Landlocked States and the Law of the Sea: Economic and Human Development Concerns

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LANDLOCKED COUNTRIES AND THE LAW OF THE SEA: ECONOMIC AND HUMAN DEVELOPMENT CONCERNS

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I. Introduction

The United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries (LLDCs), and Small Island Developing States asserts that there are thirty-one Landlocked Developing Countries on the planet.\(^1\) Though efforts have been made at an international level to secure sea access for these states, notably through Part X (Arts. 124-132) of the current United Nations Convention on the Law of the Sea (UNCLOS),\(^2\) the reality of implementing such measures still presents difficult problems.\(^3\) Article 125(1) of UNCLOS provides that:

\[
\text{Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.}\(^4\)
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1 List of Landlocked Developing Countries, UN.ORG (2012), [http://www.un.org/special-rep/ohrlls/lldc/list.htm](http://www.un.org/special-rep/ohrlls/lldc/list.htm). See also Trade, Trade Facilitation and Transit Transport Issues for Landlocked Developing Countries, Executive Summary, United Nations Development, Trade and Human Development Unit, at 3, UNOHRLLS.ORG (2007), [http://www.unohrlls.org/UserFiles/File/LLDC%20Documents/MTR/Executive%20summary.pdf](http://www.unohrlls.org/UserFiles/File/LLDC%20Documents/MTR/Executive%20summary.pdf) (Executive Summary) (stating that “landlocked developing countries are among the poorest countries in the world: out of 31 such countries, 16 are classified as least developed . . .”).


3 See Global Framework for Transit Transport Cooperation Between Land-Locked and Transit Developing Countries and the Donor Community, United Nations, TD/B/42(1)/11-TD/B/LDC/AC.1/7, ¶ 1, [http://www.un.org/special-rep/ohrlls/lldc/Pages%20from%20G9552680.pdf](http://www.un.org/special-rep/ohrlls/lldc/Pages%20from%20G9552680.pdf) (Global Framework) (stating that:

The particular needs and problems of land-locked and transit developing countries have been a subject of discussions in various international fora for many years now. In spite of several initiatives by these countries, both at the national and the international level, and by the international community to overcome these particular problems, the challenges that these countries still face continue to be formidable.

4 UNCLOS Art. 125(1).
Article 125(2) informs upon this principle by asserting that “[t]he terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.”

These localized bilateral, subregional, and regional agreements effectuated between land-locked states and transit coastal states, while given theoretical support by UNCLOS, are on a practical level still subject to the predispositions and capacities of the states entering into contract. While transit agreements between various individual land-locked countries and their adjacent coastal states may be similar to one another, there is no minimum standard for such agreements, although they are subject to “mutual accord.” Because the negotiating power of all states is dependent in part upon the degree of economic power exercisable by an effective government, some developing land-locked countries are at an even further disadvantage than that presented by mere geography. The reality is a difficult predicament for many LLDCs: with only minimal or ineffective access to ports and maritime shipping routes, the countries may lack the economic capacity to negotiate agreements by which to make greater and effective access

5 UNCLOS Art. 125(2).
7 Id.
8 See, e.g., United Nations Economic Commission for Africa, Assessing Regional Integration in Africa (IV), at 241, § 7.1, UNECA.ORG (2010), http://www.uneca.org/aria/aria4/index.htm, (stating that for many of the least developed landlocked countries, “research finds that, on average, transport costs . . . are as high as 77 per cent of the value of exports.”).
9 See, e.g., Frank J. Garcia, Trade and Inequality: Economic Justice and the Developing World, 21 MICH. J. INT’L L. 975, 987 (2000) (stating that: [s]maller economies rely more heavily on external trade than do larger economies, in part to compensate for problems of scale, such as a narrow range of national resources and the absence of certain types of production owing to the small size of the market. The size and strength of the market thus both restrict the range of consumer choices which smaller economies can independently satisfy, and hamper their efforts to industrialize, expand, and compete in the global export marketplace.).
to coastal resources possible.\textsuperscript{10} Though LLDCs had a distinct voice during the drafting of UNCLOS and made strides towards gaining an “equitable” stake in coastal resources,\textsuperscript{11} there is still much to be done to establish and strengthen the means by which they are able to gain access to the sea. For instance, the United Nations has asserted that:

Land-locked and transit States have taken a number of initiatives to coordinate transit transport operations as an integral part of formal bilateral and subregional transit agreements or ad hoc consultative arrangements. The implementation of these coordination arrangements, however, remains generally weak because of the lack of effective monitoring and enforcement mechanisms.\textsuperscript{12}

Scholarship has also suggested that while “it must be admitted that with the signing of the UNCLOS III, an important phase of international negotiations has been completed,” in the context of LLDCs, “the crucial phase - that of application of the few novel legal concepts introduced by the Convention - still remains.”\textsuperscript{13} By summarizing and analyzing the transit regimes and particular economic needs of selected land-locked countries, this Paper explores the options for creating a uniform minimum standard transit regime; thus ensuring that the principles behind Part X of UNCLOS are permitted to augment, without unnecessary restriction, the rights and capacities of all land-locked


\textsuperscript{11} S.C. VASCIANNIE, LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES IN THE INTERNATIONAL LAW OF THE SEA 218 (1990) (VASCIANNIE). See also UNCLOS Art. 69 (stating that “[l]and-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 exclusive economic zones of coastal States of the same subregion or region” and that “[t]he terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements . . .”); Art. 70 (stating that “[t]he terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account the relevant economic and geographical circumstances of all the States concerned . . .”).

\textsuperscript{12} Global Framework ¶ 4.

\textsuperscript{13} Right of Access, at 82.
states. In Part II this Paper gives a general background of the history and importance of sea access for land locked states, and highlights some of the difficulties inherent to the geographic status of landlockedness. In Part III this Paper examines the transit regimes and overall economic situations of selected LLDCs, namely, Mongolia, Paraguay and Bolivia, and landlocked countries in Africa. Part IV contains a critical analysis of the intersection between the international law of the sea and transit regimes for LLDCs, and Part V concludes by contemplating the prospect of establishing more efficient and reliable transit mechanisms for LLDCs as the twenty first century continues.

II. Historical Background: Economic Development and Human Development Concerns

Many scholars trace the origins of modern international law to the writings of Hugo Grotius, and more specifically, to his essay Mare Librum (Freedom of the Seas) first published in 1608. In many respects, the law of the sea predates the concept of human rights law. As stated by one scholar:

There are ancient foundations for human rights law, both international and municipal. The natural law environment in which Grotius worked was itself more hospitable to the idea of governmental obligations to individuals than the state-centered positivism that succeeded it. But for those who regard as seminal events the French Declaration of the Rights of Man and the American Bill of Rights, even municipal human rights law is ‘younger’ than the modern law of the sea, and international human rights law younger still.

In spite of rapid developments in other areas of law and science, the past two hundred years have contributed relatively little to the development of some land-
locked countries.\textsuperscript{16} Many of the issues faced centuries years ago by geographically challenged areas are still present today.\textsuperscript{17} In \textit{An Inquiry into the Nature and Causes of the Wealth of Nations},\textsuperscript{18} first published in 1776, Adam Smith identified the difficulties inherent in transporting resources over great distances on land.\textsuperscript{19} As restated by more recent scholarship, “[h]igh transportation costs typically place landlocked countries at a distinct disadvantage relative to their coastal neighbors when competing in global markets,” in part, because they must contend with “dependence on passage through a sovereign transit country [for] access [to] international shipping markets.”\textsuperscript{20} While this dependence often finds modern manifestation in relation to roads and railways as well, rivers were the primary mode of transit when Smith was writing, and he addressed his concept of power politics accordingly:

\begin{quote}
The commerce besides which any nation can carry on by means of a river which does not break itself into any great number of branches or canals, and which runs into another territory before it reaches the sea, can never be very considerable; because it is always in the power of the nations who possess that other territory to obstruct the communication between the upper country and the sea.\textsuperscript{21}
\end{quote}

Similarly, transport over any great distance on land, even within the territory of a single country, entails considerable rigors when compared to sea transport. As stated by Smith:

\begin{quote}
\textsuperscript{17} Id.
\textsuperscript{18} SMITH, supra note 10.
\textsuperscript{19} Id. at 18-19.
\textsuperscript{20} Faye, at 32.
\textsuperscript{21} SMITH, at 18-19.
\end{quote}
As by means of water carriage a more extensive market is opened to every sort of industry than what land carriage alone can afford it, so it is upon the sea coast, and along the banks of navigable rivers, that industry of every kind begins to subdivide and improve itself, and it is frequently not till a long time after that those improvements extend themselves to the inland part of the country. . . Were there no other communication between . . . two places . . . but for land carriage . . . There could be little or no commerce of any kind between the distant parts of the world. 22

Grotius addressed similar and pertinent concepts in his work De jure belli ac pacis (On the Law of War and Peace), and notably, also mentioned the freedom of land transit (which is not thought of as a customary right under current international law): 23

Lands, rivers and any part of the sea that has become subject to the ownership of a people, ought to be open to those who, for legitimate reasons, have need to cross over them; as, for instance, if a people . . . desires to carry out commerce with a distant people. 24

Reflecting the great importance of sea carriage to all nations and peoples, historical efforts at codifying and developing the international law of the sea have been numerous:

The International Maritime Conference to define the rules of the road at sea met at Washington in 1889. International conferences on maritime law were held in Brussels in 1905, 1909, 1910, 1922

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22 SMITH, at 16-17. Though it is a bit dated, another passage by Smith still reveals fundamental truths about the differences between carriage of goods by land and by sea: “Six or eight men, therefore, by the help of water carriage, can carry and bring back in the same time the same quantity of goods between London and Edinburgh, as fifty broad wheeled wagons, attended by a hundred men, and drawn by four hundred horses.” Id. at 16.


24 DE JURE BELLI AC PACIS, at 196-97. See also EMMERICH DE VATTTEL, LE DROIT DES GENS OU PRINCIPES DE LOI NATURELLE APPLIQUÉS À LA CONDUITE AUX AFFAIRES DE NATIONS ET DES SOUVERAINS, at 150-51, TRANS. IN BROWN (ED.) CLASSICS OF INTERNATIONAL LAW, 1916 (discussing the right of passage over foreign domain as falling within the category of “rights which remain to all nations.”).
and 1926, and on safety of life at sea at London in 1914 and 1929.\textsuperscript{25}

Though ultimately insufficient, the Barcelona Convention\textsuperscript{26} of 1921 also laid important groundwork for establishing a minimum standard for international freedom of transit,\textsuperscript{27} and “[b]etween the two World Wars, a series of important agreements were added to the Barcelona Convention. . . . [including] the Statute on the Free Navigation of International Waterways . . . and the Geneva Convention on the International Regime of Maritime Ports.”\textsuperscript{28} A Committee of Experts for the Progressive Codification of International Law, appointed by the League of Nations, also met in Geneva in 1925 and 1926 to discuss such matters as “the law of the territorial sea . . . [the] legal status of Government ships . . . [the] suppression of piracy . . . [the] rules regarding the exploitation of the products of the sea . . . [and] [t]erritorial waters.”\textsuperscript{29} These efforts by the Committee were an indication of the trials ahead for members of the UN during the three Law of the Sea Conferences held between 1958 and 1982:\textsuperscript{30} an initial report by the Committee to the League of Nations stated that “most Governments have not given any detailed expression of their views as to the provisions which might be inserted in an international convention to solve the various

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\textsuperscript{26} Barcelona Convention on the Regime of Navigable Waterways, League of Nations Treaty Series, vol. 7, at 36-63 (20 April 1921), \url{http://www.legislation.gov.hk/doc/multi_904v1.pdf}. See AJIL Supplement, at 56 (stating that “the Convention and Statute on Freedom of Transit, the Convention and Statute on Waterways of International Concern, and the Declaration recognizing the Right to a Flag of States having no Seacoast, were adopted by the Barcelona Conference on 20 April 1921.”).


\textsuperscript{28} Right of Access, at 28, n. 29.

\textsuperscript{29} AJIL Supplement, at 68.

questions raised . . . (italics omitted).” The International Convention on Load Lines (pertaining to the subject of overloading vessels and the dangers therein) was also adopted at London in 1930, then revisited in 1966, when it was adopted by the International Maritime Organization (IMO). The first UN Convention on the Law of the Sea was held in Geneva in 1958, and the second was held in Geneva in 1960. The Convention on Transit Trade of Land-Locked States (CTTLLS), adopted by the United Nations Conference on Transit Trade of Land-locked Countries held at UN headquarters in New York in 1965, further worked to clarify the rights of land locked countries under the Geneva Conventions.

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31 AJIL Supplement, at 74.
32 *International Convention on Load Lines*, International Maritime Organization, IMO.ORG (2011) [http://www.imo.org/about/conventions/listofconventions/pages/international-convention-on-load-lines.aspx](http://www.imo.org/about/conventions/listofconventions/pages/international-convention-on-load-lines.aspx) (stating that “[i]t has long been recognized that limitations on the draught to which a ship may be loaded make a significant contribution to her safety. These limits are given in the form of freeboards, which constitute, besides external weathertight and watertight integrity, the main objective of the Convention.”). *See also* UNCTAD, Policies and Actions Taken By Individual Countries, and by International Organizations to Improve Transit Transport Systems, United Nations, ¶ 53, TD/B/LDC/AC.1/14 (23 June 1999), [http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/522/71/PDF/G9952271.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/522/71/PDF/G9952271.pdf?OpenElement) (Policies) (stating that the “IMO is fully aware of the difficulties of landlocked developing countries and strives to involve as many landlocked developing countries as possible in its technical cooperation activities.”).
33 Treves. For an illustration of some of the progress on behalf of landlocked states in between the earlier versions of the convention and UNCLOS III, *see also* VASCIANNE, at 187 (stating that the earlier versions of UNCLOS “failed to specify in definite terms whether . . . States Parties were legally bound to provide access for their land-locked neighbors, or whether they only had a moral obligation to do so.”).
35 *Id.* Principle I of the CTTLLS states that “[t]he recognition of the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development;” Principle IV states that: *In order to promote fully the economic development of the land-locked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit, in such a manner that they have free access to regional and international trade in all circumstances and for every type of goods. . . . Goods in transit should not be subject to any customs duty. . . . [and] [m]eans of transport in transit should not be subject to special taxes or
note that many, but not all of the rights of land locked countries asserted in the 1965 CTTLLS are reflected in the third and current version of UNCLOS.\textsuperscript{36}

International conventions pertaining to “the movement of goods, people and vehicles across international borders” are also numerous,\textsuperscript{37} and more recently, the challenges facing landlocked countries have been addressed by an International Ministerial Conference on Transit Transport Cooperation, held at Almaty, Kazakhstan, from August 25-29 in 2003.\textsuperscript{38} The Conference was attended by representatives from eighty-two Member States of the UN as well as twenty-four international organizations.\textsuperscript{39}

\begin{itemize}
\item charges higher than those levied for the use of means of transport of the transit country;
\item Principle V states that “[t]he State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind;” and
\item Principle VI states that “[i]n order to accelerate . . . a universal approach to the solution of the . . . problems of trade and development of land-locked countries . . . the conclusion of regional and other international agreements . . . should be encouraged by all States.” \textit{Id.} at 45-46.
\end{itemize}

\textsuperscript{36} Compare UNCLOS Art. 124 with CTTLLS Art. 1, at 47-48; UNCLOS Art. 125 with CTTLLS Art. 2, at 49-50; UNCLOS Art. 127 with CTTLLS Art. 3, at 50; UNCLOS Art. 128 with CTTLLS Art. 8, at 54; UNCLOS Art. 132 with CTTLLS Art. 9, at 54.


\textsuperscript{38} Posner & Sykes, at 594.


\textsuperscript{39} Report of the UN Secretary General, Outcome of the International Ministerial Conference of Landlocked and Transit Developing Countries and Donor Countries and International Financial and Development Institutions on Transit Transport Cooperation, at 2, United Nations, A/58/388
At its conclusion the Conference adopted the Almaty Ministerial Declaration and the Almaty Programme of Action, the latter of which was created as a global framework to develop “efficient transit transport systems in landlocked and transit developing countries.” A ten-year comprehensive review of the Almaty Programme is scheduled for 2013, and the potential outcomes of such review are further discussed in Part IV of this Paper. Perhaps preceding the Almaty Conference in some ways is a UN Resolution from 1998 which specifically addressed the problems facing landlocked states, and among other things, recognized that a “lack of territorial access to the sea, aggravated by remoteness and isolation from world markets, and prohibitive transit costs and risks impose[s] serious constraints on the overall socio-economic development efforts of the landlocked developing countries.”


Id. The Almaty Programme aims to: (1) secure access to and from the sea by all means of transport for landlocked developing countries according to applicable rules of international laws; (2) reduce costs and improve services so as to increase the comprehensiveness of their exports; (3) reduce the delivered costs of imports; (4) address problems of delay and uncertainties in trade routes; (5) develop adequate national networks; (6) reduce loss, damage and deterioration en route; (7) open the way for export expansion; and (8) improve safety of road transport and security of people along the transport corridors. Id. To achieve its given objectives, the Almaty Programme highlighted five priority areas for landlocked and transit states: (1) review of transport regulatory frameworks and establishment of regional transport corridors; (2) development of multimodal networks (rail, road, air, and pipeline infrastructures); (3) implementation of international conventions and instruments that facilitate transit trade (including the WTO); (4) international community assistance in providing technical support, facilitating foreign direct investment (FDI), and increasing official development assistance; (5) improvement of the implementation of transit instruments and comprehensive review such implementation. Id. at 2-3. See generally Almaty Programme of Action: Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries, United Nations, UN.ORG (2003), http://www.un.org/special-rep/ohrlls/lldc/Almaty_PoA.pdf (Almaty Programme).


While UNCLOS is not typically thought of as a human rights proclamation, it is a widely ratified global agreement by which parties accept binding arbitration and adjudication of disputes that arise under its auspices.43 As such, it does espouse certain minimum standards of equality among states, and by extension, the citizens of those states. Yet this is not to say that the size and resource potential of the maritime zones acquired by some of the “richest industrial states and the most industrialized of the developing countries” is the equivalent of the zones acquired by some of the poorest landlocked countries.44 In reality, a number of landlocked states do not have much of a right to coastal resources.45 According to some scholars, UNCLOS “completely ignores issues of fairness.”46 Others take a similar approach, acknowledging that:

the allocation of ocean resources resulting from extended coastal state jurisdiction cannot be squared with the rhetoric of distributive justice . . . . Landlocked countries, most of which are not prosperous, get no allocation. As among coastal states, both area and, more important, resources are very unevenly distributed.47

UNCLOS grants some access for landlocked states to the fisheries in the exclusive economic zones (EEZs) of adjacent coastal states, but arguably it “amounts to little more than an apparent priority over third states with regard to . . . access to an

43 Oxman, at 401.
44 Oxman, at 411.
45 Posner & Sykes, at 587.
46 Posner & Sykes, at 596.
undetermined part of a surplus of changing size calculated by the coastal state."48 As such, UNCLOS does not restrain the ability of the coastal state to distribute resources to its own fishermen or restrain the influx of foreign capital and labor from participating in what is considered the fishery of the coastal state.49 As stated by recent scholarship:

the particular bundles of jurisdictional rights in the different zones reflect a trade-off between the benefits of conferring regulatory authority on a single state--which thus incurs the costs and receives the residual benefits of regulation--and the risk that, by granting a monopoly to a coastal state, the state will exclude other states or otherwise interfere with their use of the sea.50

Though UNCLOS does try to redistribute coastal resources to poorer and landlocked nations, it has been argued that “it relies too much on inefficient restrictions on market activity and not enough on cash transfers; [and] where it does rely on cash transfers, it does little to ensure that the cash goes to the poorest nations.”51 Similarly, the position stated by the International Court of Justice in the North Sea Continental Shelf Cases in 1969, that landlocked states have “no interest” in the distribution of the continental shelf,52 has not been derogated from by Part X of UNCLOS.53

Another factor which cannot be overlooked in any fairness analysis is that many current political boundaries in Africa were created by European powers during the Berlin Conference of 1884-1885, whereas trade between Africans had endured for centuries.

48 Oxman, at 413.
49 Oxman, at 414.
50 Posner & Sykes, at 596.
51 Posner & Sykes, at 596.
53 See UNCLOS Part X (making no reference to the rights of landlocked states to the continental shelf).
It need hardly be mentioned that the people living in landlocked areas in Africa were not consulted about their preferences or thoughts on rights of sea access during a Conference at which they were not present. On a similar note, in South America, for instance, some claim that Bolivia lost its coastline to Chile as the result of an “unjust war.”

As previously mentioned, many LLDCs face significant burdens in their efforts to reach the sea by means of land transit. International law does not recognize a customary right of innocent passage over land, and as a result, certain types of illicit passage often emerge. Piecemeal smuggling is sometimes protected by illicit frontier agreements and garners the support of communal authorities in towns that depend upon the trafficking. Smuggling also poses a threat to transit and to customs officials, who are often confronted and sometimes defeated by armed traffickers. In general, even valid and politically supported international transit agreements are routinely undermined by the activities of frontier staff:

petty corruption involving illegal and undocumented payments is found among frontier staff at all levels. It is simple for officials to turn the regulations to their advantage, and if no payment is made they can deliberately delay operations or apply any measure to the letter, thus making any border crossing a challenge.

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56 Posner & Sykes, at 582.
58 Id.
59 Improvement in Latin America, at 30.
In a broader sense:

LLDCs are often at the mercy of the bureaucracy, customs procedures and the quality of the services and infrastructure of their neighbouring transit countries. Landlocked countries incur transit charges paid to transit countries for using their facilities and services. These include port charges, road tolls, forwarding fees, customs duties and transit quota restrictions. For example, on certain transport routes in Africa there are an unjustifiably high number of road blocks and check points, causing delays and inflating transport costs. These barriers are also a violation of existing international conventions as well as bilateral and regional cooperation agreements promoting the free flow of transit goods.  

As can be seen, the implementation of transit agreements is sometimes complicated by “various protectionist measures imposed by Governments, as well as overlapping customs and transit documents,” which in turn create an “urgent need to harmonize and unify . . . [such] documents.”  

To summarize, “[l]andlocked countries are completely dependent on their transit neighbours’ infrastructure to transport their goods to port. This infrastructure can be weak for many reasons, including lack of resources, mis-governance, conflict and natural disasters.”  

As each landlocked country has different coastal neighbors, each is impacted to a varying degree by the stability and relative development of its neighbors. 

For instance, the position of landlocked countries in Europe is more fortunate (and for that reason, for purposes of this paper, only mentioned to create a contrast with the LLDCs of Asia, South America, and Africa). In Europe:

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60 Executive Summary, at 5. Cf. UNCLOS Art. 127(1) (stating that “[t]raffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.”). The implication of some of the statements made in Executive Summary, at 5, and quoted in the text, is that oftentimes the extraneous charges faced by LLDCs during transit may nullify to a large extent the benefits conceded to them under UNCLOS Art. 127(1).

61 Policies ¶ 12.

62 Faye, at 43-44.
only Luxembourg and Liechtenstein are truly landlocked. Luxembourg borders on Belgium and access is through the Belgian port of Antwerp. Liechtenstein uses the Swiss highway system. Switzerland is only half landlocked. The Swiss transit rights are guaranteed through Italy and Germany. Basel, the major industrial city of Switzerland, is on the River Rhine and heavy cargo barges move straight through, via Germany, to Rotterdam, the Dutch port on the North Sea. Austria, Hungary and the former Czechoslovakia use the River Danube as their major arterial for heavy cargo. Armenia, because of hostilities between Russia and Georgia in August 2008, now uses the road link through Turkey.63

There are a number of guiding principles for transit agreements, but their application may be inconsistent. In general, transit agreements are carved by an economically stronger nation through the territory a relatively weaker nation,64 but there are exceptions,65 and prior colonial arrangements do play a factor in some cases.66 Another rule of transit treaties, once signed, is that they are in perpetuity (unless otherwise indicated), and the “extra sovereign rights” of the transiting country, during national emergency in that country or political instability in the host country, can be invoked to seize the appropriate transit land, rivers and port infrastructure of the host country, while the host country has no legal recourse.67 This trend is in line with modern notions of necessity under international law,68 although some argue that:

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64 Snapshots (stating the examples of U.S. over Panama, Singapore over Indonesia, and Ethiopia over Eritrea).
65 Id. (stating the exceptions of Bolivia over Peru, and Paraguay over Argentina).
66 Id. (stating that with the exception of Ethiopia, landlocked countries in Africa had their transit rights negotiated by former colonizing powers).
67 Snapshots.
the transiting country can also use the threat of enlarging its rights under the original transit treaty, propose lowering of future transit fees under the guise of seeking efficiencies, streamlining, cutting red-tape and so on, and seek to portray any slow down or mild resistance in the negotiating process as malafide intent by the host country or negotiating in bad faith by the same (internal quotations omitted).

Under certain circumstances, the seizure of transit land, transiting rivers and port infrastructure can indeed be instigated under a claim of extra-sovereign rights. Such claims by a transiting country can have a powerful impact on the territorial sovereignty of the host country, as it is left with little remedy under international law. Transit requests can also be refused, however, even in the face of great persistence by the transiting country. Though the most notable example of this phenomenon (Canada refusing

69 Snapshots.

70 Snapshots (notable examples of this scenario are: in 1939 when Poland refused transit rights between mainland Germany and the port of Dantzig in its province of East Prussia, and German insistence on transit rights through Polish territory (as well as the aggression of the Nazi party) instigated the beginnings of WWII; in 1946 when the rights of a British warship to navigate through the mine laden waters of Albania’s territory sea in the Corfu Channel were asserted by the International Court of Justice; in 1956 when Britain and France invaded the Suez Canal zone and the Sinai peninsula after Egyptian President Nasser’s nationalization of the canal, which effected British held transit rights; in 1967 when Israel launched a pre-emptive air strike against Egypt after President Nasser closed the Straits of Tiran and denied Israeli transit rights to the port of Eilat; from 1979 to the present day the United States maintains a Navy base in Bahrain and exhaustively patrols the Persian Gulf to pre-empt any Iranian threat to transit shipping through the Strait of Hormuz; in the 1989 United States invaded Panama (among other reasons) to preserve US access to the Panama Canal).

71 Snapshots (for instance: Canada refuses transit rights to all countries through the Canadian Arctic, but most particularly to Denmark and the US. . . . Canada is hugely dependent on the US for commercial trade. . . . However, the US government does not recognize Canadian sovereignty over the waterways that flow around the thousands of islands in the Canadian Arctic archipelago. In response, Canada routinely refuses US requests for transit from the east coast of US to the north slope of Alaska, with exceptions made for scientific exploration and study and US Coast Guard ice-breakers that need to get to their stations in northern Alaska. . . . No surface US naval ships have crossed Canadian waters in the Arctic, although US nuclear submarines as well as Russian (previously, Soviet), French and British nuclear submarines routinely cross Canadian waters, but only when submerged.)

72 Id.
transit rights to all countries through the Canadian arctic) does not impact LLDCs specifically, it is simply one more complicating factor that contributes difficult precedent to an already difficult equation.

The reality is that serious constraints on the economic development of LLDCs translate into serious constraints on the human development of such countries:

Dismal economic growth has led in turn to acute resource constraints for the LLDCs, inhibiting their capacity to alleviate serious social difficulties. It is little wonder that LLDCs score poorly on many human development indicators. According to the 2004 Human Development Index (HDI) of the United Nations, nine of the world’s 15 lowest-ranking countries are landlocked, with Burundi, Mali, Burkina Faso and the Niger among the bottom five.73

In short, the geographic feature of landlockedness “intensifies the extent of human poverty.”74 Lack of economic growth also greatly contributes to a general commodity dependence experienced by LLDCs.75 As asserted in a study by the United Nations Conference on Trade and Development (UNCTAD) pertaining to the issue, development challenges are inextricably linked to the role of commodities, and especially to the extent


of commodity dependence in the least developed countries.\textsuperscript{76} Many of the trends that grow from chronic economic distress are similarly troubling:

LLDCs showed little progress in human development between 1975 and 2001. Even though they have made some progress in improving their social indicators during the past two decades, the divergence between them and the coastal developing world appears to be widening rather than closing. Successful human development is critical, as it can promote economic growth, which in turn advances human development. But the opposing corollary holds true as well — poor human development contributes to economic decline, thus leading to further deterioration in human development.\textsuperscript{77}

Needless to say, the rift between the economic and human development of coastal developed countries and LLDCs can be expressly linked to relative geographic advantage and disadvantage:

The less-than-spectacular economic and social accomplishments of the LLDCs compared to those of coastal developing countries suggest a powerful linkage between geography and development. A lack of direct access to the sea, isolation from major economic centres, inadequate transport infrastructure and cumbersome transit procedures combine to hamper the ability of landlocked developing economies to grow successfully, especially through the well-worn path of international trade.\textsuperscript{78}

Keeping in mind the discussion above, this Paper turns to examine in greater detail the particular circumstances of only a few of the many LLDCs.

\textsuperscript{76} Global Crises, at 2 (stating that least developed countries generally have an inflated employment percentage concentrated in the agricultural sector combined with food deficit problems requiring external assistance for food needs).
\textsuperscript{77} Geography Against Development, at 15.
\textsuperscript{78} Id. at 18.
III. Case Studies: Developing Countries

a. Mongolia

Mongolia is one of the world’s largest landlocked countries. With a territory containing over 1.6 million square kilometers, which is largely comprised of steppe and semi-desert on a plateau 1,580 meters above sea level, it is bordered by China to the east, south and west, and by the Russian Federation to the north. The Gobi desert occupies much of the southeast of the country while mountains occupy the west and southwest. The country is rich in mineral resources such as copper and gold, and though it ranks first in the world in per capita ownership of livestock, agricultural activity is hampered by the oftentimes severe climate and poor land quality.

It is not widely populated, and many people in rural communities continue to live in “semi-nomadic conditions.” Infrastructure is not well developed, there are not many roads, the existing roads are not well maintained, and many Mongolians are largely dependent upon rail transport. Though the construction of new infrastructure has been made a priority by the Mongolian government and by donors, economic growth has been difficult due to a lack of diversity in the

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80 Id.
81 Id. See Mountains of Mongolia, BLUEPEAK.NET (2009), http://www.bluepeak.net/mongolia/mountains.html
82 LDC Series, at 65-66.
83 LDC Series, at 65.
84 Id.
economy.\textsuperscript{85} Even though agriculture accounts for a third of total economic output, the country is still not self sufficient in food, and has to rely on imports to meet its overall economic needs, including food, textiles, machinery, equipment, spare parts, and oil.\textsuperscript{86} Its main exports are copper, gold, cashmere, hides and skins, and meat and other animal products,\textsuperscript{87} and it relies heavily on trade with Russia, China, South Korea, Japan, and the United States to keep its economy in motion.\textsuperscript{88} Despite continued development concerns, the country did accede to the World Trade Organization (WTO) in January of 1997, which informs upon its relative success at economic reform and the implementation of a trade regime attuned to international standards.\textsuperscript{89} Similarly, its efforts at infrastructure development have been slow but steady; for instance, between 1996 and 1999, over 173 kilometers of roads and 1,208 meters of bridges were built in the country.\textsuperscript{90}

Despite the size and proximity of China, the only Chinese seaport utilized for Mongolian transit traffic is Tianjin.\textsuperscript{91} Mongolia can utilize at least six Russian seaports, however: Vladivostok, Nahodka, Vanino and Vostochny (on the Sea of

\textsuperscript{85} Id.
\textsuperscript{86} Id. at 65-66.
\textsuperscript{87} Id. at 66.
\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Id.
\textsuperscript{91} A. Erdenepurev, \textit{Current Status of Trade and Transport Facilitation and Problems Related to Border-Crossings}, Policy Coordination Strategic Planning Department Ministry of Industry and Trade, Mongolia, at 5, UNESCAP.ORG (April 2006), http://www.unescap.org/tid/itt/mtg/mong06_ae2.pdf (Erdenepurev). A useful resource for locating and/or indentifying ports around the world, including those on navigable rivers and inland waterway systems, can be found at WORLDPORTSOURCE.COM (2012), http://www.worldportsource.com/waterways/systems/index.php
Japan), St. Petersburg (on the Baltic Sea), and Novorossisk (on the Black Sea).needles to say, Mongolia has bilateral transit agreements with Russia\(^\text{94}\) and China, as well as road transport agreements with Russia and China.\(^\text{95}\) The majority of Mongolian transit traffic is carried by rail between Ulaanbaatar and Tianjin.\(^\text{96}\)

Mongolia is a party to the CTTLLS, as is Russia (both with reservations).\(^\text{97}\) China is not a party, and is not bound by CTTLLS principles.\(^\text{98}\) Mongolia, China, and Russia are all parties to UNCLOS.\(^\text{99}\) Importantly to this discussion, and with the purposes of facilitating “adequate transit traffic arrangements for regional and international trade and for acceleration of economic development,” the three countries, with the help of UNCTAD, created a Draft

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\(^\text{92}\) Id. See also Snapshots (it is interesting to note that Mongolia at one point had “transit rights negotiated on its behalf by Stalin's Soviet Union.”).

\(^\text{93}\) Id.

\(^\text{94}\) Mongolia and Russian Federation: Agreement concerning access to the sea and transit transport for Mongolia across the territory of the Russian Federation (Moscow, 19 October 1992), TREATIES.UN.ORG (2012), http://treaties.un.org/doc/Publication/UNTS/Volume%201763/volume-1763-I-30672-English.pdf (Mongolia-Russia Treaty) (providing in Article 2 that Russia, among other considerations, shall:

\begin{itemize}
\item \textit{in accordance with the generally recognized principles of international law and in conformity with the rules established by the transit State, . . . accord the following rights to [Mongolia]: (a) Freely to engage in transit transport across the territory of the transit State to or from the sea in accordance with the provisions of this Agreement; (b) To use the seaports and, for vessels sailing under the flag of the State lacking access to the sea, to pass freely through the internal and territorial waters of the transit State . . .).}
\end{itemize}


\(^\text{96}\) Erdenepurev, at 6.

\(^\text{97}\) CTTLLS.

\(^\text{98}\) Id.

Transit Traffic Framework Agreement in early 2003. The goal of the agreement was to “guarantee freedom of transit by all modes of transport and promote simplification, harmonization and standardization of customs, administrative procedures and documentations.” The document makes explicit its incorporation of the relevant terms of UNCLOS. Though the Agreement provides a solid basis upon which the three countries can move forward, it remains in draft form as of early 2012. The text of the Mongolia-Russia bilateral transit agreement can be found on the United Nations website.

In sum, although, as do some other LLDCs:

Mongolia does not face severe ethnic and cross-border tensions. . . . it does . . . share the challenge of remoteness . . . with the capital city, Ulaanbaatar, lying nearly 1700 km from the nearest port. Mongolia also still grapples with its extremely low population density . . . which further complicates transport. The country has only one main highway and relies primarily on rail for shipping. Railway infrastructure is in fair condition but problematic for trading with neighbouring China, the world’s fastest growing economy, since the two countries use different rail gauges and shipments need to be unloaded and reloaded at Zamyn Uud.

101 Altangerel, at 26.
102 Draft Transit Framework, at 4 (stating that “[l]and-locked States shall have the right of access to and from the sea through the territories of Transit States for the purpose of exercising the freedom of transit traffic provided for in Paragraph 1 of this Article as stipulated in the United Nations Convention on the Law of the Sea.”).
104 Mongolia-Russia Treaty. For comparison to another bilateral treaty from the Asian continent, see Afghanistan-Pakistan Transit Trade Agreement 2010, NTTFC.ORG (2010), http://www.nttfc.org/reports/APTTA-Final-Signed%2028102010.pdf (APTTA). Article 7 of the Agreement pertains to Maritime Ports and Article 8 pertains to Other Ports of Entry/Exit. Id.
105 Faye, at 64.
b. Paraguay and Bolivia

There are a number of regional agreements of importance to the transit regimes and development potential of Paraguay and Bolivia. In April 1969, Argentina, Bolivia, Brazil, Paraguay and Uruguay agreed in the Treaty of the River Plate Basin\(^\text{106}\) to coordinate the development of the region and its outlying territories.\(^\text{107}\) Objectives were to find common interests, conduct studies, install infrastructures, and create operational agreements or legislation for pursuing further cooperation regarding navigation, road, rail, air travel, electricity supplies and communications, and regional industrial links.\(^\text{108}\) Under the Treaty, the Financial Fund for the Development of the River Plate Basin (FONPLATA) was created in 1976 to further integrate the region,\(^\text{109}\) and the Hidrovia Project also was created in 1996, concerning agreements about free navigation and transit on the Paraguay and Paraná rivers.\(^\text{110}\) The Hidrovia Project is of particular

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\(^{106}\) Treaty of the River Plate Basin, 8 I.L.M. 905 (1969), http://www.heinonline.org.ursus-proxy-8.ursus.maine.edu/HOL/Page?handle=hein.journals/intlm8&div=97&collection=journals&set_as_cursor=17&men_tab=srcresults&terms=(bolivia-brazil)&type=matchall (Treaty of the River Plate Basin). The Treaty is designed mostly as a development initiative, and though it does mention “facilitating and assisting navigation . . . rational utilization of water resources, in particular by the regulation of watercourses and their multipurpose and equitable development . . . [and] improvement of road, rail, river, air, electrical and telecommunications Interconnexions” as objectives, it in no way addresses the specific needs of Bolivia and Paraguay as landlocked states. \textit{Id.} Art. 1.

\(^{107}\) Improvement in Latin America, at 10.

\(^{108}\) \textit{Id.}


\(^{110}\) Improvement in Latin America, at 10-11. See Maria Silveira, \textit{The South American Hidrovia Parana-Paraguai: Environment v. Trade?}, CHASQUE.NET http://www.chasque.net/rmartine/hidrovia/Envxtrad.html (last accessed May 9, 2012) (discussing the potential environmental impacts of the development initiative); Hidrovia Canal and Environment, AMERICAN.EDU, \textit{http://www1.american.edu/TED/hidrovia.htm} (last accessed May 9,
importance to the issue of sea access for Paraguay and Bolivia. It has been proposed that:

If and when it is completed Hidrovia will allow ocean going vessels to make the 2,000 mile trip from Argentine and Uruguayan ports of the Atlantic to currently landlocked areas in Paraguay and Bolivia. The proposed route would begin at Caceres in western Brazil, run through the center of Paraguay (including the capital Asuncion), through portions of Argentina and finish at Nueva Palmira in Uruguay. The project would essentially expand navigation of the Paraguay and Parana river system, which is the second largest in South America. The result, say proponents, would be a massive economic boom for the region, drastically reducing transportation costs and providing the resource rich but landlocked areas of Argentina, Paraguay, Bolivia and Brazil with direct access to the Atlantic Ocean and thus the entire world.\(^{111}\)

The economic benefits to the heartland of South America stemming from the completion of this project would clearly be considerable. For instance: “[i]nstead of $60-$90 a ton for truck hauling, river transport would cut the costs to perhaps half of that, from $30-$50 a ton, combined with expected lower costs for river upkeep than road maintenance.”\(^{112}\) Yet despite the potential benefits of the Hidrovia that are relevant to this discussion, the Project continues to face serious resistance due to its adverse environmental impact, and “as originally proposed, is

\(^{111}\) Hidrovia Canal.

no longer seen as viable” (though its ultimate fate, perhaps in lesser or cumulative forms, is uncertain). The Latin American Integration Association (LAIA) is also an intergovernmental body that advocates for regional integration to achieve economic and social development, with the objective of creating a common market. The Treaty of Montevideo of 1980 established the overall legal and regulatory framework for LAIA, and was signed by Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and

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113 Id.
114 Id. See id. (stating that the discontinuance of the original project: does not mean that hydrological projects on the Paraguay River and its tributaries will not occur piecemeal and still impact the Pantanal in a major way. Although governmental support for the Hidrovia itself has waned, principally among the Brazilian government, various smaller hydrological initiatives remain of interest. These proposed and actual structural interventions include various actions of dredging and channel straightening of the Paraguay River and its tributaries, some in the Upper Paraguay River Basin and others further south, where their hydrological impact could still affect the upper stretches and thus the Pantanal. [and the] cumulative negative impact can actually be worse than a larger, more comprehensively planned project. Furthermore, various interests continue to advocate a commercial waterway into the heart of the continent, even if implemented piecemeal. Thus the Hidrovia project, or its various formulations, remains a vital concern to the Pantanal.).

115 Improvement in Latin America, at 10.
116 Treaty of Montevideo Establishing the Latin American Intregration Association, 20 I.L.M. 672 (1981), http://www.heinonline.org.ursus-proxy.8.ursus.maine.edu/HOL/Page?handle=hein.journals/intlm20&div=77&collection=journals&set_as_cursor=4&men_tab=srchresults&terms=(treaty%20AND%20of%20AND%20of%201980)&type=matchall (LAIA Treaty) (mentioning: in Article 18 that “member countries shall endeavour to set up effective compensation mechanisms to take care of negative effects which might influence intraregional trade of the relatively less developed land-locked countries”; in Article 21 that “[i]n order to facilitate utilization of tariff cuts, member countries may set up cooperation programs . . . directed towards supporting the relatively less developed countries, with special regard, among them, to land-locked countries;’ in Article 22 that “treatments in favour of relatively less developed countries may include collective and partial cooperation actions calling for effective mechanisms meant to compensate the disadvantageous situation faced by Bolivia and Paraguay due to their land-locked location” and that “within the regional tariff preference referred . . . attempts shall be made to preserve the margins granted in favour of land-locked countries by means of cumulative tariff cuts;” and in Article 23 that “[m]ember countries shall endeavour to grant land-locked countries facilities to establish free zones, warehouses or ports and other administrative international transit facilities in their territories.”).
Venezuela. Paraguay and Bolivia have also signed bilateral agreements under LAIA with other South American countries in an effort to facilitate trade, namely by reducing or eliminating tariffs on a limited number of products. Further economic and development initiatives in the region include the Southern Common Market (Mercosur) created in 1991, which is aimed at promoting industrial growth and investment, and the Free Trade Area of the Americas (FTAA) (which began as an idea in 1994 and has struggled to gain support since then), aimed at uniting the economies of the whole western hemisphere under a single free trade agreement. The general public in Paraguay and Bolivia is against the idea of the FTAA.

Both countries have poor domestic infrastructure, and although they are “surrounded by relatively extensive and well-maintained transport corridors. . . . [t]he poor state of maintenance and operation of domestic corridors . . . have prevented [the] countries from benefiting from such strong external transit corridors.” Other troubles also prevail. Paraguay’s railroad, which links to Argentina, Uruguay and Brazil, has fallen into disuse, and political tensions are present for both Paraguay and Bolivia. For example, the age old struggle between Bolivia and Chile has recently impacted “an

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117 Improvement in Latin America, at 10.
118 Id. Cf. UNCLOS Art. 127(1).
120 See, e.g., Free Trade Area of the Americas, CITIZEN.ORG (2012), http://www.citizen.org/trade/ftaa/ (stating that “[t]he FTAA is currently in a long coma with no signs of life whatsoever for the past several years.”).
121 Improvement in Latin America, at 11.
122 Id.
123 Faye, at 66.
124 Id. at 67.
ambitious Bolivian plan that could double exports by exporting natural gas via Chilean ports,” as the plan “has been delayed by ongoing domestic protest in Bolivia against the use of Chilean corridors.”125

On a positive note: the central location of both countries:

could allow them to serve as regional hubs for new technologies less dependent on transport costs, such as telecommunications. Bolivia and Paraguay also hold the potential to be major regional energy hubs since they both possess significant reserves. Bolivia recently discovered expansive reserves of natural gas and oil, and Paraguay has the potential to be a major exporter of hydroelectric power. Since these sectors are not primarily dependent on road and rail infrastructure, it will be possible to develop and benefit from them even before domestic transport infrastructure is improved to a significantly higher level.126

Similarly, there are ongoing efforts by the international community, especially by UNCTAD, to address trade facilitation issues in Latin and Central America, including a recent forum held in Chile.127 Both countries have ratified and acceded to the CTTLLS128 and UNCLOS.129

i. Paraguay

Paraguay is connected to the Atlantic by the Paraguay and Paranà rivers, but it does not have sovereignty over the full lengths of river reaching to the ocean.130 It is bordered by Bolivia, Argentina, and Brazil.131 The hot and arid Gran Chaco region covers the majority of Paraguayan territory, though in the east

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125 Faye, at 67.
126 Faye, at 67-68.
127 See, e.g., UNCTAD Regional Forums on Trade Facilitation Implementation Plans in Latin and Central America (Chile, March 2012), Global Facilitation Partnership for Transport and Trade, GFPTT.ORG (2012), http://www.gfptt.org/Entities/EventProfile.aspx?id=154b20f4-08c9-440f-a29f-a51b3cda3576

128 CTTLLS.
129 UNCLOS Ratifications.
130 Faye, at 5.
131 Id.
there is a fertile area which includes fields, pastureland, and lakes and woods, where stockbreeding and the widespread cultivation of cotton, soya, rice, tobacco, sugar, maté, wood, vegetable oils, coffee, tung oil, meat products, and fruit occurs. The export of these products, however, has at times been hindered by insufficient road infrastructure. The country has significant hydroelectric resources resulting from its shared ownership of the Itaipu dam with Brazil, the Yacyreta dam with Argentina, and full ownership of the Acaray dam, but it still relies heavily on its fellow Mercosur countries for trade. The Paraguay and Parana rivers give Paraguay 3,100 kilometers of navigable waterway, the navigation of which is governed by law; and the management and operation of all ports to which Paraguay has access are controlled by the National Navigation and Ports Authority (ANNP), established by Law No. 1066 of 23 August 1965.

The country has conducted studies on possible trade corridors, including, on the Pacific Coast, corridors between La Patria and Garay, La Patria and Infante Rivarola, Estigarribia and Pozo Honda, and on the Atlantic Coast, between Asuncion and Ciudad del Este, and Pozo Colorado and Pedro Juan Caballero. Yet it “faces severe financial constraints in its efforts to develop its ports and infrastructure.” As a result, more than a decade ago it reached an agreement with the Inter-American Development Bank for a loan of $82,300,000 U.S.

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132 Id. at 6.  
133 Id.  
134 Id.  
135 Id.  
136 Id. at 35-36. See Paraguayan Law No. 476 (15 October 1957) (establishing regulations regarding rights and obligations of vessels, and with respect to documentation, crews, passengers and owners).  
137 Policies ¶ 22.  
138 Id. ¶ 23.
currency, which was to be directed towards the development of road networks.\footnote{Id. ¶ 24.}

Similarly, for some time, Paraguay has made clear its intention to privatize its railways, but the “high investment necessary to modernize its century old [equipment] is [of] little interest to the private sector.”\footnote{Id. ¶ 25. See also Argentina and Bolivia, Exchange of notes constituting an agreement concerning approval by the Bolivian Government of the agreements concluded between the Bolivian National Railways and the Argentine Railways and duly authorized by the Procurement Board of the Argentine-Bolivian Mixed Railway Commission concerning the delivery of rolling stock and traction equipment for the Yacuiba-Santa Cruz de la Sierra railway, TREATIES.UN.ORG (Buenos Aires, 26 October 1967), \url{http://treaties.un.org/doc/Publication/UNTS/Volume%20671/volume-671-I-9550-English_French.pdf}}

The country has access to a number of ports on the Atlantic ocean in Argentina,\footnote{See Argentina and Paraguay, Agreement between the Argentine Republic and the Republic of Paraguay on the establishment of regulations for border committees, at 241, TREATIES.UN.ORG (Buenos Aires, 15 April 1998), \url{http://treaties.un.org/doc/Publication/UNTS/Volume%202072/v2072.pdf}; Argentina and Paraguay, Agreement concerning the construction of an international bridge over the river Pilcomayo between Clorinda and Puerto Eisa, TREATIES.UN.ORG (Buenos Aires, 21 October 1964) \url{http://treaties.un.org/doc/Publication/UNTS/Volume%20635/volume-635-I-9081-English.pdf}} Brazil,\footnote{See Brazil and Paraguay, Exchange of notes constituting an agreement for exemption from the port improvement tax for goods bound for or originating from Paraguay, and in transit through Brazilian territory, TREATIES.UN.ORG (Brasilia, 9 August 1985), \url{http://treaties.un.org/doc/Publication/UNTS/Volume%201406/volume-1406-I-23500-English.pdf}; Brazil and Paraguay, Exchange of notes constituting an agreement on railroad connections, TREATIES.UN.ORG (Brasilia, 17 September 1979), \url{http://treaties.un.org/doc/Publication/UNTS/Volume%201242/volume-1242-I-20194-English_French.pdf}} and Uruguay, including: at Buenos Aires, Argentina, Paraguay has been granted a small section of wharf and priority over the adjacent area; it has a storehouse for exports and imports adjoining the port of Matadero; it has access to a “free zone” at the port of Rosario\footnote{See also Argentina and Bolivia, Exchange of notes constituting an agreement concerning a free-trade zone in the Port of Rosario, TREATIES.UN.ORG (La Paz, 11 December 1968), \url{http://treaties.un.org/doc/Publication/UNTS/Volume%20671/volume-671-I-9554-English_French.pdf}} which contains specialized equipment for handling bulk goods brought in by sea; at the port of Paranagua in Brazil it has a 4,000 square meter storehouse and a 9,000 square meter container
store including modern facilities; at the port of Santos there is a terminal managed
by ANNP which handles container imports, transit, and bulk exports; it has access
to Rio Grande do Sul, which is connected by rail to Encarnación in Paraguay, and
which it uses to export soya in bulk; at Nueva Palmira in Uruguay it has a wharf
and other facilities, including industrial conveyor belts, large silos, a cold store,
warehouses and container yards; and it has access to the well sheltered port of
Montevideo at the mouth of the Hidrovia, which is in close proximity to an
international airport. Paraguay also maintains a number of inland ports of
importance, namely Asunción, Concepción, Villete, and Pilar on the Paraguay
River, and Saltos del Guaira and Presidente Franco on the Paraná River.

ii. Bolivia

Bolivia is a sparsely populated landlocked country in the center of
South America, and though it has battled political instability for most of its
history, it has been a relatively stable democracy for the past thirty years.
Difficult climatic conditions and resultant financial problems have at times caused
a decrease in the vitality of Bolivia’s main industries, such as petroleum and
natural gas production, telecommunications, silver and zinc mining, and
agriculture. Even at points since the emergence of the current democracy, the
government has struggled (despite international assistance) with debt, general

144 Faye, at 39.
145 Id. at 36-37.
146 Background Note: Bolivia, U.S. Department of State, STATE.GOV (August 1, 2011),
http://www.state.gov/r/pa/ei/bgn/35751.htm (Background Note: Bolivia) (stating that
“[p]opulation density ranges from less than one person per square kilometer in the southeastern
 plains to about 10 per square kilometer (25 per square mile) in the central highlands.”).
147 Improvement in Latin America, at 4.
148 Id. at 4-5.
political and social unrest, and smuggling,149 and “almost two-thirds of its people, many of whom are subsistence farmers, live in poverty.”150

As noted briefly in Part II, Bolivia has not always been a landlocked country: it granted Chile permanent possession of more than 150,000 square kilometers of its coastline in the Treaty of Peace, Friendship and Commerce signed between the two countries in 1904, after a period of war.151 As compensation, Chile endeavored to construct a railway from Arica, on the Chilean coast, to La Paz, the capital of Bolivia, and gave Bolivia, "in perpetuity, the most extensive and unrestricted right of commercial transit across its territory to its Pacific ports."152 Under the treaty, Bolivia was also permitted to maintain customs offices in Arica and Antofagasta, and in other ports as it may appoint.153 Under a later agreement, in 1912, the rights of free transit across Bolivia were further described, and regulation and authority over traffic and customs were granted to Bolivian authorities located in Chilean ports.154 Bolivian transit rights were further guaranteed for all types of merchandise at all times by the Convention of 16 August 1937 (after such rights survived challenge during the Chaco War), and the Convention also provided for more refined procedures regarding the receipt, handling and subsequent transportation of goods.155 The procedure utilized at Arica and Antofagasta was again altered, in 1975, by the

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149 Id.
150 Background Note: Bolivia.
151 GLASSNER, at 105.
152 Improvement in Latin America, at 7.
153 Id.
154 Id. See also Uprety, at 124.
155 Id.
Integrated Transport System (SIT), which granted Bolivia exclusive administrative power over the transfer of goods from vessels.156

The loss of its coastline has not gone unremembered by the people of Bolivia:

The Bolivian Navy still trains its naval force of 5,000 strong in Lake Titicaca in the hope that the country [will] one day be able to recover its coastline. Successive governments of Bolivia have always made the return of their sea coast one of their top priorities. The Bolivian people annually celebrate a patriotic day, the ‘Dia del Mar’ (Day of the Sea), to remember their country’s territorial loss, which included the coastal city of Antofagasta. What is written on one of the murals depicting a national hero pointing towards the Pacific reads: ‘what once was ours will be ours once again.’ This issue has become a matter of cultural phenomenon for all Bolivians.157

Yet on a positive note, Bolivia made both symbolic and practical progress in its efforts to regain access to the sea when in October 2010 it negotiated an agreement to build a small port on a 1.38 square mile parcel of the Peruvian coastline.158

By rail, Bolivia is connected to the ports of Matarani in Peru, Arica and Antofagasta in Chile, Rosario and Buenos Aires in Argentina,159 San Pablo and

156 Id.
159 See Argentina and Bolivia, Agreement between the Argentine Republic and the Republic of Bolivia to establish regulations for the Border Committees, Certificate of Registration, TREATIES.UN.ORG (Buenos Aires, 16 February 1998),
Santos in Brazil, and inland river ports Aguirre and Quijarro (in Bolivia) and Corumba in Brazil.\textsuperscript{160} By road, there are four corridors linking Bolivia to the ocean, and they have been described by the government as "Plan Bolivia," in reference to further development.\textsuperscript{161} To facilitate these connections, Bolivia has bilateral transit agreements\textsuperscript{162} with Argentina, Brazil, Chile, and Peru.\textsuperscript{163}

Lake Titicaca, belonging to both Bolivia and Peru, has been the site of an import and export cargo service between Guaqui and Chaguaya in Bolivia and Puno in Peru since 1903, but the water transport of most importance to Bolivia takes place on the Hidrovia.\textsuperscript{164} Still, only half of the 10,000 kilometers of rivers in Bolivia is navigable, as the rivers run through sparsely populated, undeveloped regions lacking sufficient facilities for the loading and unloading of cargo.\textsuperscript{165}

The Amazon River basin covers almost 68\% of Bolivian territory, and by using its main navigable waters, Brazil, Bolivia and Peru can be linked.\textsuperscript{166} Transport upon the Beni, Madre de Dios and Orthon rivers can run from Manaos in Brazil to Iquitos on the Peruvian coast, and the Ichilo, Mamore and Itenes rivers link the port of Villaroel in central Bolivia with Guayaramerin on the

\textsuperscript{160}http://treaties.un.org/doc/Treaties/2010/04/20100421\%2012-13\%20PM/Other\%20Documents/COR-Reg-47426-Sr-59511.pdf

\textsuperscript{161}Improvement in Latin America, at 17.

\textsuperscript{162}Policies ¶ 12.

\textsuperscript{163}See Bolivia-Peru: Framework Agreement on the “Grand Marshall Andrés de Santa Cruz” Binational Project for Friendship, Cooperation and Integration and Supplementary Agreements, 32 I.L.M. 279, 283 (1993), http://www.heinonline.org.ursus-proxy-8.ursus.maine.edu/HOL/Page?handle=hein.journals/intlm32&div=4&collection=journals&set_as_cursor=5&men_tab=srchresults&terms=bolivia|peru&type=matchall#293 (Bolivia-Peru Agreement). Article 2 of the Agreement states that “Peru shall grant the free use of its port facilities and develop an industrial and a beach resort free zone at Ilo.” \textit{Id.}

\textsuperscript{164}Improvement in Latin America, at 22.

\textsuperscript{165}\textit{Id.}

\textsuperscript{166}\textit{Id.}
The port of Villaroel facilitates the loading of goods bound for the northern towns, as well as the unloading of chestnuts, farming produce and livestock, and is comprised of a concrete wharf, covered storage, an operations area with a five-ton crane, and an 80-ton weighing platform. With help from the World Bank and others, the port of Central Aguirre on the border with Brazil, with facilities such as a 33,000 ton silo and a 2,500 ton oil tank, has developed to allow the transfer of goods from port to storage and port to free zone platform, the greater importation of goods into Bolivia, and the transshipment of goods.

\textbf{c. Landlocked Countries in Africa}

Africa has fifteen landlocked countries, and all face certain challenges. Botswana, Burkina Faso, Burundi, Chad, Central African Republic, Ethiopia, Lesotho, Malawi, Mali, Niger, Rwanda, Swaziland, Uganda, Zambia, and Zimbabwe have no coastline and are without easy access to maritime trade. On average, transport costs for these LLDCs can range as high as 77\% of the value of exports. The access of LLDCs in Africa to maritime trade depends heavily on the “good will” of transit countries: recorded trade between landlocked and transit developing countries in Africa is not significant, and the infrastructure in transit developing countries is generally insufficient.

Though economic development is a major objective of nearly all governments in Africa, after decades of independence from colonial rule, Africa

\begin{itemize}
\item \textit{167} Id.
\item \textit{168} Id. at 22.
\item \textit{169} Id. at 22-23.
\item \textit{170} Africa Trade Forum, at 1.
\item \textit{172} Id.
\item \textit{173} Id.
\end{itemize}
continues to struggle economically. Physical infrastructure throughout the continent is not strong enough to support trade liberalization or a common market, and though infrastructure projects have been attempted, the pace is slow, and trade between African countries remains a challenge. Moreover, some argue that the foreign values and lifestyles introduced by colonialism spawned a reliance on foreign goods which African economies cannot support, and that trade between African nations is further hindered because products from the region, even to its inhabitants, are often considered inferior to products originating outside of Africa. In response to the collective challenges faced, there have been efforts among African nations to forge greater economic cooperation, and three examples of regional organizations dedicated to economic growth, the

174 Maranga, at 106.
175 Maranga, at 112.
176 Maranga, at 114-15. This predicament lead the late Captain Thomas Sankara to comment at an Economic Community of West African States (ECOWAS) Summit in Abidjan, Ivory Coast, “[w]hy import products when we have all we need? We are economic colonies even if we have national flags. . . . we should produce, transform and consume.” Id. See generally Global Crises.

emphasizes co-operation in infrastructure to evolve co-ordinated, harmonized, and complementary transport and communication. . . . [including] improving the existing transport and communication links and establishing new ones as a means of furthering the physical cohesion of the Partner States and facilitating and promote the movement of traffic within the community;

The COMESA aims at: “[f]acilitation of both road and air transport . . . efficient movement of goods and people . . . maximizing the use of existing infrastructure. . . .[and] creat[ing] stable, competitive and cost-efficient transit systems; ” and the SADC works towards:

[i]ntegration of transport, communications and meteorology networks . . . implementation of compatible policies, legislation, rules, standards and procedures; elimination or reduction of hindrances and impediments to the movement of persons, goods, equipment and services. . . . the right of freedom of transit for persons and goods; the right of land-locked Member States to unimpeded access to and from the sea….the development of simplified and harmonized documentation which supports the movement of cargoes along the
fight against poverty, and the improvement of transport and transit systems and facilities are the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). The governments of Burundi, Kenya, Rwanda, Uganda, and Zaire also endeavored, in 1985, to create the Northern Corridor Transit Agreement (NCTA), which provides for improvements in port facilities, transit routes and facilities, and customs control among other things.

Similarly, the governments of some countries, such as Zimbabwe, pursue “a length of the logistical chain, including the use of a harmonized nomenclature.”

Id. ¶ 21.

178 EAC Treaty, East African Community, EAC.INT (2012), http://www.eac.int/ (EAC). See EAC Art. 93 (Maritime Transport and Ports) (providing that coastal partner states shall “co-operate with the landlocked Partner States and grant them easy access to port facilities and opportunities to participate in provision of port and maritime services”).


180 SADC Treaty, Southern African Development Community, SADC.INT (2012), http://www.sadc.int/english/regional-integration/tifi/tis/legal-documents/sadc/ (SADC). While the actual text of the SADC treaty does not in any way make special reference to the rights of landlocked states, see id., there is an additional Protocol on Transport, Communications, and Meteorology which specifically addresses Maritime and Inland Waterway Transport (in Chapter 8), and Integrated Transport Policy (in Chapter 3.2). SADC, Protocol on Transport, Communications, and Meteorology (Maseru, Lesotho, 24 August 1996), SADC.INT (2012), http://www.sadc.int/english/key-documents/protocols/protocol-on-transport-communications-and-meteorology/ (SADC Protocol) (stating in Chapter 3.2 that Member States shall follow the principles of “the right of freedom of transit for persons and goods, the right of land-locked Member States to unimpeded access to and from the sea, [and] the right of coastal Member States to unimpeded access to and from land-locked Member States.”). See also Statement from the SADC Private Sector on Regional Economic Integration (Johannesburg, South Africa, 17 August 2008) SAND.INT (2012), http://www.sadc.int/french/regional-integration/tifi/sadc-free-trade-area/sadc-fta-launch/statement-by-the-private-sector/ (calling for “urgent liberalisation of the transport and logistics sector in the region in order to reduce the costs of doing business, especially for land-locked countries.”) (SADC Private Sector).

181 1985 Northern Corridor Transit Agreement, WORLD BANK.ORG (1985), http://www4.worldbank.org/afr/ssatp/Resources/HTML/legal_review/Annexes/Annexes%20V/Annexe%20V-01.pdf (NCTA) See NCTA § 4 (Maritime Port Facilities) (stating that the government of Kenya shall provide, within its capabilities, the “necessary maritime port facilities” in Mombasa for the use of NCTA states). See also NCTA § 5 (Transit Routes and Facilities); § 6 (Frontier Services and Facilities); § 7 (Customs Control); § 8 (Documentation and Procedures); § 9 (Transport).
policy that encourages private-sector investment in the construction and maintenance of roads, bridges and railway lines as well as the commercialization and privatization of state owned enterprises in the transport sector.”

The COMESA, the EAC, the NCTA and the SADC have been heralded by the Global Facilitation Partnership for Transportation and Trade as establishing and successfully implementing various measures to address transit facilitation. There is a probability that in Africa, regional arrangements for transit transport are utilized more widely than, or in favor of, bilateral treaties. Yet the encompassing nature of these regional arrangements, while providing structural integrity for the area concerned, may not adequately address the unique needs of the individual LLDCs located within the region.

The LLDCs of East and Southern Africa have access to “adequate” transit corridors for regional and international trade, but the condition of infrastructure, the quality of operations and management, and the condition and operation of cross border facilities still needs improvement. Cooperative arrangements between LLDCs and maritime neighbors do exist, in practice, but with limited

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182 Policies ¶ 28.
183 Bilateral and regional transit agreements, Global Facilitation Partnership for Transport and Trade, GFPTT.ORG (April 5, 2012), http://www.gfptt.org/entities/TopicProfile.aspx?tid=f02e95d2-7f7a-4443-bfa4-e1abc6be8e47
184 While the EAC, COMESA, SADC and NCTA all make noble efforts to address the problems of landlocked states as a group, the regional nature of the arrangements to a certain extent obscures the unique needs of individual landlocked states within those groups, which might need to be addressed in further detail to achieve the highest levels of sea access for the states. See, e.g., EAC Art. 93; COMESA Art. 84 & 88; SADC Protocol Ch. 3.2; SADC Private Sector; NCTA §§ 4-9.
185 Review of Progress ¶ 23.
effectiveness, due to “slow implementation, unilateral actions and policy reversals by countries.”  

East Africa has two major ports, Dar-Es-Salaam, Tanzania, and Mombasa, Kenya, which serve Uganda, Rwanda, Burundi and eastern Democratic Republic of Congo (DRC). Mombasa provides many East African landlocked countries with maritime access, which has been gained through the framework of the NCTA, and provides combined transport over road, rail, lake and oil pipeline that accounts for “annual cargo volumes in excess of [ten] million tonnes and combined transit and transshipment traffic of more than two million tonnes.”

In Southern Africa, there are three ports in Mozambique, one in Namibia, and five in South Africa (including major ports for transit traffic: Beira and Maputo, in Mozambique, Durban, Cape Town and Port Elizabeth in South Africa, and Walvis Bay in Namibia).

The SADC has a system of 15 ports which serve landlocked SADC members nearly exclusively: eight ports are on the Indian Ocean, including the ports of Beira, Maputo, and Nacala in Mozambique and Richards Bay, Durban, East London and Port Elizabeth in South Africa; and six are on the Atlantic coast, including Cape Town and Saldanha Bay in South Africa, Walvis Bay in Namibia, and Luanda, Lobito and Namibe in Angola.

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186 Id. ¶ 24.
187 Id. ¶¶ 20 & 25.
188 Id.
189 The Northern Corridor Transit Agreement, Global Facilitation Partnership for Transport and Trade, GFPTT.ORG (February 3, 2012), http://www gfptt. org/Entities/ActivityProfile.aspx?id=9d8d46db-05f4-47ed-95ad-acabf8890f5a
190 Review of Progress ¶ 25. The container terminal at Mombasa is also linked to inland container terminals or “dry ports” in Nairobi, Kisumu and Eldoret. Id. ¶ 30.
191 Id. ¶¶ 27-28.
Though the DRC is not technically landlocked, it is often considered among Africa’s LLDCs because of its very minimal coastline in comparison to its vast inland territory.\textsuperscript{192} It has many ports along the Congo River that are used for both domestic and foreign trade,\textsuperscript{193} and that can serve as an example, for descriptive purposes, to represent many of the challenges facing all African shipping ports. For instance, many Congolese maritime ports are products of Belgian colonialism and there has been little renewal or development of their infrastructures since the 1930s.\textsuperscript{194} As a result, the ports are not able to fulfill the requirements of modern international commerce and lack the capability to successfully compete in the world market.\textsuperscript{195} The functionality of the ports is hindered by an inability to process containerized vessels, address dredging and navigational problems or increases in freight rates,\textsuperscript{196} and cope with the ongoing presence of war, general mismanagement and corruption.\textsuperscript{197}

Some argue that the potential for expansion of trade activities in Africa puts many African countries in a position to play major roles in the future of international trade, but that many maritime ports in Africa are not currently equipped to contend with the demands of the modern commerce.\textsuperscript{198} Management

\textsuperscript{192} See Landlocked, WORLDGEOGRAPHY.ORG (May 20, 2010), \url{http://world-geography.org/378-landlocked.html} (Landlocked) (stating that “[w]hen the Democratic Republic of Congo was created, the country negotiated for a thin strip of land on the north end of Angola, providing the country with just 23 mi (37 km) of access to the Atlantic Ocean—enough to cut transportation costs by half of what they would have been without the ocean access.”).


\textsuperscript{194} Id. at 243.

\textsuperscript{195} Id.

\textsuperscript{196} Id.

\textsuperscript{197} Id. at 250-51.

\textsuperscript{198} Id. at 242.
issues, port access issues, and security and cost issues have also lead to further marginalization.¹⁹⁹

Yet on a positive note:

[i]n southern Africa, the landlocked countries that border South Africa are performing significantly better than those that do not. This underscores the potential benefits of a relatively wealthy neighbour. The two countries that are the best performers in the region, Swaziland and Botswana, are exceptional cases. Botswana benefits enormously from its diamond trade, which utilizes air transport and thus overcomes many possible burdens of landlockedness, and Swaziland benefits from its close location to ports in both Mozambique and South Africa.²⁰⁰

Such examples help to further illustrate the high level of dependence that LLDCs have on the development of their coastal neighbors. “[T]he variation in the east Africa region is particularly illuminating. [Human Development Index] levels decrease as one moves inland along the major transit route through Kenya used by Burundi, Rwanda and Uganda.”²⁰¹ Despite pronounced difficulties, positive steps in African transit and transport development include the Intermodal Africa Conference (the eighth and most recent conference was held in 2010), which addresses “topical issues and challenges on global transportation” and is attended by leading members of the shipping community from all around the world;²⁰² as well as the African Maritime Transport Charter (created by the member states of the Organization of African Unity), which addresses the priority of economic development, the importance of maritime transport in the promotion of free

¹⁹⁹ Id. at 242-43.
²⁰⁰ Faye, at 39.
²⁰¹ Id. at 39.
trade and development, and the importance of maritime transport as a factor in regional and continental economic integration.\textsuperscript{203}

\section*{IV. Critical Analysis}

The improvement of transit transport is often hindered by a lack of reliable data on the costs of alternative routes, including the potential for uncertainty and delay on such routes.\textsuperscript{204} A dearth of internationally available data that relates the value of goods imported into and exported from a country and differentiates the associated freight and insurance charges makes it difficult to compare the total transit costs for individual landlocked countries and their maritime transit partners, though customs services for some countries have attempted to provide such reports.\textsuperscript{205} Some studies even indicate that freight and insurance margins, compared between LLDCs and developed coastal countries, tend to work so as to penalize LLDCs “both for distance from the core economies and for being landlocked.”\textsuperscript{206}

Even so, the bare figures for transit cost may not adequately reflect a number of other factors effecting transport, including inland transport time, transport infrastructure, risk level in the country, distance from inland trade

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{203} African Maritime Transport Charter, Republic of South Africa Department of International Relations and Cooperation, \url{http://www.dfa.gov.za/foreign/Multilateral/africa/treaties/maritime.htm}
\item \textsuperscript{204} Jack I. Stone, UNCTAD (consultant), Infrastructure Development in Landlocked and Transit Developing Countries: Foreign Aid, Private Investment and the Transport Cost Burden of Landlocked Developing Countries, ¶ 12, UNCTAD/LDC/112, \url{http://unctad.org/en/docs/poldcd112_en.pdf}
\item \textsuperscript{205} \textit{Id.}
\end{itemize}
\end{footnotesize}
centers to seaports, and geographic conditions.\textsuperscript{207} Due to these “special constraints that inhibit [LLDCs’] full participation in the globalization process,” mere “problems of distance are . . . compounded by the need to cross international borders and by the inability to regulate the . . . transport process. As a result, the delivered costs of imports are higher, exports less competitive and attraction for foreign direct investment reduced.”\textsuperscript{208} Restated:

one of the few robust findings in the international cross-sectional analysis of economic growth rates is that the share of trade in GDP [gross domestic product], mediated through its impact on the investment share, is positively associated with the rate of economic growth. This suggests that, whatever causal mechanisms are at work, the effects of geographical disadvantage are most likely to work through reductions in the volume of trade.\textsuperscript{209}

The UN has addressed the issue with similar frankness, stating that:

[lack of territorial access to the sea, isolation, remoteness from world markets, and high transport and transit costs experienced by . . . [LLDCs] impose serious constraints on their overall socio-economic development, including their trade competitiveness. . . . Unless the structural problems facing LLDCs are adequately addressed, there is a real risk of relative lack of integration in the world economy, especially for those LLDCs whose neighbouring export and transit markets are similarly poor.”\textsuperscript{210}

So how does UNCLOS help or hinder the lot of LLDCs? Are the principles contained in Part X sufficient to protect LLDCs from ineffective, or

\textsuperscript{207} See Hironori Kawai, Shinya Hanaoka & Tomoya Kawasaki, Characteristics of International Freight Transport in Landlocked Countries, \url{http://www.ide.titech.ac.jp/~hanaoka/139.pdf}
\textsuperscript{208} Cross Border Facilitation, at 63.
\textsuperscript{210} Executive Summary, at 3. \textit{See id. at} 4 (stating that: [a]ccording to the 2006 Human Development Report, LLDCs score poorly on many human development indicators, with 10 of the world’s 20 lowest-ranking countries being landlocked. Collectively, LLDCs accounted for only 2 percent of the developing world’s total gross domestic product (GDP) in 2005. External debt is [also] a serious constraint on the ability of these poor countries to pursue economic development and reduce poverty.)
even oppressive, bilateral or subregional arrangements? Does UNCLOS afford LLDCs any “special protection from the international community against unfair exploitation by their . . . lucky coastal neighbors”?211 Given the notion that the “availability of good transport infrastructure enhances the productivity of all other inputs and enhances the rate of return to formation of both physical and human capital,”212 and a general recognition that “[t]he dependence of LLDCs on neighbouring transit countries for access to seaports . . . requires a multilateral system of international trade rules that ensures the quick and safe passage of goods and services at competitive prices,”213 Part X of UNCLOS only vaguely prescribes a remedy for the concerns faced by LLDCs. As stated by scholarship:

[un]der general principles of international law, it is erroneous to make the status of a country subject to and conditional upon, the voluntary benevolence or malevolence of another state. Access to the sea, and its multiple economic consequences, constitute a rule of international public order, the content of which should not be infringed by bilateral treaties.214

Moreover, UNCLOS does make distributive choices that prejudice landlocked countries (among others): for example, pertaining to the EEZ, it favors countries with long coastlines on the open sea.215 Some scholars suggest that all states, including LLDCs, could have been granted identically sized portions of EEZ, or that states could have been given an EEZ proportionate in size to their population or their general economic need, and that similar principles are

211 Mackellar, at 9.
212 Id. at 4.
213 Executive Summary, at 7.
214 Right of Access, at 67.
215 Posner & Sykes, at 594.
evidenced elsewhere in international law.\textsuperscript{216} Similarly, what of the “extra sovereign rights” (as mentioned in Part II) of transiting countries through war torn host countries, especially in Africa?\textsuperscript{217} Such rights are of little consolation when the transiting state lacks the capacity to assert them.

While the CTTLLS:

is the first multilateral agreement to address exclusively the specific problems of transit trade, it does not contain any radical innovations. Diverging evaluations of its effectiveness demonstrate the Convention’s lack of success in confronting the problem of free access to the sea.\textsuperscript{218}

Given such criticism, and as stated briefly in Part II,\textsuperscript{219} given the fact that UNCLOS only partially incorporates the CTTLLS, UNCLOS may be even less successful in confronting the problems of free access to the sea for LLDCs. Yet considering the twenty-four year process that engendered the current version of UNCLOS,\textsuperscript{220} it seems unlikely that a formal revision is destined to occur anytime soon. What more can be done?\textsuperscript{221}

A ten-year review of the Almaty Programme of Action, as provided for and given support by the original Almaty Programme from 2003, will be held in

\textsuperscript{216} \textit{Id.}
\textsuperscript{217} \textit{See, e.g.,} Faye, at 46 (stating that “[t]he landlocked countries of western Africa have been particularly affected by neighbours’ internal conflicts.”).
\textsuperscript{218} Right of Access, at 43.
\textsuperscript{219} \textit{See} Comparison of CTTLLS and UNCLOS provisions, \textit{supra} note 36.
\textsuperscript{220} \textit{See, e.g.,} Treves.
\textsuperscript{221} On an immediate level, it does not seem that it would be too difficult for any one of the concerned subsidiary organizations of the UN to collect and maintain an online database of all the existing bilateral, subregional and regional transit treaties participated in by LLDCs under the auspices of UNCLOS Art. 125(2). Such a database would allow a facial comparison of at least the legal frameworks governing similar arrangements, if not for a practical comparison of the actual conditions of ports, border facilities, and transport infrastructures (which could also be included by means of photographs, blueprints, operating schedules and operating budgets).
The purpose of the original Almaty conference, as stated by the UN, was “to galvanize international recognition and support for the efforts to develop a win-win solution for both landlocked and transit developing countries with the support of their development partners.” Will the review in 2013 be an opportunity for progress towards a flexible uniform transit regime, or a “new global agenda for a triangular transit transport cooperation,” as recommended by the UN in its Global Framework for Transit Transport Cooperation? The UN has also suggested that:

prohibitive transport costs have a greater impact on reducing LLDC’s participation in international trade than tariffs or other trade barriers. Transport costs can be three times more than the tariffs imposed by developed countries on goods from LLDCs. Port and inland transportation costs can represent as much as two-thirds of the total door-to-door costs for landlocked countries. In many LLDCs, multimodal transportation, an important source of improved shipping efficiency, is not widely available due to the infrequent use of containers for inland transport. . . . A way around these costs is for landlocked countries and their coastal neighbours to enter into transit agreements that define the conditions, obligations and rights under which the parties will use the transit facilities, including transit corridors, roads, inland waterways and rail transport to facilitate trade with the least amount of problems. Regional integration, through cooperative endeavours such as transport and development corridors, is also another way for countries to address obstacles arising from transit transport difficulties (emphasis added).

Many of the regional and bilateral agreements governing transit transport for LLDCs do not go so far, as suggested by the UN, as to specifically “define the conditions, obligations and rights under which the parties will use the transit

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223 Almaty Outcome, at 2.
224 Global Framework ¶ 1.
225 Executive Summary, at 5-6.
facilities,” but rather, are usually more general in nature. For instance, the EAC merely provides for “cooperation” between landlocked states and coastal states, COMESA similarly proposes “cooperation” and provides for “special treatment” for landlocked states, and the SADC provides for “unimpeded access” to the sea for landlocked states, while the Treaty of Montevideo of 1980 proposes “collective and partial cooperation actions,” “support,” “effective compensation mechanisms,” and the establishment of “free zones, warehouses or ports” for the benefit of landlocked states in the territory of member coastal states. The terms of the Mongolia-Russia transit treaty and the NCTA, on the contrary, are a bit more specific as to the rights of the landlocked state(s).

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226 See, e.g., Mongolia-Russia Treaty Art. 2; EAC Art. 93; COMESA Arts. 84 & 88; SADC Protocol Ch. 3.2; SADC Private Sector; NCTA §§ 4-9; Mercosur Art. 1, Treaty of the River Plate Basin Art. 1, LAIA Treaty Arts. 18, 21, 22 & 23; Bolivia-Peru Agreement Art. 2. Cf. APTTA (which is fairly comprehensive in comparison to most of the other agreements referenced in this footnote).
227 EAC Art. 93.
228 COMESA Arts. 84 & 88.
229 SADC Protocol Ch. 3.2.
230 LAIA Treaty Arts. 18, 21, 22 & 23.
231 See Mongolia-Russia Treaty Arts. 2, 5-8 (providing for freedom of transit and use of seaports, freedom of navigation, storage and reloading of Mongolian shipments, shortest possible transit routes, delay prevention protocol, customs liberalization, storage and reloading zones, and Mongolian transport offices located in the transit state). See also APTTA (proving for the efficient movement of goods and avoidance of delay, promotion of intermodal transport, minimization of customs fraud and avoidance, simplification and harmonization of customs documentation and procedure, monitoring for the traffic of illicit substances, freedom of transit, grievance and dispute resolution procedure, designation of transit transport corridors (including specific ports), safety of transit traffic, maintenance of infrastructure, assurances of adequate staffing, coordination of working hours, parking space for containers and trucks, assurances of rapid and reliable telecommunications services, licensing of transport operators, exchange of road traffic rights, provisions on railway rules and regulations, reciprocal commercial presence (including offices), motor vehicle and licensing regulations, liability insurance, etc.).
232 See NCTA §§ 4-9 (providing for rights of transit, nondiscrimination, port access, transit route protocol, stop over facilities for loading and unloading, safety of transit traffic, expedient clearance of transit traffic, the establishment of frontier posts, assurance of adequate staffing, warehousing facilities, coordination of working hours, parking space for containers and trucks, assurances of rapid and reliable mail and telecommunications, customs control, harmonization of documentation and procedure, periodic review of documentation and procedure mechanisms, streamlining of documentation, freedom of transit and harmonization of transit services, and liability insurance.).
Perhaps with an awareness of such discrepancies, the UN has further suggested that:

[legal and regulatory reforms are sometimes necessary to harmonise conflicting laws and regulations of landlocked and transit countries that inhibit trade. Examples include hours of business, restrictions on the operation of commercial transport vehicles by foreigners, monopolies, and privatisation to promote competition by encouraging participation of the private sector, both foreign and local, in certain industries such as logistics, railroads and port operations. Institutional reform is also necessary to create or strengthen institutions, including national legislation, to enforce international conventions or agreements. These agreements, such as the UN Convention on the Law of the Sea and others, permit access to the sea for landlocked countries, equal treatment of transit transport operators, freedom of navigation on inland waterways and other trade facilitating initiatives.]

Critical suggestions for improvement also include the sustainable development of tourism in effected countries, as well as development aid, contingency finance, and debt relief. UNCTAD has also asserted that:

The logical corollary of . . . commodity dependence is that natural resources play a crucial role in [the least developed countries’] economic growth, poverty reduction and food security. . . . [t]his significant role of commodities is also reflected in the UNCTAD proposal for a new international development architecture, which highlights commodities as . . . . [one of the] key pillars in a forward-looking agenda to shape international economic relations.

Given the amount of attention and resources that have been dedicated to this problem, guaranteeing a minimum standard of access to coastal resources for

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233 Executive Summary, at 6-7.
235 Id. at 10-11.
236 Global Crises, at 2.
237 See, e.g., Executive Summary, at 7 (stating that: LLDCs have been very successful in establishing a coordinating forum – the Geneva Group – at the WTO. While there is reluctance among certain WTO member states to formally recognise LLDCs as a separate grouping of countries
land-locked states seems within the theoretical power of the international community, though the practical reality of implementing any such guarantees may continue to plague LLDCs for decades to come.

Will modern politics and an increasingly globalized economy allow for the possibility of a world without LLDCs? What about a world without landlocked states in general? Similar to the recent arrangement reached by Bolivia and Peru or the arrangement reached by the DRC and Angola, it seems theoretically possible that all landlocked states could be granted small parcels on the coastline of one or more of their coastal neighbors. Transit swathes, similar to the “sea lanes” used to navigate through the territorial sea, straits, and

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requiring special consideration, there is a growing recognition among the member states of the special needs of LLDCs. In addition, the WTO accession process for some LLDCs has been particularly burdensome, prompting requests for a delay in the implementation or a relaxation of the obligations associated with WTO accession.

See also United Nations Millenium Declaration, ¶ 18, A/55/L.2, United Nations, UN.ORG (2000), http://www.un.org/millennium/declaration/ares552e.htm (stating that:

[w]e recognize the special needs and problems of the landlocked developing countries, and urge both bilateral and multilateral donors to increase financial and technical assistance to this group of countries to meet their special development needs and to help them overcome the impediments of geography by improving their transit transport systems.

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See, e.g., Policies ¶ 74 (stating that:

[I]landlocked and transit developing countries have continued to make significant investments in their infrastructure development, subject to the availability of financial resources. The major sources of such investment, in the form of grant aid or soft loans have been their development partners with regional development banks, the World Bank, the European Union and Japan prominent among them. Member states and relevant international organizations have made progress in improving sectoral aspects of transit transport, in particular in the development of sea and inland ports and air safety measures. Efforts have also been made to build up a broader consensus on and a better understanding of various aspects of transit trade at the national and subregional levels through a wide range of workshops for both government officials and the business community, mainly organized by international organizations.

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See Hernandez, supra note 158.

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Cf. Vasciannie, at 217 (stating that “there is ample evidence that up to the time of UNCLOS III, transit states had consistently refused to regard access over their territory as a right recognized by international law.”).

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See Landlocked, supra note 192.
archipelagic waters (as provided for in UNCLOS)\textsuperscript{242} could be carved in lanes no more than miles wide along the landlocked borders of transit states and out to the sea, and even included in official maps.\textsuperscript{243} Though such a great endeavor would have to be undertaken on an individualized level for each LLDC, and might not provide many benefits in reducing transit costs for inland states, it would reduce the (often mismanaged, even corrupt) formalities that accompany many border crossings and regional arrangements, improve territorial access to the sea for the LLDC, and also provide a psychological boost for its citizens and government.

Does the international community have the power to mandate the availability of such transit routes upon application by landlocked states to an international tribunal? Perhaps: but only under certain circumstances. Could LLDCs achieve small territorial cessions through an adaptation of the right of self-determination?\textsuperscript{244} The principle may never have been asserted to such ends, but that is not to say that it could not and may never be. Is it unreasonable to think that an international court or arbitral tribunal could grant to a landlocked state a narrow strip of sovereign territory that follows along the border of its transit neighbor and out to the sea? If circumstances so dictated, it seems a possibility. Could such a decision be reached under principles of equity, or public

\textsuperscript{242} UNCLOS Art. 22 (Sea lanes and traffic separation schemes in the territorial sea); Art. 41 (Sea lanes and traffic separation schemes in straits used for international navigation); Art. 53 (Right of archipelagic sea lanes passage).

\textsuperscript{243} An example of inland transit routes running along transit state borders is helpful in envisioning this principle. See ANNEX I.

necessity, or super-national notions of eminent domain?\textsuperscript{245} Perhaps, and again, it would depend upon the severity of the circumstances. Could adequate financing be obtained or raised by the landlocked state or with the help of the international community, and the World Bank in particular? It seems probable, especially if fiscal sacrifices were made in other areas of concern. Would transit coastal states rigidly resist such notions, regardless of the potential to trade small areas of territory for high prices? It may depend upon the correlative values of land and money at any point in time. UNCLOS Art. 129 (Co-operation in the construction and improvement of means of transport) does provide that:

\begin{quote}
[w]here there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may co-operate in constructing or improving them.\textsuperscript{246}
\end{quote}

Art. 130 also provides that “[s]hould such delays or difficulties [in transit traffic] occur, the competent authorities of the transit States and land-locked States concerned shall co-operate towards their expeditious elimination.”\textsuperscript{247} Given the equitable and humanitarian principles at stake, as well as the theoretical support provided by applicable international law, it does not seem absurd to think that transit coastal states in all circumstances would be able to successfully resist either ceding or selling small “lanes” along the borders (or elsewhere, if more practicable) of their own territory to their landlocked neighbor(s).

To reiterate, UNCLOS Art. 125(1) states that:

\begin{footnotes}
\textsuperscript{245} Cf. VASCIANNIE, at 210 (stating that it should “not be assumed that the existence of a long line of treaties on transit raises any presumption in favour of a customary right [under international law] in this area.”).
\textsuperscript{246} UNCLOS Art. 129.
\textsuperscript{247} Id. Art. 130.
\end{footnotes}
[l]and-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.\textsuperscript{248}

If subsection (1) to Art. 125 were left as the sole subsection, without subsections (2) and (3),\textsuperscript{249} would landlocked states be better off, or worse off?\textsuperscript{250} Art. 125(3) in particular, which expressly protects the sovereign rights of transit states,\textsuperscript{251} might partially impede the rights granted to landlocked states in Art. 125(1). As a whole, Art. 125 appears to balance the rights of landlocked states and coastal states, but what is the practical effect? Because it leaves the right of sea access for landlocked states subject to negotiation and at the same time expressly protects the sovereign rights of transit states, Art. 125 falls well short of providing a blanket enforcement mechanism by which landlocked states are guaranteed a minimum standard of access. Art. 282 (Obligations under general, regional or bilateral agreements) in Part XV of UNCLOS (Settlement of Disputes) offers partial consolation, however, suggesting that:

\begin{quote}
If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this
\end{quote}

\textsuperscript{248} Id. Art. 125(1).
\textsuperscript{249} Id. Art. 125(2) states that "[t]he terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements, and Art. 125(3) asserts that "[t]ransit 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" (emphasis added)."
\textsuperscript{250} A discussion similar to the one contained in the text accompanying this footnote, but reaching somewhat different conclusions, can be found in VASCIANNE, at 188-90.
\textsuperscript{251} See UNCLOS Art. 125(3).
Part, unless the parties to the dispute otherwise agree (emphasis added).  

Other provisions of Part XV go further to reinforce the rights of all states parties to UNCLOS. Art. 287 details how parties may obtain binding resolution of a dispute through application to a judicial or quasi-judicial body, including the International Tribunal for the Law of the Sea, the International Court of Justice, or an arbitral tribunal. Though it might be difficult to apply UNCLOS Part XV to a dispute arising under Part X in the context of a particularly successful transit agreement, a situation may well arise where the arrangement between landlocked and coastal state has ceased to function even to bare minimum standards, and has placed the landlocked country in a state of necessity. In that circumstance, and given the unfortunate situations of many LLDCs as well as the need for innovative solutions, a test case brought under the dispute resolution mechanisms of UNCLOS seems entirely warranted.

V. Conclusion

The problems faced by LLDCs lead to “underdevelopment, backwardness, and in most cases, acute poverty.” Although “successive legal innovations . . . acknowledge the sovereign rights of each . . . to economic security, in practice, their truly independent economic status has at no time been clearly established. . . . [and] [t]he real acquired rights of these countries, theoretical as well as practical, still remain unclear.” Despite

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252 Id. Art. 282.
253 Id. Art. 287 (Choice of Procedure).
254 See ILC Draft Articles, Art. 125.
255 Right of Access, at 81.
256 Id.
international awareness of the problems that they face. LLDCs still “suffer systematically from the unilateral decisions made by . . . transit states,” and are generally marginalized in the world economy.

Despite the relative success of landlocked countries in Europe, “considerable problems still remain” for the LLDCs of Asia, South America, and Africa. This Paper has attempted to describe the legal and economic background giving rise to some of the problems faced by LLDCs and to summarize the particular circumstances of some of the countries most affected.

The international law of the sea does not provide for the rights of LLDCs in such a way as to clarify and concretize those rights on a practical level. While bilateral, subregional, and regional arrangements may consist of notable efforts to provide for the unique needs of LLCDs, there seems to be an insufficient international surveillance and enforcement system to guarantee that state-state or regional agreements actually work in practice. Member states of the United Nations, at least in principle, adhere to the concept of the “sovereign equality” of fellow members. Sovereign equality in this context is undoubtedly a political and not an economic or distributive concept, but is the ability and desire to access the sea not such a basic human compulsion that it cannot be

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258 Right of Access, at 82.
259 Geography Against Development, at 3.
260 Id.
261 See, e.g., Mongolia-Russia Treaty; APTTA; EAC; COMESA; NCTA; SADC Protocol; LAIA Treaty, etc. Also consider the status of the Hidrovia Project or its subsidiary manifestations in South America. Pantanal, supra note 112.
262 UN Charter.
263 See John F. Kennedy, America’s Cup Speech, Newport, Rhode Island (September 14, 1962), http://home.comcast.net/~ceoverfield/sea.html (stating:
I really don't know why it is that all of us are so committed to the sea, except I think it is because in addition to the fact that the sea changes and the light
overlooked as a fundamental norm (*jus cogens*) of international law? UNCLOS certainly suggests that it cannot, but further efforts may be needed to transform the suggestion into accepted practice.

“Today’s reality of interdependence between States means that the disadvantages of landlockedness can only be mitigated through the efforts of the international community as a whole.”264 The abundance of source material, both academic and organizational, pertaining to this issue indicates a high level of awareness and commitment at an international level. At the same point, the abundance of material on the subject also reflects the depth of the problem. LLDCs can only hope that with sustained attention to the particular challenges they face, continued or increased aid from international donors, and the positive impacts of legal reform, that the dire nature of many such challenges will over time begin to subside, even improve.

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264 Geography Against Development, at 145.
*this diagram shows theoretical territorial extensions for three selected landlocked states in Africa. The extensions could run in narrow 'lanes' along the existing borders of transit coastal states, and in effect provide the landlocked states with unimpeded access to the sea. Though the geographical possibility of creating such lanes in all cases might be challenging, the concept stands for itself: with only marginal territorial sacrifices by transit coastal states, the unfortunate phenomenon of the completely landlocked nation could become a thing of the past.