Global Journal of Arts Humanity and Social Sciences
ISSN: 2583-2034

GSAR PUBLISHERS
GLOBAL SCIENTIFIC AND ACADEMIC RESEARCH

OPEN ACCESS

Global Journal of Arts Humanity and Social Sciences
ISSN: 2583-2034
Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci
Frequency: Monthly
Published By GSAR Publishers
Journal Homepage Link: https://gsarpublishers.com/journal-gjahss-home/

Volume - 6 | Issue - 11 | November 2026 | Total pages 1205-1211 | DOI: 10.5281/zenodo.24167789

ASSESSING THE EFFECTIVENESS OF THE INTERNATIONAL LAW GOVERNING THE RIGHTS OF LANDLOCKED STATES ACCESS TO THE SEA AND PARTICIPATION IN MARINE RESOURCES

By

Msoma Macdonald F
LL.M Candidate, St. Augustine University of Tanzania P.O Box 307, Mwanza

Article History
Received: 02- 10- 2026
Accepted: 08- 11- 2026
Published: 12- 11- 2026

Corresponding author
Msoma Macdonald F

Abstract

This paper assesses the effectiveness of the international laws governing the rights of landlocked states of access to the sea and participation in marine resources. It traces the development of those rights from the early doctrine of passage and the river and League of Nations transit regimes to the 1958 Geneva Convention, the 1965 New York Convention and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and then examines each entitlement in the light of its text, rationale, treaty practice, scholarship and case law. The paper finds that international law does not confer a single ocean resource right but a set of differentiated entitlements of varying strength. The right of access and freedom of transit under Part X is legally established although its modalities are negotiated; participation in the surplus living resources of the exclusive economic zone under Article 69 is the most heavily qualified entitlement, because its key terms are undefined and depend on determinations made by the coastal state; and the freedoms of the high seas and participation in the Area are formally secure but depend on access and national capacity. The paper concludes that the framework is effective in recognising rights but less effective in giving them certain content and enforceable force, and that its effectiveness diminishes as a right becomes more dependent on the discretion of another state.

Keywords: Landlocked States, Access to the Sea, Freedom of Transit, Marine Resources, UNCLOS, Effectiveness.

1.0 Introduction

The question of how a state without a coast may reach and use the sea is older than the modern law of the sea. Today UNCLOS defines a landlocked state as a state which has no sea-coast and gives such states a range of entitlements in relation to the sea.[1] Yet it is commonly said, without close analysis, that landlocked states hold "ocean resource rights". That label conceals the fact that the entitlements concerned differ in legal basis, content and conditions, and that their effectiveness cannot be assumed from their recognition in a treaty.

This paper addresses the first objective of a wider study on the implementation of ocean resource rights for landlocked states, namely to assess the effectiveness of the international laws governing the rights of landlocked states of access to the sea and participation in marine resources. "Effectiveness" is used in a legal sense. A right is effective to the extent that its content is sufficiently clear, that it binds the states on which it depends, that it can be enforced, and that it does not depend for its practical content on the discretion of another state.

The analysis is doctrinal and rests on documentary review of primary sources (treaties, regional instruments and decided cases) and secondary sources (books and journal articles). Each entitlement is examined through five considerations: the interpretation of the provision under articles 31 to 33 of the Vienna Convention on the Law of Treaties; the rationale of the rule, drawn

[1] *United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS), art 124(1)(a).*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).

from the negotiating history; the treaties between landlocked states and coastal or transit states that give the rule practical content; the scholars that supports or qualifies the finding; and the decided cases, where they exist. As it traces the historical development of the rights, assesses the entitlements under UNCLOS, considers the supporting instruments and institutions, gives an overall assessment and concludes.

2.0 The Historical Development of the Rights

The rights that landlocked states hold today are the product of a long and uneven development. The history matters for an assessment of effectiveness because it explains why each right took the form it did and what weakness it carried forward.

2.1 From Passage to the League of Nations Regime

The classical writers treated access as a question of the duty of a territorial sovereign to allow passage. Grotius who argued in *Mare Liberum* that the sea could not be appropriated also maintained that passage through the territory of another state for harmless purposes should not be refused without good reason and Vattel later described the matter as a duty of humanity between nations.[2] These were doctrinal and moral statements and not rules of positive law. Passage was conceived as a limited exception to territorial sovereignty and not as a limit on it, a conception that reappears in Article 125(3) of UNCLOS.

The first treaty regimes that gave states without a seacoast practical access concerned international rivers. The Final Act of the Congress of Vienna of 1815 declared navigation on international rivers free to riparian states and the principle was carried into the Mannheim Convention on the Rhine of 1868, from which Switzerland derived access to the sea and into the General Act of the Berlin Conference of 1885 for the Congo and Niger basins.[3] These regimes were regional and protected navigation rather than a general right of access to the sea. In Africa the hinterland corridors still used by landlocked states were laid down under colonial administration, and on independence a relationship that had been administered within one colonial system became a relationship between sovereign states that had to be governed by agreement. That inheritance helps to explain why the modalities of transit in East Africa and the Horn of Africa are still negotiated today.

The Barcelona Conference of 1921 produced the first multilateral treaty on the subject, the Convention and Statute on Freedom of Transit, which required contracting states to facilitate transit on routes convenient for international transit without discrimination and limited charges to those covering the cost of supervision and administration.[4] The Conference also adopted a Declaration Recognising the Right to a Flag of States Having No Sea-Coast.[5] The regime established principles that survive in the present law, namely non-discrimination, limits on charges and the flag right now found in Articles 90 and 131 of UNCLOS. Its limits were equally lasting: participation was limited, contracting states retained wide room to act in the interest of their safety and vital interests, and the Statute treated transit as a service to be facilitated on existing routes and not as a right of access belonging to landlocked states as such. In the same period the Permanent Court held in *Railway Traffic between Lithuania and Poland* that an undertaking to negotiate is an undertaking to negotiate in good faith with a view to reaching agreement, but not an undertaking to reach one,[6] a principle that continues to shape the analysis of access claims.

2.2 From Geneva to UNCLOS

The 1958 Convention on the High Seas gave the principle its first general treaty form. Article 3 provides that, in order to enjoy the freedoms of the sea on equal terms with coastal states, states having no sea-coast should have free access to the sea, and that states situated between the sea and a landlocked state shall, by common agreement with the latter and on a basis of reciprocity, accord free transit.[7] The formula was weak in three respects: the principle was stated with the word "should", the duty of transit states arose only "by common agreement", and transit was accorded on a basis of reciprocity, which suits poorly a landlocked state with no ports to offer. At the same time the purpose of access was made explicit, since it was tied to the enjoyment of the freedoms of the high seas, a link that Article 125(1) preserves. Nothing in the 1958 conventions gave landlocked states a claim to resources in waters under coastal jurisdiction. The decision of the International Court of Justice in *Right of Passage over Indian Territory* in 1960 shows the position where no treaty exists: the Court upheld a right of passage but on the basis of a local custom between the parties and not a general rule, and it left the territorial sovereign's power of regulation intact.[8]

Decolonisation produced many new landlocked states whose concerns were taken up in the United Nations Conference on Trade and Development (UNCTAD). The principles adopted in 1964 recognised the right of free access to the sea and excluded special transit facilities from the most-favoured-nation clause, and they provided the basis for the Convention on Transit Trade of Land-

[2] *Hugo Grotius, De Jure Belli ac Pacis (1625) book II, ch II; Emer de Vattel, The Law of Nations (1758) book II.*

[3] *Final Act of the Congress of Vienna (9 June 1815) arts 108–116; Revised Convention for the Navigation of the Rhine (Mannheim, 17 October 1868); General Act of the Berlin Conference on West Africa (26 February 1885) chs I, IV and V.*

[4] *Convention and Statute on Freedom of Transit (Barcelona, 20 April 1921) 7 LNTS 11.*

[5] *Declaration Recognising the Right to a Flag of States Having No Sea-Coast (Barcelona, 20 April 1921) 7 LNTS 73.*

[6] *Railway Traffic between Lithuania and Poland (Railway Sector Landwarów–Kaisiadorys) (Advisory Opinion) PCIJ Series A/B No 42 (1931).*

[7] *Convention on the High Seas (Geneva, 29 April 1958) 450 UNTS 11, arts 3 and 4.*

[8] *Right of Passage over Indian Territory (Portugal v India) (Merits) [1960] ICJ Rep 6.*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).

locked States adopted in New York in 1965.[9] The New York Convention was the first treaty devoted to transit by landlocked states, but it never achieved general participation and again left the details of transit to agreement between the states concerned. Its adoption also marks the creation of the category of landlocked developing countries in a trade and development forum rather than a law of the sea forum, which helps to explain why the support that category later generated has concentrated on transit, infrastructure and trade and not on the resources of the sea.

The decisive stage was the Third United Nations Conference on the Law of the Sea, held between 1973 and 1982 following the proposal made by Malta in 1967 that the deep seabed be treated as the common heritage of mankind. Landlocked states negotiated together with geographically disadvantaged states and pursued a secure right of access, a share in the living resources of the exclusive economic zone (EEZ) and a share in the benefits of the Area. The second objective was the most difficult: the EEZ placed most of the world's fisheries under coastal jurisdiction, and the coastal states would accept only a qualified and regional right, in a negotiation conducted as a package.[10] The outcome gave landlocked states more than they held in 1958 but less than they sought. Landlocked states obtained their rights in treaty form, but the rights that depend on the conduct of coastal and transit states were made subject to those states' own determinations and agreements, and Article 297(3) completed the compromise by removing most disputes over the coastal state's discretion over EEZ fisheries from compulsory binding settlement.

The period since 1994 has been one of implementation rather than of new rules on access and resource participation. The Agreement relating to the Implementation of Part XI left the entitlements of landlocked states in the Area formally unchanged, and the Almaty, Vienna and Awaza programmes of action have addressed transit and trade rather than the ocean resources of landlocked states.[11] The most recent legal development is the Agreement on Biodiversity Beyond National Jurisdiction (BBNJ), in force since 17 January 2026, which recognises the special requirements of developing states parties, including landlocked developing countries, in its provisions on capacity-building and marine technology.[12] It does not alter Article 69 or Article 125.

3.0 The Effectiveness of the Rights under UNCLOS

3.1 Access to the Sea and Freedom of Transit

Part X (Articles 124 to 132) places the right of access in the Convention itself. Article 125(1) provides that landlocked states have the right of access to and from the sea for the purpose of exercising the rights provided for in the Convention, including those relating to the freedom of the high seas and the common heritage of mankind, and that they enjoy freedom of transit through the territory of transit states by all means of transport.[13] Article 125(2) provides that the terms and modalities of transit are to be agreed through bilateral, subregional or regional agreements, and Article 125(3) preserves the transit state's sovereignty and its right to take the measures necessary to protect its legitimate interests.[14] Articles 126 to 132 exclude the most-favoured-nation clause, prohibit charges on traffic in transit other than for specific services rendered, require measures to avoid delay and guarantee ships flying the flag of landlocked states equal treatment in maritime ports.[15]

Interpretation. Read according to the ordinary meaning of its terms, in their context and in the light of the object and purpose of the Convention, Article 125 is built in two steps. Paragraph 1 uses the language of entitlement, that landlocked states "have the right" of access and "shall enjoy" freedom of transit, while paragraph 2 refers only the "terms and modalities" of that freedom to agreement. The ordinary meaning of "terms and modalities" is the manner in which a right is exercised and not the question whether it exists. To read paragraph 2 as a condition precedent to paragraph 1 would leave the first paragraph without effect, contrary to the principle that a treaty provision should be interpreted so that it has meaning.[16] The context confirms this, because Article 125(3) would be unnecessary if the transit state could defeat the right by declining to agree, and Articles 126 to 132 apply to transit whether or not a detailed agreement exists. The obligation in paragraph 2 is best read as an obligation to negotiate in good faith, which does not imply an obligation to reach agreement.[17,18] A transit state may not refuse to negotiate, or negotiate in bad faith, but it cannot be compelled to accept particular terms.

Rationale. The premise of Article 125 is that a state without a coast cannot enjoy the freedoms of the sea unless it can reach the sea. At the Third Conference the landlocked group was not prepared to accept a regime that rested on goodwill and reciprocity, and the Convention accordingly confers the right itself and drops the condition of reciprocity found in 1958. The transit states insisted

[9] *United Nations Conference on Trade and Development, Proceedings (Geneva, 23 March–16 June 1964) vol I, Final Act and Report, Annex A.I.2; Convention on Transit Trade of Land-locked States (New York, 8 July 1965) 597 UNTS 3.*

[10] *Stephen C. Vasciannie, Land-locked and Geographically Disadvantaged States in the International Law of the Sea (Clarendon Press 1990).*

[11] *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 28 July 1994) 1836 UNTS 3; UNGA Res 69/137 (12 December 2014); UNGA Res 79/233 (24 December 2024).*

[12] *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (New York, 19 June 2023) UN Doc A/CONF.232/2023/4.*

[13] *UNCLOS, art 125(1).*

[14] *UNCLOS, arts 125(2) and 125(3).*

[15] *UNCLOS, arts 126–132.*

[16] *Corfu Channel (United Kingdom v Albania) (Merits) [1949] ICJ Rep 4, 24.*

[17] *Railway Traffic (n 7).*

[18] *UNCLOS, art 300.*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).

on territorial sovereignty and on bilateral modalities because transit passes through their ports, roads and railways and because each corridor presents different customs, security and infrastructure circumstances. Part X is therefore a compromise between the equality of access that the landlocked group sought and the sovereignty that transit states would not surrender.[19,20]

Treaties and scholarship. The finding is supported by the agreements through which the modalities of transit have been settled. The Northern Corridor Transit and Transport Agreement gives Uganda and its neighbours defined rights of transit through Kenya, and the 2002 agreement between Ethiopia and Djibouti gives Ethiopia a permanent right of access to the Port of Djibouti.[21] Outside Africa, Article VI of the 1904 treaty between Bolivia and Chile grants Bolivia a right of commercial transit through Chilean territory and ports.[22] In each instrument the right is stated and its modalities are specified, which shows that such agreements operationalise Article 125(1) and do not create it. The transit agreement between Ethiopia and Eritrea shows the converse, because a bilateral instrument can fall into disuse when relations deteriorate while the right under the Convention remains in law. The leading scholarship states the position in the same terms: the right of access is a general right whose practical content depends on bilateral and regional arrangements.[23,24,25]

Case law. No court or tribunal has yet interpreted Article 125, and that absence is itself a finding. Decided cases illuminate it only by analogy. In *Right of Passage over Indian Territory* the International Court upheld a right of passage while leaving the sovereign's power of control intact, which parallels the balance between Article 125(1) and Article 125(3). In *Navigational and Related Rights* the Court held that the territorial state may regulate the exercise of a treaty right of free navigation provided that the regulation is reasonable and does not defeat the right,[26] an approach that supports the reading of Article 125(3) adopted here. In *Bolivia v Chile* the Court did not interpret Article 125, but by finding that no obligation to negotiate sovereign access had arisen it confirmed that claims going beyond treaty-based transit rights are not readily enforceable.[27]

Assessment. The right of access is the most effective of the entitlements in respect of its existence, because it derives from the Convention and does not depend on any particular agreement. Its effectiveness is weaker in respect of its content. The relationship between paragraphs 1 and 2 of Article 125, and in particular whether a failure to conclude an agreement suspends freedom of transit, is not settled by judicial authority, and the duties bearing on delay and infrastructure are duties of conduct and not of result.

3.2 Participation in the Living Resources of the EEZ

Article 69(1) grants landlocked states the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZs of coastal states of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the states concerned.[28] The right is subject to Articles 61 and 62, under which the coastal state determines the allowable catch and its own harvesting capacity and gives other states access only to the surplus that it is unable to harvest.[29] Article 69(2) lists factors relevant to the terms of participation, Article 69(3) provides for cooperation on equitable arrangements for developing landlocked states as the coastal state's capacity approaches the allowable catch, and Article 69(4) confines developed landlocked states to the EEZs of developed coastal states. Article 71 excludes Article 69 for coastal states whose economies are overwhelmingly dependent on EEZ fisheries, and Article 72 prevents the transfer of the right to third states.[30]

Interpretation. A "surplus" exists only after the coastal state has determined the allowable catch and its own harvesting capacity. The key operative terms, "equitable basis", "appropriate part" and "surplus", are not defined in the Convention, and no judicial decision or arbitral award has interpreted them. The words "on an equitable basis" and the factors in Article 69(2) point to a balancing of interests and not to a fixed share. Article 62(2) directs the coastal state to have particular regard to Articles 69 and 70 when it gives access to a surplus, but it does not say what that regard requires. Article 69 therefore creates a right to be considered for access and to take part, in good faith, in negotiations on equitable arrangements, and not a right to a quantified share. Because Article 297(3)(a) excludes from compulsory binding settlement disputes over the coastal state's discretionary powers regarding the allowable catch, its harvesting capacity and the allocation of surpluses, the practical content of the right lies largely in the coastal state's discretion. That discretion is not wholly unreviewable, since Article 297(3)(b) provides for compulsory conciliation in three cases of manifest failure or arbitrary refusal,

[19] *Satya N. Nandan and Shabtai Rosenne (eds), United Nations Convention on the Law of the Sea 1982: A Commentary, vol III (Martinus Nijhoff 1995).*
[20] *Vasciannie (n 11).*
[21] *Ernesta Swanepoel, 'The Law of the Sea and Landlocked States' (South African Institute of International Affairs, Policy Briefing 205, August 2020) 6.*
[22] *Treaty of Peace and Friendship between Chile and Bolivia (Santiago, 20 October 1904) art VI.*
[23] *Kishor Uprety, The Transit Regime for Landlocked States: International Law and Development Perspectives (World Bank 2006).*
[24] *Vasciannie (n 11).*
[25] *Swanepoel (n 22) 7.*
[26] *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua) (Judgment) [2009] ICJ Rep 213.*
[27] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile) (Judgment) [2018] ICJ Rep 507.*
[28] *UNCLOS, art 69(1).*
[29] *UNCLOS, arts 61(1) and 62(2).*
[30] *UNCLOS, arts 69(2)–(4), 71 and 72.*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).

but under Article 297(3)(c) the conciliation commission may not substitute its discretion for that of the coastal state and its report is not binding.[31]

Rationale. Article 69 is a product of the EEZ settlement. Coastal states obtained sovereign rights over the living resources of a zone of 200 nautical miles, and the landlocked and geographically disadvantaged states, which had no part in the zone, obtained in return a limited right of participation. The negotiating record shows that the landlocked group sought a broad and equal entitlement and that the coastal states would agree only to a qualified and regional one.[32] The qualifications serve identifiable ends: the reference to a surplus protects conservation and the coastal state's own industry, Article 69(2) protects its fishing communities, and the restriction to the same subregion or region reflects the view that the sharing of the zone should follow existing geographical and economic ties.

Treaties and scholars. Article 69 contemplates bilateral, subregional or regional agreements, but the study found little treaty practice of this kind and no agreement under Article 69 involving Uganda or Ethiopia. The published literature consists largely of analysis of the claim and not of reports of concluded arrangements. Commentators identify the same uncertainties: whether the Convention obliges a coastal state to ensure that a surplus exists, whether Article 69(3) imposes a duty to reach arrangements or only to cooperate in seeking them, and what constitutes an appropriate part of a surplus.[33,] It has also been argued that the duty of good faith in Article 300 would prevent a coastal state from rejecting an offer from a landlocked state and then accepting a similar offer from a third state.[34]

Case law. No judicial decision or arbitral award has interpreted Article 69, so the analysis rests on the text, the negotiating record and scholarly commentary. Three decisions are relevant by analogy. In the *Fisheries Jurisdiction Cases* the International Court held that a coastal state's preferential fishing rights are not absolute and must be reconciled with the established rights of other states through negotiation in good faith.[35] In the *North Sea Continental Shelf Cases* it held that equity operates within the law and does not remake geography,[36] which indicates why equity cannot supply landlocked states with a zone of their own. In its 2015 advisory opinion the International Tribunal for the Law of the Sea (ITLOS) affirmed the primary responsibility of the coastal state for conservation and management in its EEZ, which includes the determinations on which Article 69 depends.[37]

Assessment. Participation under Article 69 is the least effective of the entitlements. Its existence is clear, but its practical content depends on determinations made by the coastal state, its key terms are undefined, its treaty practice is scarce and its enforcement is confined to non-binding conciliation. The right is real in principle and contingent in practice.

3.3 The Freedoms of the High Seas

The freedoms of the high seas are the least qualified entitlement in the text. Article 87(1) provides that the high seas are open to all states, whether coastal or landlocked, and Article 90 gives every state the right to sail ships flying its flag on the high seas.[38] The wording "whether coastal or landlocked" reflects the rationale that the high seas are the common space of all states, a position already accepted in 1958 and in the Barcelona Declaration of 1921. No agreement with a coastal or transit state is needed to confer the freedoms, although agreements on port access and equal treatment in ports under Article 131 are needed to put them to use. The freedoms are subject to the conditions laid down in the Convention, so that fishing, for example, remains subject to the conservation provisions of Part VII, and Article 94 makes landlocked states subject to the same flag-state duties as coastal states.

The study finds, however, that the exercise of the freedoms by a landlocked state depends on the prior right of access under Part X and on its own capacity to register, regulate and operate vessels. No case has concerned the high seas rights of a landlocked state, but the 2015 advisory opinion of ITLOS held that flag states have a due diligence obligation to ensure that vessels flying their flag comply with conservation measures,[39] an obligation that applies equally to a landlocked state that registers vessels and that landlocked developing states may lack the capacity to meet. The freedoms are therefore effective in law but may be of limited value in practice.

3.4 Participation in the Area

Article 136 declares the Area and its resources the common heritage of mankind, and Article 137 provides that no state may claim sovereignty over any part of it. Article 140(1) requires activities in the Area to be carried out for the benefit of mankind as

[31] *UNCLOS, art 297(3)(a)–(c).*
[32] *Vasciannie (n 11).*
[33] *W.T. Burke, 'The Law of the Sea Convention Provisions on Conditions of Access to Fisheries Subject to National Jurisdiction' (1984) 63 Oregon Law Review 98; Barbara Kwiatkowska, The 200 Mile Exclusive Economic Zone in the New Law of the Sea (Martinus Nijhoff 1989) 71.*
[34] *R.K. Sizani, 'The Law of the Sea Convention and the Rights of Neighbouring African Landlocked States to Fish in the South African Fishing Zone' (1991) 3 African Journal of International and Comparative Law 515.*
[35] *Fisheries Jurisdiction (United Kingdom v Iceland) (Merits) [1974] ICJ Rep 3; Fisheries Jurisdiction (Federal Republic of Germany v Iceland) (Merits) [1974] ICJ Rep 175.*
[36] *North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) [1969] ICJ Rep 3, para 91.*
[37] *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC) (Advisory Opinion) ITLOS Case No 21 (2 April 2015).*
[38] *UNCLOS, arts 87(1) and 90.*
[39] *SRFC Advisory Opinion (n 39).*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).

a whole irrespective of the geographical location of states, whether coastal or landlocked, Article 148 requires the effective participation of developing states to be promoted with due regard to the special need of landlocked and geographically disadvantaged states to overcome obstacles arising from their location, and Article 161(1)(d) secures representation of their special interests in the Council of the International Seabed Authority.[40] Article 82(4) further directs that payments for the exploitation of the continental shelf beyond 200 nautical miles be distributed through the Authority with regard to the interests and needs of developing states, particularly the least developed and the landlocked among them.

The rationale is the common heritage principle, proposed by Malta in 1967 and declared by the General Assembly in 1970, which landlocked and geographically disadvantaged states treated as the part of the settlement in which they could participate on equal terms.[41] The entitlement is therefore formally equal, but its realisation depends on the benefit-sharing arrangements adopted by the Authority and on the technical and financial capacity of landlocked states. The principal authority is the 2011 advisory opinion of the Seabed Disputes Chamber, which held that the obligations of a sponsoring state apply equally to developed and developing states.[42] That holding indicates that landlocked developing states would not be held to a lower standard, so that the practical obstacle to their participation is the cost and technical capacity needed to meet it. Because commercial exploitation of the Area has not begun and the exploitation regulations were still under negotiation in 2026, the sharing of financial benefits has not yet arisen in practice.[43]

4.0 Supporting Instruments and Institutions

Several other instruments and institutions bear on the effectiveness of the rights, but none of them creates substantive ocean resource rights for landlocked states. The Vienna Convention on the Law of Treaties strengthens the implementation of agreements concluded between landlocked and transit or coastal states: article 26 requires every treaty in force to be performed in good faith, article 27 prevents a state from invoking its internal law to justify non-performance, and articles 31 and 32 supply the rules for interpreting provisions on access, transit and resource participation.[44] The African Charter on Human and Peoples' Rights, through the right of peoples to freely dispose of their natural resources and to development in articles 21 and 22, provides a regional normative foundation for equitable participation, but it cannot of itself give Uganda or any other landlocked state a right to fish in the EEZ of a coastal state, which must arise from UNCLOS or from regional or bilateral agreement.[45]

The institutions give the rights a forum but not a remedy. The International Seabed Authority provides a mechanism through which landlocked states can take part in decisions on the Area, although formal participation does not necessarily produce economic participation without financial and technological capacity. ITLOS has jurisdiction over disputes on the interpretation and application of the Convention and has used its advisory jurisdiction on fisheries questions, but no body representing landlocked states has used it to seek clarification of Article 69. The International Court of Justice has contributed principles on sovereignty, equity and treaty interpretation, but, as shown above, none of its decisions has applied Article 69 or interpreted Article 125.

5.0 An Overall Assessment of Effectiveness

Taken together, the five considerations point in the same direction. The interpretation of each provision shows a difference in the strength of the entitlements; the rationale drawn from the negotiating history and the historical development shows that the difference was deliberate and was the price of coastal and transit state consent; the treaties between landlocked and transit states show that modalities are settled by agreement where political relations permit; the scholarship confirms the pattern; and the case law, which is sparse and in several places absent, shows that the entitlements have seldom been tested before a court.

Three observations follow. First, the effectiveness of an entitlement diminishes as it becomes more dependent on the act or determination of another state. The freedoms of the high seas are stated without qualification, the right of access exists independently of agreement but its modalities depend on the transit state, and participation under Article 69 depends on determinations that only the coastal state can make. Second, the weaknesses of the earlier regimes have been carried forward and not cured. The Barcelona Statute, the 1958 Convention and the New York Convention each left the details of transit to agreement and lacked effective enforcement, and UNCLOS, while it located the rights in the treaty itself, left the modalities of transit and the terms of resource-sharing to negotiated arrangements. Third, the absence of judicial interpretation is itself a measure of weakness. No court or tribunal has interpreted Article 125 or Article 69, so that the key questions, namely the relationship between Article 125(1) and (2) and the meaning of "surplus", "appropriate part" and "equitable basis", remain open.

It does not follow that landlocked states hold merely political rather than legal rights. The framework is a set of differentiated

[40] *UNCLOS, arts 136, 137, 140, 148 and 161(1)(d).*

[41] *Alexandre Kiss, 'The Common Heritage of Mankind: Utopia or Reality?' (1985) 40 International Journal 423.*

[42] *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion) ITLOS Seabed Disputes Chamber Case No 17 (1 February 2011).*

[43] *International Seabed Authority, Contribution to the report of the Secretary-General under General Assembly resolution 80/110 (2026).*

[44] *Vienna Convention on the Law of Treaties (n 2) arts 26, 27, 31 and 32.*

[45] *African Charter on Human and Peoples' Rights (Nairobi, 27 June 1981) arts 21 and 22.*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).

legal entitlements of varying precision, some stated as rights in the text and others dependent on negotiated arrangements or on determinations made by other states, and it is more accurate to describe it in those terms than under the single label of "ocean resource rights".

6.0 Conclusion

This paper has assessed the effectiveness of the international laws governing the rights of landlocked states of access to the sea and participation in marine resources. It concludes that the framework is effective in recognising rights but less effective in giving them certain content and enforceable force. The right of access and freedom of transit is legally established, and what remains to be negotiated is its modalities within the limits set by Article 125(3) and Articles 126 to 132. Participation in the living resources of the EEZ under Article 69 is the most heavily qualified entitlement, while the freedoms of the high seas and participation in the Area are formally secure but depend on access and capacity.

Two measures follow from the analysis. The first is authoritative clarification of the undefined terms of Article 69 and of the relationship between paragraphs 1 and 2 of Article 125, for example through an advisory opinion of the International Court of Justice under Article 96 of the Charter of the United Nations or through guidelines adopted by the States Parties to UNCLOS.[46] The second is the conclusion of transit agreements that settle the modalities left open by Article 125(2), with clear limits on charges, maximum clearance times, equal treatment in ports and a dispute-settlement clause. Until these steps are taken, the legal recognition of the rights of landlocked states will continue to exceed their practical content.

[46] *Charter of the United Nations (San Francisco, 26 June 1945) art 96(1).*

Copyright © 2026 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0).