economic Crises on the Development Prospects of the LLDCs*, UN-OHRLLS, 2009, <http://unohrlls.org>.
24. United Nations Office of the High Representative for the LDCs, LLDCs and SIDS, *The Transit Transport Situation in Africa, Asia and Latin America. A review of the Implementation of the Almaty Programme of Action as Contribution to its Midterm Review*, UN-OHRLLS, 2008. <http://unohrlls.org>.
25. UN Office of the High Representative for the Least Developed Countries, Land-locked Developing Countries and Small Island Developing States (UN-OHRLLS), New York, USA *Land-locked Developing Countries, things to Know, Things to Do*. The Vienna Programme of Action 2014, <http://unohrlls.org>.

Book Chapter

1. Kateka, James L. “ Land-locked and Geographically Disadvantaged States”. *The Imli Manual on International Maritime Law*. Volume 1. Oxford University Press 2014, p. 431-442.
2. Subedi, Surya Prasad. “land-locked States and International law”. Nyaya Prashasanka Ayamharu. Sopan, 2004, p. 329-241.
3. Tomka, Peter. “ The Contribution of the International Court of Justice to the Law of the Sea”. *The Imli Manual on International Maritime Law*. Volume 1. Oxford University Press 2014, p. 618-642.

Thesis

1. Rana, Ramesh Kumar, “Right of access of land-locked state to the sea by the example of bilateral agreement between land-locked state- Nepal and port state-India” Small Master’s Thesis Masters of Laws in Law of the Sea University of Tromsø, 2010, <https://munin.uit.no/bitstream/handle/10037/3239/thesis.pdf?sequence=1>, p. 28.

Dictionary

1. Garner, Bryan A. *Black's Law Dictionary*.(8th ed.). Texas: Thomson West Publishing Company, 2004.

2. Hornby, A.S. *Oxford Advanced Learner's Dictionary*. (7th ed.). New Delhi: Oxford University Press, 2005. .

Articles

1. Acharya, Madhu Raman. "Rights of LLDCs Bilateral, regional and multilateral Perspectives in relation to Nepal". 14. *Camad*. (2012), p. 5-10.
2. Adedeji, A.A. "An appraisal of the Right of Access to the Accorded to Land-locked States under the 1982 Third United nations Convention on the Law of the Sea (UNCLOS III)". *Jimma University Journal of Law* Vol. 1, No 1 (2017). P. 133-161, <http://heinonline.org/HOL/License>.
3. Faye, Michael L. et.al, "The Challenges Facing Land-locked Developing Countries," *Journal of Human Development* . Vol.5, N0.1. Carfax Publishing, (2004), p.31-68, <http://www.tandfonline.com/doi/abs/10.1080/14649880310001660201> .
4. Menefee, SP. "The Oar of Odysseus: Land-locked and Geographically Disadvantaged States in Historical Perspective". Vol. 23. *California Western International law Journal*, (1992). P.1-66, <http://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1370&context=cwilj>.
5. Uprety, Kishor "From Barcelona to Montego Bay and Thereafter: A Search for Land-locked States Rights to Trade through Access to the Sea-A Retrospective Review". *Singapore Journal of International and Comparative Law* 7 (2003) : 201-235. <http://heinonline.org/HOL/License>.
6. Wani, Ibrahim J. "An evaluation of the Convention on the Law of the Sea from the Perspective of the Land-locked Countries". 22. *Virginia Journal of International Law* (1982). P. 627-665, http://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/vajint22&ion=28.

Website

1. Adhikari, Dr. Rishi Raj (edit.). *Promoting Nepalese Trade and Investment Relations with India and China*, Institute of Foreign Affairs (IFA) Kathmandu, Nepal, (2015). Accessed, 12 September, 2017, ww.infa.org.np.

2. Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention). Accessed 6 October, 2017, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-A-16&chapter=11&clang=_en.
3. European Parliament, Directorial General for International Policies, Policy Department A : Economic and Scientific Policy, International Market and Consumer Protection, Internal Market beyond the EU: EEA and Switzerland, Accessed, 6 October, 2017, [http://www.europarl.europa.eu/RegData/etudes/note/join/2010/429993/IPOL-IMCO_NT\(2010\)429993_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2010/429993/IPOL-IMCO_NT(2010)429993_EN.pdf).
4. Government of India, Ministry of External Affairs, Treaty of Trade and Commerce between Government of India and Nepal, 1950 “Google Privacy Policy”. Accessed, 29 August 2017, <http://mea.gov.in/bilateral-documents.htm?dtl/6291/Treaty+of+Trade+and+Commerce>.
5. Government of Nepal. Ministry of Commerce. Trade and Export Promotion Centre, Accessed, 31 August, 2017, <http://www.tepc.gov.np>.
6. Government of Nepal. National Planning Commission. Fourteenth Plan (2016-19) Accessed, 4 October, 2017, <http://www.npc.gov.np>.
7. Kumar, Dr. Amit. India Council for World Affairs, Joint Statement between the People’s Republic of China and Nepal, Accessed. 13 September, 2017, <https://www.mofa.gov.np/joint-press-statement>.
8. Prasad, Uma Shankar. “Study of Nepal's Economic Relations with China” The Journal of Development and Administrative Studies (JODAS). Vol. 23(1-2), Accessed, 11 September, 2017, <http://www.nepjol.info/index.php/JODAS/article/download/15446/12479>.
9. Shrestha, Gyanu Raja. “Nepal-India Bilateral Trade Relations Problems and Prospects”. Research and Information System for the Non- Aligned and other Developing Countries (RIS). India (2003). Accessed, 31 August, 2017, https://www.ris.org.in/images/RIS_images/pdf/dp54_pap.pdf.
10. Taneja Nisha, Bimal Samridhi and Dayal, Isha. “An Analysis of Nepal’s Transit through India” .Indian council for Research on International Economic Relations, Working Paper 316 (2016) Accessed, 1 September, 2017, http://icrier.org/pdf/Working_Paper_316.pdf

11. United Nations Conference on trade and development (UNCTAD). UN Recognition of the problems of Land-locked Developing Countries. Accessed 27 September 2017, www.unctad.org.
12. United Nations, Division of Ocean Affairs and Law of the Sea. Accessed, 6 October, 2017, <http://www.un.org/depts/los>.

