



**ST. MARY'S UNIVERSITY COLLEGE**

**FACULTY OF LAW**

**LL.B THESIS**

**THE RIGHT OF LAND LOCKED STATE TO ACCESS  
TO THE SEA UNDER INTERNATIONAL LAW,  
THE CASE OF ETHIOPIA**

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ID NO. 0558/98B**

**ADDIS ABABA, ETHIOPIA  
JULY 2009**

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SEA UNDER INTERNATIONAL LAW: THE CASE OF ETHIOPIA**

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**ADDIS ABABA, ETHIOPIA  
JULY 2009**

Date \_\_\_\_\_

I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

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## **Introduction**

The sea has historically performed two important functions first as a communication and second, as vast reservoir. All states do not have, the same rights over the seas, and they defer according to their geographical location.

The term Land-locked state is defined under article 124 of the 1982 convention of the law of sea a state that has no seacoast. Coastal state is a state, which have a seacoast.

Land locked states including Ethiopia remain poor. There is no doubt that the issue of access to and from the sea is inextricably linked to poverty reduction and the attainment of sustainable and broad base growth.

Land locked developing countries like Ethiopia are obliged to pay high port service costs. For instance Ethiopia paid for the Djibouti Port service more than 700 million dollar per year. Thus, the question will center on how best to guarantee a free and sustainable access to and from the sea.

Ethiopia was, for a time until the Italian conquest of Ethiopia in 1935, the only independent country in Africa. Ethiopia became land locked

state since 1991. However, this paper attempts to examine what rights Ethiopia has over the different waters /zones of red sea.

The entire body of this paper is divided into three main chapters. The first chapter deals with the concept of land locked, doubly land-locked, and coastal states. The Second Chapter deals with the various part of the sea and what is the rights coastal states and land-locked states.

Chapter Three deals with the historical background of Ethiopia became a land-locked state and the right of Ethiopia over the different zone/waters of Red Sea from the point of view of international law and bilateral agreements. Finally brief concluding remarks and recommendations will be given.



## CHAPTER ONE

# THE CONCEPT OF LAND LOCKED STATES

### 1.1 Definition of Land Locked State

Historically, being land locked was regarded as a disadvantageous position. It cuts the country off from sea resources such as fishing, but more importantly cuts off access to sea borne trade, which, even today, makes up a large percentage of international trade<sup>1</sup>.

The term landlocked state has many legal instruments have defined the term landlocked states. The following is the definition given by Black's law dictionary:

*It's an expression applied to a piece of land belonging to one person and surrounded by land belonging to other person; so, that it can't be approached except over their land access to such/and will normally be via an easement from surrounding land owner.*<sup>2</sup>

On the other hand, the 1982 convention of the law of the sea convention under Article 124(1) (a), defines a land locked state as: "A state, which has no sea coast".<sup>3</sup> Therefore, a land locked state is commonly defined as one enclosed by land<sup>4</sup>.

## 1.2 Land Locked States

There are 44 land locked countries in the world from five continents that have more than one country and only North America doesn't have a land locked country.<sup>5</sup> The list of land locked countries are: Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Bhutan, Laos, Mongolia, Nepal, Armenia, Azerbaijan which are found in Asia; Austria, Czech Republic, Hungary, Kosovo, Liechtenstein, Republic of Macedonia, Serbia, Slovakia, Switzerland, Andorra, Belarus, Luxembourg, Moldova, San Marino, Vatican City, in Europe; Burkina Faso, Central African Republic, Chad, Mali, Niger, Botswana, Malawi, Zambia, Zimbabwe, Burundi, Rwanda, Uganda, Ethiopia, Lesotho, Swaziland, found in Africa; Bolivia, Paraguay, found in the continent of South America.<sup>6</sup>

The following Countries are almost land locked, because of their relatively short coastline: Iraq (Persian Gulf via Al-Faw Peninsula) 58 km (35 mi); Slovenia (Adriatic sea via Koper) 47km (29mi); Democratic Republic of the Congo (Atlantic Ocean) 40km (25mi); Jordan (Red-Sea – Gulf of Agaba via Agaba) 26km (16mi).<sup>7</sup>

Articles 3 of the Geneva Convention of 1958 on the High Seas provided that all states have the right enjoy freedom of the seas on equal terms with coastal states.<sup>8</sup>

In other words states, which are completely surrounded by land, with no access to the sea should have the right to use the sea under international law.<sup>9</sup>

Article 125 of the 1982 Convention on the law of the sea also formulated as follows:

*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 transits states by all means of transport<sup>10</sup>.*

But the land locked states' right is no absolute right of transit, rather than transits depend upon arrangements to be made between the land locked and transit states<sup>11</sup>. Nevertheless, the establishment of a right of access to the sea coast is an important step in assisting land–locked states. Articles 127 to 130 of the 1982 Convention also set out a variety of terms for the operation of transit arrangements, while article 131 provides that ships flying the flag of land–locked states shall enjoy treatment equal to that accorded to other foreign ships in maritime ports. Ships of all states, whether coastal states or land locked states, have the right of innocent passage in the territorial sea and freedom of navigation to the waters beyond the territorial sea.<sup>12</sup>

It is also noted that land-locked states have the right to participate upon an equitable basis on in the exploitation of an appropriate part of the surplus of living resources of the economic zone of coastal states of the same sub region or region, economic or region, taking into account relevant economic and geographical factors.<sup>13</sup>

Geographically disadvantaged states have the same right.<sup>14</sup> The terms and modalities of such participation are to be established by the states concerned through bilateral, sub regional or regional agreements, taking into account a range of factors including the need to avoid effects detrimental to fishing communities or fishing industries of the Coastal state and the nutritional of the respective states.<sup>15</sup>

With regard to provisions concerning the international sea bed region Article 148 of the 1982 Convention provides that the effective participation of developing states in the international sea bed area shall be promoted, having due regard to their special interests and needs and in particular to the special need of land locked among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it<sup>16</sup>.

### **1.3 Doubly Land Locked Countries**

A land locked country surrounded by other land locked countries may be called a “doubly land locked” country.<sup>17</sup> A person in such a country has to cross at least two borders, to reach a coastline.<sup>18</sup>

There are currently two such countries in the world. they are

Liechtenstein in Central Europe, and Uzbekistan in Central Asia.<sup>19</sup>

Uzbekistan has borders with Turkmenistan and Kazakhstan that border the land locked but salt water Caspian sea, from which ships can reach the sea of Azov by using the Volga – Don canal, and thus black sea, the Mediterranean sea, and the oceans.<sup>20</sup>

There was no doubly land locked country in the world from the 1871 unification of Germany until the end of World War I<sup>21</sup>. This is because Uzbekistan was part of the Russian Empire; while Liechtenstein bordered Austria-Hungary, which had on Adriatic coast until 1918.<sup>22</sup>

#### **1.4 Costal States**

Costal states are states those having access to the sea, which are also called transit states. These states have their own sea cost. Coastal states have the advantage of using the sea as they wish, with out any obstacles.<sup>23</sup>

Sovereignty of costal states extend to the territorial sea, consequently, they have complete domination over this part of the sea, except that other states have the rights of innocent passage<sup>24</sup>.

Article 14 of the 1958 Convention on the Territorial Sea emphasized that the costal state must not hamper innocent passage and must publicize any danger to navigation in the territorial sea of which it is aware.<sup>25</sup> Passage is defined as navigation through the territorial sea for the purpose of crossing that sea without entering internal waters.<sup>26</sup> Passage ceases to be innocent under Article 14(4) of the 1958 convention where it is prejudicial to the peace, good order or

security of the coastal state. Where passage is not innocent in its territorial sea, coastal state has the power temporarily to suspend innocent passage of foreign vessels where it is essential for security reasons<sup>27</sup>.

Article 17 of the Geneva Convention of 1958 on territorial sea, provided that foreign ships exercising the right of innocent passage were to comply with the laws and regulations enacted by the coastal state.<sup>28</sup>

### **1.5 The Effect of being a Land-Locked State**

A common feature of all land-locked state is the geographical circumstance that these states have no seacoast. This peculiarity entails obvious economic and even political disadvantage. The reason why access to the sea is of such paramount importance to these, land-locked state as explained by one lawyer in the context of African States is that:-

*Trade in Africa is largely externally, rather than internally structured. Moreover, the bulk of this international trade is still predominantly carried by sea: their access to the sea is synonymous with access to the world market.*<sup>29</sup>

This drawback of a geographical and economic nature can at the same time involve a political disadvantage too, especially in the case of some states of Africa and Asia as certain transit states can make use of the practice of transit trade for exercising political pressure and influence. One example of such political pressure occurred in 1970.

*When Uganda's Minister of Labor announced a policy of replacing unskilled Kenya workers with Ugandan nationals in 1970, the government of Kenya threatened to refuse handling Uganda's goods at the important port of Mombassa.<sup>30</sup>*

Further, the advantage gained by the cheapest mode of transport over the sea is ship honed off by the disadvantage of the geographical position of a land-locked state. The European land-locked states have managed to minimize their problem of being land-locked through mechanized transport systems. In reality for the developing countries, the longer the journey, the greater the risk of theft or damage.<sup>31</sup>

The effect of state being land-locked does not stop here. Beside, the transport costs, port dues and custom duties, the demand of strong currency instant revision of port and customs tariffs, pay load maintenance a tax aggravates its problem.<sup>32</sup>

## FOOTNOTES CHAPTER ONE

- 1 [http://en-wikipedia.org/wiki/Landlocked Country](http://en-wikipedia.org/wiki/Landlocked_Country) – (1/1/2009) P.1
- 2 Henry Campbell Black M-A Black Law Dictionary 6<sup>th</sup> ed, 1981-1991 P. 178
- 3 See Article 124(1) (a) of the 1982 Convention of the law of sea
- 4 **Ibid**
- 5 **Supra not 1**
- 6 **Supra not 1, P.3**
- 7 **Supra not 1, P.4**
- 8 **Dr. Hari Ara Das, Principles of International Law and Organization, New Delhi: Vikas Publishing House Pvt. Ltd. P. 146**
- 9 **The 1965 Convention on Transit Trade of Land-Locked State Preamble**
- 10 **See also Article 125 of the 1982 Convention of the Law of the Sea.**
- 11 **Malcolm N. Show, International Law 5<sup>th</sup> ed. Cambridge University Press, P. 541**
- 12 **Supra not 8, P.417**
- 13 **Ibid**
- 14 **Ibid**
- 15 **Ibid**
- 16 **Ibid**
- 17 **Supra not 1, P.4**
- 18 **Ibid**
- 19 **Ibid**
- 20 **Ibid**
- 21 **Ibid**
- 22 **Ibid**
- 23 **Louis, B. Sohn; the Law of sea; 1991 P. 91**
- 24 **Ibid**
- 25 **Supra not 11, P.508**
- 26 **Ibid**
- 27 **Ibid**
- 28 **Supra not 11, P. 509**
- 29 **Yared Shiferaw, Land-Locked State under the Law of Sea, 1998:5 (un published)**
- 30 **Ibid**



<sup>31</sup> **ibid**

<sup>32</sup> **ibid**

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- <sup>10</sup> See also Article 125 of the 1982 Convention of the Law of the Sea.
- <sup>11</sup> Malcolm N. Show, *International Law* 5<sup>th</sup> ed. Cambridge University Press, P. 541
- <sup>12</sup> Supra not 8, P.417
- <sup>13</sup> Ibid
- <sup>14</sup> Ibid
- <sup>15</sup> Ibid
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- <sup>17</sup> Supra not 1, P.4
- <sup>18</sup> Ibid
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- <sup>20</sup> Ibid
- <sup>21</sup> Ibid
- <sup>22</sup> Ibid
- <sup>23</sup> Louis, B. Sohn; *the Law of sea*; 1991 P. 91
- <sup>24</sup> Ibid
- <sup>25</sup> Supra not 11, P.508
- <sup>26</sup> Ibid
- <sup>27</sup> Ibid
- <sup>28</sup> Supra not 11, P. 509

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<sup>29</sup> **Yared Shiferaw, Land-Locke State under the Law of Sea, 1998:5 (un published)**

<sup>30</sup> **ibid**

<sup>31</sup> **ibid**

<sup>32</sup> **ibid**

## **CHAPTER TWO**

### **THE RIGHTS OF LAND-LOCKED STATES ON THE SEA UNDER THE 1958 AND 1982 CONVENTION OF THE LAW OF SEA**

The law of the sea has its origin in the customary international law uniformly accepted by all nations with respect to the traditional or general usage of the oceans.<sup>1</sup> In addition, since the law of the sea is part and parcel of international law, it is as such is binding on all states.<sup>2</sup>

The sea which covers more than 70 percent of the surface of the globe,<sup>3</sup> traditionally been divided into three different zones, which are subject to different rules.<sup>4</sup> However, in recent years the position has been complicated by the tendency of coastal states to claim limited rights over the areas of the high seas adjacent to their territorial sea, such as the exclusive economic zone and the continental shelf.<sup>5</sup>

#### **2.1 Sources of the Law of the Sea that confers Right**

The seas have historically served two important functions; first, as a medium of communication, and secondly as a vast reservoirs of resources, both living and non-living. Both of these functions have stimulated the development of legal rules.<sup>6</sup>

The seas were at one time thought capable of subjection to national sovereignties.<sup>7</sup> The Portuguese in particular in the seventeenth century proclaimed huge tracts of the high seas as part of their

territorial domain, but these claims stimulated a response by Grotius who elaborated the doctrine of the open seas, whereby the oceans as *res-communize* were to be accessible to all nations but incapable of appropriation.<sup>8</sup> This view prevailed, partly because it accorded with the interests of North European states, which demanded freedom of seas for the purposes of exploration and expanding commercial intercourse with the East.<sup>9</sup>

The freedom of the high seas rapidly became a basic principle of international law, but not all the seas were so characterized.<sup>10</sup> It was permissible for a coastal state to appropriate a maritime belt around its coastline as territorial waters, or territorial sea, and treat it as indivisible parts of its domain.<sup>11</sup> The original stipulation linked the width of the territorial sea to the ability of the coastal state to dominate it by military means from the confines of its own shore.<sup>12</sup> But the present century has witnessed continual pressure by states to enlarge the maritime belt and thus subject more of the oceans to their exclusive jurisdiction.<sup>13</sup>

For the legal purposes the sea covers has traditionally been divided into three different zones, each of which is subject to different rules. Moving outwards from land, these zones are (1) internal water (2) territorial sea (3) the high sea.<sup>14</sup>

The law of the sea was to a large extent codified by the first United Nations Conference on the Law of Sea (UNCLOS) at Geneva in 1958, which drew up four conventions: the Convention of the

territorial sea and the contiguous zone, the Convention of high sea, the Convention on fishing and conservation of the living resources of the high seas, and the Convention on the continental shelf. These conventions were ratified or accede to by forty-six, fifty-seven, thirty-six and fifty-four states respectively, while thirty-eight states become parties to the optional protocol on the compulsory settlement of disputes.<sup>15</sup>

The 1958 conference failed to reach agreement on a number of questions (especially the question of the width of territorial sea; a second conference in 1960, UNCLOS II, also failed to reach agreement on this question).<sup>16</sup> Moreover, some states become dissatisfied with the various rules, which were laid down in the 1958 Conventions; and technological advances created a need for new rules.<sup>17</sup> Consequently a third United Nations Conference on the law of sea (UNCLOS III) was convened in 1973, to draw up a new comprehensive convention on the law of sea.<sup>18</sup> The conference finally adopted the text of the United Nation Convention on the law of sea in 1982.<sup>19</sup>

## **2.2 Rights on Internal Waters**

Internal waters are deemed to be such parts of the seas as they are not either the high seas or relevant zones or the territorial sea, and are accordingly classed as appertaining to the land territory of the coastal state.<sup>20</sup> Internal waters, like harbors, lakes or rivers, are to be found on the landward side of the baselines from which the width of the territorial and other zones is measured, and are assimilated with the territory of the state. They differ from the territorial sea primarily in that there does not exist any right of innocent passage from which the shipping of other states may benefit.<sup>21</sup>

It is clear that the sovereignty of coastal states extends to internal waters. A coastal state is, therefore entitled to prohibit entry into its ports by foreign ships, except for ships in distress (for example, ships seeking refuge from a storm, or ships which are severely damaged) and in certain cases in which previously a right of innocent passage had existed.<sup>22</sup>

Broadly speaking the coastal state may apply and enforce its laws in full against foreign merchant ships in its internal waters.<sup>23</sup> A foreign merchant ship, which voluntarily enters the ports or internal waters of a coastal state, subjects itself fully to the administrative civil and criminal jurisdiction of that state, unless otherwise agreed by treaty between the coastal state and the flag state. In particular, every foreign ship, including warships, must comply in port or internal waters with the laws and regulations of the coastal state relating to navigating, safety, and health and port administration.<sup>24</sup>

The land locked states have the right to enter the water of the coastal state only when the ship of land locked state sinking, seeking refugee from a storm or in the case where the ship of the land locked state faced severely damage.<sup>25</sup>

### **2.3 Right on Territorial Sea**

The territorial sea (otherwise known as territorial waters or the maritime belt) extends for an uncertain number of miles beyond internal waters. The width of the territorial sea has been one of the most controversial questions in international law.<sup>26</sup>

Previously, agreement on the breadth of the territorial sea had eluded definition. State practice had been uncertain and varied. Some countries, for example, the United Kingdom and the United States, rigidly maintained the traditional three-mile territorial sea, while certain Latin American countries made extensive claims to a maximum of 200 miles. The norm, however, was for states to claim a territorial sea of a width somewhere between 3 and 12 miles. The uncertainty of state practice was reflected in the 1958 and 1960 Geneva conference neither conference was successful in defining the breadth of the territorial sea.<sup>27</sup>

Various for were suggested, such as the United States formula of six-plus-six, (that is a six mile territorial sea with a six mile fishing zone), an Asian/Latin American sponsored proposal whereby every state would enjoy the distance between three and 12 miles. None of the



proposals was successful. The 12-mile maximum that has been widely reflected in state practice, including that of the United Kingdom and the United States, is now accepted as customary international law.<sup>28</sup>

Article 3 of the 1982 convention establishes the breadth of the territorial sea at limit "not exceeding 12 nautical miles."<sup>29</sup> Article 2(1) of the 1982 Convention says that the coastal state exercises sovereignty over its territorial sea. But the coastal state's sovereignty is subject to a very important limitation; foreign ships have a right of innocent passage through the territorial sea.<sup>30</sup> While Article 17 stated the right of innocent passage as follows "subject to this convention, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea."<sup>31</sup>

The definition of "passage" contained in Article 18 of the 1982 Geneva Convention elaborates upon the accepted customary international law. Article 18 provides: -

1. Passage means navigation through the territorial sea for the purpose of: -
  - a) Traversing that sea without entering internal waters or calling at such roadstead or port facility outside internal waters: or
  - b) Proceeding to or from internal waters or a call at such roadstead or port facility.
2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the

purpose of rendering assistance to persons, ships or aircraft in danger or distress.”<sup>32</sup>

Passage must be continuous and expeditious, but a ship may stop and anchor if this is in addition to ordinary navigation, is rendered necessary by force majeure or is required in order to assist person’s ships or aircraft in danger or distress.<sup>33</sup> A coastal state should not exercise criminal jurisdiction on board a foreign ship passing through the traditional sea for the purpose of arresting any investigation, in connection with any crime committed on board the ship during its passage through the territorial sea,<sup>34</sup> unless:

- a) The consequence of the crime extend to the coastal state;
- b) The crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- c) The assistance of the local authorities has been required by the master of the ship or by a diplomatic agent or consular officer of the flag state or;
- d) Such measure is necessary for the suppression of illicit traffic in narcotic drugs.

The coastal state may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, without entering internal waters, unless otherwise permitted under international law.<sup>35</sup>

Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal state.<sup>36</sup> Where passage is not innocent, the coastal state may take steps to prevent it in its territorial

sea and, where ships are proceeding to internal waters; it may act to forestall any breach of the conditions to which admission of such ships to internal waters is subject.<sup>37</sup>

The coastal state has the power temporarily to suspend innocent passage of foreign vessels where it is essential for security reasons, provided such suspension has been published and provided it doesn't cover international straits.<sup>38</sup>

Article 19 of the 1982 Convention of the Law of the Sea enumerates what is meant by innocent passage. In order to become innocent passage, the passage must not violate the security, peace and order of the coastal state. These criteria's are exhaustively enumerated and range from passage by foreign vessels or national prejudicial to the good order: peace and security of the coastal state to the use of force against the sovereignty of the coastal state. Any kind of interference and any fishing activity in the territorial waters specified as prohibited.<sup>39</sup>

The same as 1982 Convention of Law of the Sea, the 1958 Geneva Convention on the Territorial Sea on Article 17 deals with:-

*Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal state in conformity with these articles and other rules of international law and, in particular with such laws and regulations relating to transport and navigations.*<sup>40</sup>

Land-locked states like other states have the right of innocent passage over the territorial sea, and can even conclude agreements

with coastal states to get more benefit.<sup>41</sup> They navigate through the territorial sea for the purpose of either traversing that sea without entering internal waters, or proceeding to or from internal waters. Their passage must be continuous and expeditious, but the ship can stop and anchor if this is incidental to ordinary navigation is rendered necessary by force majeure or is required in order to assist person's ships or air craft in danger or distress.<sup>42</sup>

Ships of land-locked state can safely sail in the territorial sea without any threat of investigation or search or arrest from coastal states are not accountable for any crime committed before the entry to the internal water of the sea.<sup>43</sup>

## **2.4 Right on Contiguous Zone**

The contiguous zone is a band of water extending from the outer edge of the territorial sea to up to 24 nautical miles (44km) from the baseline.<sup>44</sup> Contiguous zones were clearly differentiated from claims to full sovereignty as parts of the territorial sea, by being referred to as part of the high sea over which the coastal state may exercise particular rights. Unlike the territorial sea, which is automatically attached to the land territory of the state, contiguous zone have to be specifically claimed.<sup>45</sup>

A state can exert limited control for the purpose of preventing or punishing "infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea". However, unlike the territorial sea there is no standard rule for resolving

conflicts, and the states in question must negotiate their own compromise.<sup>46</sup>

Under Article 33 of the 1982 convention, whoever, a coastal state may claim a contiguous zone (for the same purpose as the 1958 provisions) up to 24 nautical miles from the base lines. In view of the accepted 12-mile territorial sea limits, such an extension was required in order to preserve the concept. One crucial difference is that while under the 1958 system the contiguous zone was part of the high seas, under the 1982 convention it would form part of the exclusive economic zone complex. This will clearly have an impact upon the nature of the zone.<sup>47</sup>

The rights of land locked states under the 1958 convention were broader than under the 1982 convention since for instance, land locked states can have rights in the high seas over the contiguous zone,<sup>48</sup> but under the 1982 convention their rights are limited only to the rights of navigation and over-flight.<sup>49</sup>

Therefore the Contiguous Zone under the 1958 convention of the law of sea, this area is a part of the high sea. Land-locked states have equitable right with the coastal state.<sup>50</sup> However, under the 1982 convention of the law of sea, this area is a part of exclusive economic zone for that reason the land-locked states only have right of navigation and over flight.<sup>51</sup>

## 2.5 Right on Exclusive Economic Zone

Since about 1960 there has been a tendency for states to claim exclusive fishery zone beyond their territorial seas. However, it soon became apparent that UNCLOS III would approve a territorial sea of twelve miles, with an exclusive economic zone extending for a further 188 miles, making a total of 200 miles.<sup>52</sup>

The exclusive economic zone extends for 200 nautical miles (370 km) beyond the baselines of the territorial sea, thus it includes the territorial sea and its contiguous zone. A coastal nation has control of all economic resource within the exclusive economic zone, including fishing, mining, oil exploration, and any pollution of those resources. However, it can't regulate or prohibit passage or loitering above, on or under the surface of the sea, whether innocent or belligerent, within that portion of its exclusive economic zone beyond its territorial sea.<sup>53</sup>

The coastal state does not enjoy complete sovereignty over the exclusive economic zone.<sup>54</sup> The coastal state, however, must ensure that the resource is not endangered by over exploitation and it must do this through proper conservation and management. Article 61(2) of the 1982 convention states:-

*The coastal state, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resource in the exclusive economic zone is not endangered by over-exploitation. As appropriate the coastal state and competent international organization, whether sub-regional regional or global, shall cooperate to this end.*<sup>55</sup>

So the coastal state is not the owner, but rather the guardian of the natural resources within its Exclusive economic zone.<sup>56</sup>

The coastal states most task as far as foreign states are concerned, is to decide in respect of the exclusive economic zone's living resources, the surplus available over its own harvesting capacity. That surplus, the convention provides, is to be made available to other states either through agreements or other arrangements to certain criteria, which the coastal state is, especially with regard to developing states, to take into account. Such criteria include the "significance of the living resources of the area to the economy of the coastal state and its other national interest"; the interests of land-locked states and those states with special geographical characteristics" and the interest of those state "whose nationals have habitually fished in the zone."<sup>57</sup>

Land-locked states have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources subject to arrangements with the coastal state involved.<sup>58</sup> Article 69 of the 1982 convention of the law sea states:

*Land-locked states shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal states of the same sub-region or region, taking in to account the relevant economic and geographical circumstances of all the states concerned and in conformity with the provisions of this article and article 61 and 62.*<sup>59</sup>

However, the terms and modalities of such participation shall be established by the states concerned through bilateral, sub regional or regional agreements taking into account.<sup>60</sup>

Regarding land-locked states, the rights they can exercise under the 1958 convention were wider than those under the 1982 convention, because the limits of the zone under the former was only 12 nautical miles (22 km), whereas under the 1982 convention states it became 200 nautical miles (370 km) from the baseline. This resulted in the loss of the freedom of the land-locked states to use around 180 nautical miles (348 km) of the sea.<sup>61</sup>

Under Article 58 of the 1982 convention, all states, including land-locked states, have freedom of navigation and over flight over exclusive economic zone; they may also lay submarine cables and pipelines.<sup>62</sup> Additionally they have the right to participate upon an equitable base in the exploitation of an appropriate part of the surplus of living resource of the economic zones of coastal states of the same sub region or region taking into account relevant economic and geographical factors.<sup>63</sup>

However, 1982 convention of the law of sea has given the coastal states exclusive economic right over the exclusive economic zone, but they have to give due regard to the interests of other states.<sup>64</sup>

Therefore, land locked states have freedom of navigation and over flight over exclusive economic zone. Additionally they have the right equitable base in the exploitation of surplus of living a resource.



However: for a land locked state to enjoy this right there must exist recognized bilateral or multilateral treaty to this effect.<sup>65</sup>

## 2.6 Right on the High Sea

The term “High Sea” means all parts of the sea that are not include in territorial sea or in the internal waters of a state. The high sea may be used freely by the ships of all nations; Article 2 of the 1958 Geneva Convention on the High Seas Comprises, inter alia, freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas.<sup>66</sup>

Some of these freedoms are limited where a coastal state claims an exclusive fishery zone, an exclusive fishery zone, an exclusive economic zone, or a contiguous zone.<sup>67</sup>

Article 87 of the 1982 Convention (developing article 2 of the 1958 Geneva Convention of the High Seas) provides that the high seas are open to all states whether costal or land-locked, and that the freedom of the high seas is exercised under the conditions laid down in the convention and by other rules of international law.<sup>68</sup>

Article 87 of the 1982 convention states that:-

1. *The high seas are open to all states, whether costal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this convention and by other rules of international law. It comprises, inter alias, both for coastal and land-locked states:*
  - a) *freedom of navigation*
  - b) *freedom of over flight*

- c) *freedom to lay sub-marine cables and pipelines, subject to part VI,*
- d) *freedom to construct artificial islands and other installations permitted under international law, subject to part VI;*
- e) *freedom of fishing, subject to the conditions laid down in section 2.*
- f) *Freedom of scientific research, subject to parts VI and XIII.*

*2. These freedoms shall be exercised by all states with due regard for the interests of other states in their exercise of the freedom of the high seas, and also with due regard for the rights under this convention with respect to activities in the area.<sup>69</sup>*

Therefore, the land locked states have right in the high sea is freedom of navigation, freedom of over flight, freedom to lay sub-marine cables and pipelines, freedom of to construct artificial islands and other installations permitted under international law and freedom of fishing and scientific research.<sup>70</sup>

## **2.7 Right on the Sea bed**

According to Black's law dictionary, the deep-sea bed is "all portion of land under the sea that lies beyond the sea-shore".<sup>71</sup>

Furthermore, Article 1 of the 1982 Convention of the law of the sea states that it is the seabed, ocean floor and sub soil thereof beyond the limits of the national jurisdiction.<sup>72</sup> The convention declares that the seabed and its resources are the common heritage of mankind. No state claim sovereign or other rights on the seabed.<sup>73</sup>

The conventions no discriminate between land-locked states and costal states with regard to exploitation and exploration of the seabed and ocean floor beyond the limits of national jurisdiction.<sup>74</sup> But any activities in the seabed are to be carried out for the benefit of mankind as a whole by or on behalf of the international seabed Authority established under the convention.<sup>75</sup>

The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the seabed (Area) through any appropriate mechanism, on a non-discriminatory basis.<sup>76</sup> The convention establishes an Authority, which shall act on behalf of mankind in governing the deep seabed. All state, which are parties to the 1982 convention, are members of the Authority.<sup>77</sup> In consideration of a permit to explore for and exploit the resources of the deep seabed; the contractor must make payment to the Authority.<sup>78</sup>

The 1982 convention establishes as a part of the international Tribunal for the law of the sea. A seabed disputes chamber, which has jurisdiction over disputes between state parties concerning the interpretation or application of the deep seabed regime of the convention. For example, the chamber has jurisdiction over disputes between a state party and the authority; dispute between state parties to a contract and the authority or application of a contract or plan of work; and dispute between the authorities and an applicant concerning the denial of a contract.<sup>79</sup>

## Foot Not Chapter Two

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- <sup>6</sup> Dr. Hari Hara Das, Principles of International Law and Organization. New Delhi: Vikas Publishing House Pvt. Ltd. P.390
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- <sup>20</sup> MALCOLM N. SHAW, International Law 5<sup>th</sup> ed. Cambridge university Press P. 493
- <sup>21</sup> Ibid
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- <sup>24</sup> LOUIS B. SOHN KRSTEN GUSTAFSON, The Law of the Sea, p.85
- <sup>25</sup> supra note 23
- <sup>26</sup> Supra not 1, P. 176
- <sup>27</sup> REBECCA M.M. WACCACE, M.A, in International Law. 3<sup>rd</sup> ed, Indian. Universal law, Publishing PVT. Ltd. P. 137
- <sup>28</sup> Ibid
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- <sup>30</sup> Supra Note 1, P. 176
- <sup>31</sup> See Art. 17 of the 1982 Convention of the Law of Sea
- <sup>32</sup> See Art. 18 of the 1982 Convention of the Law of Sea
- <sup>33</sup> Supra Note 25, p. 97
- <sup>34</sup> Ibid, p.101
- <sup>35</sup> Ibid, p.102
- <sup>36</sup> See Art 19 of the 19 82 Convention of the Law of Sea
- <sup>37</sup> Supra note 6, P. 404
- <sup>38</sup> Ibid
- <sup>39</sup> Supra note 36,
- <sup>40</sup> See Art. 17 of the 1958 Convention of the Territorial Sea
- <sup>41</sup> See Art. 125(2) of the 1982 Convention of the Law of Sea
- <sup>42</sup> supra note 25 , p. 102

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44 <http://en.wikipedia.org/wiki/territorial-waters> P.2 (3/27/2009)  
45 Supra note, 6. P. 411  
46 Supra note 42  
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48 See Art. 24 of the 1958 Convention of Territorial Sea  
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52 Supra not 1, P.183  
53 Supra not 42  
54 Supra not,27. P. 161  
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56 Supra not 27 ,P 162  
57 Supra not 50  
58 <http://WWW.Fao.org/docrep/s5280T/s5280top.htm> (3130/2009)  
59 See Art. 69 of the 1982 Convention of the Law of Sea  
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63 supra note 21, p. 542  
64 See Art. 56 (2) of the 1981 of the Law of Sea  
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66 Supra not 1, P. 184  
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68 Supra not 21, P. 543  
69 See Art. 87 of the 1982 Convention of the Law of sea  
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71 Henry Campbell, Black's Law Dictionary, 6<sup>th</sup> ed. 1991 P. 1348  
72 See Art. 1 of the 1982 Convention of the Law of sea  
73 See Art. 136 of the 1982 Convention of the Law of sea  
74 See Art. 137 of the 1982 Convention of the Law of sea  
75 Supra not 21, P. 561  
76 See Art. 140(2) of the 1982 Convention of the Law of sea  
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78 Supranote 25, p. 182  
79 ibid p. 187

## Chapter Three

### THE RIGHT OF ETIOPIA TO THE RED SEA VIA PORTS OF ERITRIA

#### 3.1 Historical Background before 1991

Federal Democratic Republic of Ethiopia is a land-locked Country situated in the Horn of Africa: Eritrea to the North, Sudan to the West, Kenya to the South, Somalia to the East and Djibouti to the Northeast border of Ethiopia. Its size is 1,100,000 km<sup>2</sup> with an estimated population of over 78,000,000.<sup>1</sup>

The roots of Ethiopian state are similarly deep, dating with unbroken continuity to at least the Axsumite Empire, which officially used the name “Ethiopia” in the 4<sup>th</sup> Century.<sup>2</sup>

In the medieval time, the central highlands of Eritrea preserved their orthodox Christian Axsumite heritage. The parts of the region were under the domain of Bahr Negash ruled by the Bahr Negus. The region was first referred to as Ma’ikele Bahr i.e. the land between the Red Sea and the Mereb River. This name renamed under Emperor Zara Yaqob as the domain of the Bahr Negash, called Midri Bahri (Tigrinya Sea Land). Until the modern day, when its name was changed to Mereb Mellash (beyond the River Mereb) under the rule of Yohannes IV the locals referred to this area as Midri Bahri (Land of the Sea).<sup>3</sup>

The boundaries of modern Eritrea and entire region were established during the European Colonial period between Italian, British and French Colonialists as well as the lone land-locked African Empire of Ethiopia which found itself surrounded and its boundaries defined by said colonial powers. Ethiopia was, for a time until the Italian Conquest of Ethiopia in 1935, the only independent country, in Africa (with the exception of Liberia). The Kingdom of Italy created Eritrea at the end of the nineteenth century, using the classical name for the Red Sea.<sup>4</sup> Because referring to the Red Sea, “Eritrea” meaning “Red”.<sup>5</sup>

The Italian took advantage of disorder in Northern Ethiopia following the death of Emperor Yohannes IV in 1889 to occupy the highlands and established their new colony, henceforth known as Eritrea, and received recognition from Menelik II, Ethiopia’s new Emperor.<sup>6</sup>

The Italian Possession of maritime areas previously claimed by Ethiopia was formalized in 1889 with the signing of the Treaty of Wuchale with Emperor Menelik II of Ethiopia (r. 1889-1913) after the defeat of Italy by Ethiopia at battle of Adwa where Italy launched an effort to expand its possessions from Eritrea into the more fertile Abyssinian /Ethiopian hinterland. Menelik would later renounce the Wuchale Treaty as the translators to agree to make the whole of Ethiopia into an Italian protectorate had tricked him. However, he was forced by circumstance to live by the tenets of Italian Sovereignty over Eritrea.<sup>7</sup> Between 1936 and 1941 Eritrea, along with Italian

Somaliland as part of the Italian East African Empire, was ruled together with Ethiopia for the first time. In 1941, after the Italians were defeated, Eritrea and Somaliland were placed under the British Military Administration while Ethiopia regained its independence under Emperor Haile Selassie.<sup>8</sup>

As loses in the World War II, Italy relinquished its legal right to its colonies in a 1947 treaty. A Four Power Commission of Britain, France, the Soviet Union and the United States was set up to decide on how to dispose of the former Italian Colonies through negotiations. The agreement was to submit the matter to the UN General Assembly if negotiations were unsuccessful. Evidently, they could not agree on Eritrea's future Britain proposed partition of Eritrea, with the Western parts to go to the Sudan and the highlands and coastal strip to go to Ethiopia while the United States suggested complete union with Ethiopia. France proposed Trust Territory with Italian administration while the Soviet Union argued for Trust Territory under international administration.<sup>9</sup>

The problem was referred to the UN who set up a commission of live countries (Burma, Guatemala, Norway, Pakistan and South Africa) to study and propose a solution. The idea of partition was rejected outright. Guatemala and Pakistan proposed the standard formula of the UN Trusteeship leading to independence, but others favored close association with Ethiopia. For example, Norway wanted full union while, Burma and South Africa favored federation with some autonomy, mean while, Ethiopian Emperor Haile Selassie was



working hard on the diplomatic front to acquire Eritrea.<sup>10</sup> The United States backed Eritrea's federation with Ethiopia and UN Resolution 390 A was passed to that effect. From September 1951 Eritrea became an autonomous territory federated with Ethiopia. In 1962 Emperor Haile Selassie unilaterally dissolved the Eritrean Parliament and annexed with Ethiopia.<sup>11</sup>

### **3.2 The Situation since 1991**

The end of the 30 Years old war in Eritrea in 1991, resulting in the birth of the Eritrea Nation in 1993, through a referendum, which enjoyed the full support and blessing of the transitional government of Ethiopia. During the first five years of Eritrea's statehood, Ethio – Eritrean relation have indeed, by and large, been one of peaceful coexistence, cooperation and mutual understanding.<sup>12</sup>

This was made possible particularly as a result of Ethiopian's support to help the nascent nation stand on its own feet and become a dependable partner in the fight against poverty and the maintenance of peace and stability in both countries and the region in general.<sup>13</sup>

After Eritrea's independence, which was formalized in May 1993, an agreement of friendship and cooperation was signed on the 13<sup>th</sup> of July 1993 between Ethiopia and Eritrea. Based on this Agreement, the two countries signed the Transit and Port service agreement was to guarantee and facilitate free transit of Ethiopia goods through its former ports of Asseb and Massawa.<sup>14</sup>

Despite this, however, the government of president Issayas Afewerki in May 1998 unleashed and unprovoked aggression and invaded Ethiopian territories using border claims as a pretext. The budding relations of friendship and cooperation were thus disrupted by the Eritrean invasion.<sup>15</sup>

Legally and historically, Eritrea belongs to Ethiopia before the arrival of Italian Colonialists and after their departure. The international border that existed during the Italian Colonization of Eritrea had disappeared after the defeat of Italy and Eritrea's reunification with Ethiopia. Consequently, when the Transitional Government illegally decided to recognize the secession of Eritrea, there was no border at all. The region of Asseb was not for example part of the province of Eritrea before the secession in 1993. Therefore, there is to be a new international border, which is yet to be drawn.<sup>16</sup>

However, instead of presenting all legal arguments, which would buttress Ethiopia's claim of access to the sea, the government has irresponsibly waived our country's historical and legal title to the sea by signing the Alger's Agreement.<sup>17</sup>

After the invasion of Eritrea, Ethiopia signed several economic and Port utilization agreements with Sudan, Kenya and Djibouti. After the Etho-Eritrea conflict in 1998, Djibouti becomes the major outlet to Ethiopia's import and exports trade. Both parties signed the 2002 agreement on the utilization of the port of Djibouti on April 13, 2002.

This agreement guarantees Ethiopia's right of access to and from the sea and freedom of transit through the port of Djibouti.<sup>18</sup>

On other hand Ethiopia and Sudan signed the 2000 protocol agreement on Port of Sudan utilization. Despite the fact that, the distance between the mainland of Ethiopia and the Port Sudan is long and has economic disadvantages than the ports Asseb and Massawa.<sup>19</sup>

### **3.3 Rights of Ethiopia Over the Different Zone of Red Sea**

Ethiopia now is a land-locked state. This means it does not have its own coastal lines and is surrounded by other coastal states. Despite that fact Ethiopia can benefit from costal state on the bases of international law.

With this respect, international law grants land-locked states to have rights of access to the sea and Ethiopia can enjoy these rights and advantages from the Eritrea sea, such rights are not special rights which Ethiopia have over Eritrea sea but it is rights given to all land-locked states by international law. However entertaining different rights and benefits in different zone of Eritrea sea, such as in the areas of navigation, economic development, can fulfill these rights. Next we will see these rights deeply.

#### **3.3.1 Right of Ethiopia on the Internal water**

It is only in time of distress that Ethiopian ships would have right to

enter the internal waters of Eritrea and stay until the distress is stopped or solved. Distress means danger to which a ship may seek, refuge from a storm or ships, which are severely damaged. The danger must be imminent and absolute.<sup>20</sup>

Hence, Ethiopian ships will have the right to enter the internal water of any Coastal state, but for our purpose, with special reference to Eritrea sea because this paper is intended to discuss this timely issue. Even if Eritrea has jurisdiction on the internal water, Ethiopian ships have some amount of immunity and Eritrea state can not try to get benefit from this situation by charging harbor duties or similar taxes which higher than the cost of service rendered, except an amount of payment equal to service rendered. But to avoid would arise problem between the two states due to unexpected war in the past; need an agreement based on international convention.<sup>21</sup>

### **3.3.2 Right of Ethiopia on the Territorial Sea**

Territorial sea is defined, on the 1982 convention of the law of sea as the part of the sea, which extends beyond the land territory and internal waters of the coastal state.<sup>22</sup>

The coastal states have sovereign right from the territorial sea. But the only restriction upon the sovereign of the coastal state is the right of innocent passage of other states through the territorial sea. This distinguishes the territorial sea from the internal water in which came

the internal water is without any restriction the jurisdiction is left to the costal state. Hence, in territorial sea the costal state has restriction on innocent passage of other states.<sup>23</sup>

Article 17 of the 1982 convention of law of sea provides that “Subject to this convention, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.”<sup>24</sup> In addition to that Article 18 of the same convention state about the meaning of passage is:-

1. “Passage means navigation through the territorial sea for the purpose of:-
  - a) Traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters or;
  - b) Proceeding to or from internal waters or a case as such roadstead or port facility.
2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force major or distress or for the purpose of rendering assistance to person’s. Ships aircraft in danger or distress.<sup>25</sup>

From the above provision we concluded that Ethiopia has the right of innocent passage in the territorial sea of Eritrea and over any other costal state as well. Ethiopian ships can exercise entering internal

water of Eritrea, and this passage may include temporary stoppage but when caused only by distress or force major.

### **3.3.3 Rights of Ethiopia on the Contiguous and Exclusive Economic Zone**

The contiguous zone is areas of high sea which is contiguous to the territorial sea and here the coastal state can exercise according to Article 33 of the 1982 convention of law of sea is:-

- a) Prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territories or territorial sea;
- b) Punish infringement of the above laws and regulations committed within its territory or territorial sea.<sup>26</sup>

In the 1958 convention of law of sea, contiguous zone was part of the high seas; under the 1982 convention it would form part of the exclusive economic zone. Because, Exclusive Economic Zone was not included in the 1958 Convention of the law of sea.<sup>27</sup>

In the 1982 convention of the law of sea, Article 56 provides that the coastal state has sovereign right over all economic activities like exploring and exploiting natural resources in their exclusive economic zone.<sup>28</sup>

Land-locked states shall have the right to participate, on equitable basis, in the exploitation of an appropriate part of the surplus of the

living resource of the exclusive economic zones of coastal states. However, such participation shall be established by the states concerned through bilateral, sub regional or regional agreements taking into account.<sup>29</sup>

From this we can conclude that Ethiopia as a land-locked state would have benefited more from this it implied that Ethiopia has only right of navigation and over flight on the exclusive economic zone of Eritrea sea unless other wise agreement made between Ethiopia and Eritrea.

#### **3.3.4 Rights of Ethiopia on the High Sea (Of Red sea)**

The high seas are open to all state, whether costal or land-locked states have freedom to navigate in the high seas.<sup>30</sup> No states may acquire sovereignty over parts of the high sea.<sup>31</sup>

The high sea, which is all parts of the sea, those are not included in the exclusive economic zone, in the territorial sea or internal waters of a coastal state.<sup>32</sup> Hence; the costal state and land-locked sate are granted basic rights within this region. This includes:-

- a) Freedom of navigation;
- b) Freedom of over flight;
- c) Freedom to lay submarine cables and pipelines;
- d) Freedom to construct artificial islands and other installations permitted under international law;
- e) Freedom of fishing;
- f) Freedom of scientific research.<sup>33</sup>

Hence, Ethiopia has the jurisdiction to deal with any problem encountered by its ships during navigation in the high seas. Ethiopia which is a land-locked state currently has an equal right with coastal states and its navigational rights are best fulfilled in the high seas more than in any other parts of the sea and this is what Ethiopia had been benefiting the navigational and over flight rights both the coasts of Eritrea and Djibouti.

Moreover, Article 125 of the 1982 convention of the law of the sea clearly provides that:-

1. Land-locked states shall have the right access to and from the sea for the purpose of exercising the rights provided for in this convention including those relations 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.
2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked states and transit states concerned through bilateral, sub regional or regional arrangement.
3. Transit states, in the exercise of their full sovereignty over their territory shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this part for land-locked states shall in no way infringe their legitimate interests.<sup>34</sup>



The above provision provides that the transit arrangement should be made by an agreement between the coastal states and land-locked states. However, what if the arrangement is refused or the agreement is violated by the coastal states.

From the above statement, we can analyze that the problem of land-locked states in general and particularly Ethiopia reach an agreement with Eritrea on 29<sup>th</sup> September, 1993 about the transit and port service, on the ports of Assab and Massawa. The agreement provides exemption from taxes and customs duties to transit cargoes: simplified documentation; and expeditious customs, transport and other administrative procedures. It further extends exemption from port dues and storages penalty charges for food aid cargoes and materials, which serve the immediate human, needs like medicines and pharmaceutical equipment.<sup>35</sup>

But later on Ethiopia was made to pay 1-5% tax on customs clearance formalities of the cargoes passing through Assab and Massawa port.<sup>36</sup>

However, Eritrea violated the bi-lateral agreement prevent Ethiopia use from the port Assab and Massawa and illegally confiscated large amounts of property belonging to the Ethiopian Government.<sup>37</sup> According to Article 16 of the agreement state that *“One of the contracting parties may terminate this agreement upon giving prior written*

*notice of 90 days to the other contracting party*".<sup>38</sup> However Eritrea terminate by violating the above Article prevent Ethiopia use from the port Assab and Masswa.

The effect of quitting using Asseb and Massawa's Port has left Ethiopia in economic crises. The Djibouti's Port, which was meant to be a substitute for the Eritrea Ports, was not as advantages as it was intended. Because, within a short time it made a substantial increment of payment i.e. Ethiopia was obliged to pay 22 million dollars in addition to the annual payment of 700 million dollar ought to be paid for the port service.<sup>39</sup>

Even though, the 1982 convention of the law of sea, give absolute right to the land-locked state to use the sea, without the consent or agreement of the costal state can't enjoy the right. No any remedy if the costal state prevent a land-locked state to use the sea.

## **COONCLUSION**

According to the 1958 and 1982 Convention of the Law of Sea recognized the land-licked states to access to the sea. Coastal states have better benefit than the land-locked states in different zone of the sea, except in the high sea.

Costal state should exercise sovereignty over their territorial sea while land-locked state have right of access to and from the sea and enjoy freedom of transit through the territory of transit states, farther freedom of transit should be agreed between the land-locked state and transit states. But, without agreement land-locked states ship can only inter innocent passage on the territorial sea of the coastal states.

The right of coastal on the contagious zone of the sea is only administrative and policing function necessary to prevalent and punishes the immigration regulation under the 1958 convention of the law of sea. No other right given to the costal states. However, in the 1982 Convention of the law of sea this part of sea is an exclusive economic zone of the coastal states. The land-locked states only have rights in this area to navigation and over-flight.

More over, land-locked states have the rights to exploit and explore at the common heritage area. In addition, they have right on the seabed provided that they obtain a license from the seabed authority to exploit minerals.

Although the 1958 and 1982 Convention of the law of the sea grants the land locked states absolute right to access to the sea, on the other hand the law contradict by itself stipulating that a precondition of agreement with the coastal states for full exploitation. It seems that it is hardly possible for land locked state to exercise there right on the sea without interring an agreement with coastal states.

Ethiopia being one of the land-locked states and has different rights over the Eritrea sea which international law grants to all land-locked states. In addition to this it can also benefit from the treaties, if concluded with Eritrea, Djibouti or any other coastal states as well.

## RECOMMENDATION

- Make a peaceful and solution to the border dispute between Eritrea and Ethiopia. The surrender of Massawa and Asseb port to Eritrea by Ethiopia after the independence thereof did not completely deprive Ethiopia from accessing the ports, until the sudden eruption of the border war between the two states. Hence, it is worth considering this issue for our purpose. The Ethio-Eritrea border dispute has not yet got a solution. Although there is no war at the time, it is no war no peace situation that prevails at present. Leader of the two states should give priority to their people and to the development of their countries. To this end they should be willing to find solution for the pending problem. If the pending problem finds a lasting solution restoration of full normalization will take place and the two states will be beneficiaries from the result.
- Restore full normalization between the two Governments and the two peoples of the two states. It is clear that the people of the two states have historic relation and have many things they share in common, such as culture, religion, and etc. Politically speaking there is no lasting enemy and lasting friend as well. Thus it is wrong to assume that the two states will remain hostile. As the world changes, this is the time of Globalization. Globalization requires mutuality, reciprocity and cooperation. To this end the

state main should not show reluctance to put an end to the confronting problem (border dispute). Especially Ethiopia should endeavor to find a solution for the sake of her interest.

- Make an interrupted effort to amend the conventions to the advantage of the land locked states. All land locked states including Ethiopia who are the members of the united Nations should lobby for amendment of the convention as well as for the emergence of new convention which can gives wider right to costal states to access the sea. This might not show a result within a short time, but requires a gradual process to put the straggle in to fruition. There for, land locked states should cooperate to bring a new leeway for better right.

## FOOT NOTE CHAPTER THREE

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- <sup>6</sup> Supra Note 3, P.5
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- <sup>13</sup> Ibid
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- <sup>15</sup> supra note,12
- <sup>16</sup> [http://www.ethiopiafirst-com/news\\_2002/Jan/THE-LEGAL-CLAIM.html](http://www.ethiopiafirst-com/news_2002/Jan/THE-LEGAL-CLAIM.html) (1/2/2009) p 3.
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- <sup>18</sup> Supra Note,14 P. 20
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- <sup>21</sup> Supra Note 15, P.176
- <sup>22</sup> Article 2 of the 1982 Convention of the Law of Sea
- <sup>23</sup> Supra Note 15, P.177
- <sup>24</sup> Article 17 of the 1982 Convention of the Law of Sea
- <sup>25</sup> Article 18 of the 1982 Convention of the Law of Sea
- <sup>26</sup> Article 33 of the 1982 Convention of the Law of Sea
- <sup>27</sup> Malcolm N. Show, International Law, 5<sup>th</sup> ed. P.517
- <sup>28</sup> Article 56 of the 1982 Convention of the Law of Sea
- <sup>29</sup> Article 69 of the 1982 Convention of the Law of Sea
- <sup>30</sup> Article 86 of the 1982 Convention of the Law of Sea
- <sup>31</sup> Article 87 of the 1982 Convention of the Law of Sea
- <sup>32</sup> Article 86 of the 1982 Convention of the Law of Sea
- <sup>33</sup> Article 87 of the 1982 Convention of the Law of Sea
- <sup>34</sup> Article 125 of the 1982 Convention of the Law of Sea
- <sup>35</sup> Article 2 of the 1993 Ethio-Eriteria Transit and Port Service Agreement
- <sup>36</sup> Ethiopia Herald, 25 November 1998 P.5
- <sup>37</sup> Eritrea Ethiopia Claims Commission, Final award Ports Ethiopia's claims 6, The Hague, December 19, 2005
- <sup>38</sup> Article 16 of the 1993 Ethio-Eritrea Transit and port service Agreement
- <sup>39</sup> Addis Neger News Paper (21/5/2001) P. 12

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