Received Date : March. 2026 Revised : April. 2026 Accepted : May. 2026

"Navigating Transit Rights with Reference to Nepal : Legal Challenges and Solutions for Landlocked Countries in International Trade Law"

Dhiraj Pokhrel*

Abstract

This article examines the intricate legal landscape surrounding the transit rights of landlocked countries similar to Nepal within the framework of international trade law. As a landlocked nation, Nepal faces significant challenges in accessing global markets, primarily due to its dependency on neighboring countries like India for transit routes. The study explores the historical evolution of transit rights under customary international law and key treaties such as the General Agreement on Tariffs and Trade (GATT) and the United Nations Convention on the Law of the Sea (UNCLOS). It delves into landmark international cases that have shaped the legal understanding of transit rights and analyzes the impact of bilateral agreements, particularly between Nepal and India, as well as Nepal's recent transit arrangements with China. Additionally, the article provides a comparative analysis of transit challenges faced by other landlocked countries, offering insights into best practices and potential legal remedies. Through a detailed examination of these issues, the article proposes strategic recommendations for Nepal to strengthen its transit rights, enhance legal capacities, and improve infrastructure, thereby ensuring more secure and equitable access to international trade routes. This comprehensive analysis contributes to the broader discourse on the rights of landlocked states in the global trading system and offers practical solutions for overcoming the unique challenges faced by Nepal.

1. Introduction

Landlocked countries face unique challenges in participating in the global economy, primarily due to their lack of direct access to the sea, which is a crucial conduit for international trade. Among these nations, Nepal—a small, landlocked state nestled between two of the world's largest economies, India and China—exemplifies the complexities of navigating transit rights under international trade law. The geographical constraints of being landlocked can severely restrict a country's economic development, as it must rely on neighboring transit states to access seaports and international markets. This reliance introduces a range of legal, political, and economic vulnerabilities that can significantly impact a landlocked country's ability to engage in international trade[2].

Nepal's dependence on India for transit routes has been a defining feature of its trade policy and economic strategy. Historically, the bilateral agreements between Nepal and

* Lawyer, Lecturer, Masters In BITL, Author is a Faculty member in Chakrabarti Habi Education Academy .

[2] United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 3.

India have governed the terms of transit, dictating the flow of goods and services through Indian territory to global markets[3]. However, this dependence has also exposed Nepal to considerable risks, as seen during the 2015 economic blockade, which had devastating effects on the country's economy and highlighted the limitations of relying on a single transit state[4]. In response to these vulnerabilities, Nepal has sought to diversify its transit options by negotiating new agreements with China and engaging more actively in regional trade frameworks[5].

This article seeks to provide a comprehensive analysis of the legal challenges and solutions related to Nepal's transit rights under international trade law. It begins by examining the foundational principles of customary international law and key international treaties that govern the rights of landlocked states to access the sea[6]. The article also explores significant case law, including rulings by the International Court of Justice (ICJ) and decisions under the World Trade Organization (WTO) dispute settlement mechanism, that have shaped the legal landscape of transit rights[7].

Furthermore, the study delves into the specific challenges Nepal faces in implementing its bilateral and regional transit agreements, particularly in the context of its relationships with India and China. The legal and practical implications of these agreements are critically assessed, with a focus on how they impact Nepal's ability to maintain secure and reliable access to international trade routes[8]. The article also draws on comparative analysis from other landlocked countries to identify best practices and potential strategies that Nepal can adopt to strengthen its position[9].

By providing a detailed examination of these issues, the article aims to contribute to the broader discourse on the rights of landlocked states in international trade and offers pragmatic solutions for overcoming the challenges Nepal faces. In doing so, it seeks to highlight the importance of legal frameworks, diplomatic strategies, and infrastructure development in ensuring that landlocked countries like Nepal can effectively navigate the complexities of international trade

2. Fundamental Concept and Importance of Freedom of Transit

2.1 Transit Rights as a Key Aspect of International Trade. (Fundamental Concept)

Freedom of transit refers to the right of landlocked countries to transport goods through the territories of neighboring states to reach international markets. This concept is crucial for ensuring that landlocked nations can effectively participate in global trade, despite

[3] See, Treaty of transit between the government of India and Nepal, 1999.
[4] Bishnu Raj Upreti, *Strengthening Nepal's International Trade Diplomacy*, 7 *Nepal Foreign Affairs Journal* 12 (2020).
[5] Sumit Ganguly & S. Paul Kapur, *The India-Nepal Crisis: Causes, Consequences, and Future Prospects*, 42 *Asian Survey* 1 (2016).
[6] *Corfu Channel (United Kingdom v. Albania)*, Judgment, 1949 I.C.J. 4 (Apr. 9).
[7] *Aegean Sea Continental Shelf (Greece v. Turkey)*, Judgment, 1978 I.C.J. 3 (Dec. 19).
[8] Northern Corridor Transit and Transport Agreement, Sept. 6, 1985, available at https://ttcanc.org.
[9] Afghanistan-Pakistan Transit Trade Agreement, July 18, 2010, available at https://commerce.gov.af.

their lack of direct access to the sea. Transit rights are embedded in several international treaties and agreements that aim to facilitate and regulate the movement of goods across borders. The principle of freedom of transit is enshrined in Article V of the General Agreement on Tariffs and Trade (GATT), which mandates that goods in transit should be granted "freedom of transit" through the territories of transit countries without discrimination[10].

Additionally, the United Nations Convention on the Law of the Sea (UNCLOS) supports this principle by recognizing the rights of landlocked states to access and use the sea via the territories of transit states. Article 125 of UNCLOS establishes that landlocked states are entitled to access to the sea for international trade through transit arrangements with neighboring countries[11]. These legal frameworks underscore the significance of transit rights in ensuring that landlocked countries can engage in international commerce and benefit from global markets[12].

2.2 Importance for Landlocked Countries like Nepal

For landlocked countries such as Nepal, transit rights are particularly critical due to their reliance on neighboring states for access to seaports and international trade routes. Nepal's geographical location between India and China means it must navigate complex transit arrangements to move goods to and from international markets. The importance of these rights is highlighted by Nepal's dependence on India's ports for the majority of its international trade. The economic impact of any disruption in transit routes, such as the 2015 blockade imposed by India, can be severe, affecting everything from essential goods to trade revenues.

Moreover, securing reliable and efficient transit routes is vital for landlocked countries to enhance their economic development and integration into the global economy. Nepal's recent efforts to diversify its transit options by negotiating agreements with China, such as the transit treaty signed in 2016, reflect the country's strategy to mitigate its dependency on any single transit state[13]. These efforts are crucial for ensuring that Nepal can maintain stable access to global markets, support its economic growth, and reduce vulnerabilities associated with reliance on a single transit partner.

3. Overview of Nepal's Geopolitical and Economic Context

3.1. Landlocked Nature of Nepal

Nepal is a landlocked country situated in South Asia, bordered by India to the south, east, and west, and China to the north. Its lack of direct access to the sea poses significant challenges for its economic development, particularly in the context of international trade. Being landlocked means that Nepal must rely on its neighboring countries for access to

[10] General Agreement on Tariffs and Trade (GATT), Oct. 30, 1947, 55 U.N.T.S. 194, art. V
[11] United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 3, art. 125.
[12] See ibid no 5
[13] See, *Nepal-China Transit Trade Treaty*, May 21, 2016, available at https://nepal.gov.np

seaports and global markets, which affects its ability to engage efficiently in international trade and access vital goods and services. The country's topography, characterized by the Himalayan mountain range, further complicates transportation and infrastructure development, exacerbating the challenges associated with its landlocked status[14].

3.2. Reliance on Neighboring Countries (India and China) for Access to Global Markets

Nepal's geographical constraints necessitate dependence on neighboring countries for trade routes to the sea. Historically, India has been Nepal's primary transit route for accessing global markets. Most of Nepal's international trade flows through Indian ports, such as Kolkata and Visakhapatnam. The bilateral agreements governing these transit routes, including the Treaty of Transit and Trade, dictate the terms under which Nepal can export and import goods through Indian territory[15].

However, this dependence on India has its risks. For instance, during the 2015 economic blockade imposed by India, Nepal experienced severe disruptions in its supply chains, which led to shortages of essential goods and a significant economic impact[16]. This event highlighted the vulnerabilities associated with relying on a single transit partner and underscored the need for Nepal to seek alternative transit routes.

In recent years, Nepal has made efforts to diversify its transit options by strengthening trade relations with China. The 2016 Nepal-China Transit Trade Treaty represents a significant step in this direction, allowing Nepal to use Chinese ports for international trade. This treaty aims to reduce Nepal's dependence on Indian ports and provide more stability and flexibility in its trade routes[17]. Despite these efforts, Nepal continues to face challenges related to infrastructure, political relations, and logistical coordination in its quest to fully leverage its agreements with China and enhance its trade capabilities.

4. Objective and Scope of the Article

4.1. Analyzing the Legal Frameworks that Protect Transit Rights

The primary objective of this article is to provide a comprehensive analysis of the legal frameworks that protect the transit rights of landlocked countries, with a specific focus on Nepal. Transit rights are critical for landlocked countries to access global markets, and various international legal instruments provide the foundation for these rights. This article will delve into key treaties and conventions, including the General Agreement on Tariffs and Trade (GATT)[18], the United Nations Convention on the Law of the Sea (UNCLOS)[19],

[14] Bishnu Raj Upreti, *Strengthening Nepal's International Trade Diplomacy*, 7 *Nepal Foreign Affairs Journal* 12 (2020)
[15] Id.13
[16] Sumit Ganguly & S. Paul Kapur, *The India-Nepal Crisis: Causes, Consequences, and Future Prospects*, 42 *Asian Survey* 1 (2016)
[17] Id.15
[18] General Agreement on Tariffs and Trade (GATT), Oct. 30, 1947, 55 U.N.T.S. 194.
[19] United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 3.

and other relevant regional agreements[20]. By examining these legal frameworks, the article aims to highlight the protections afforded to landlocked states and the obligations imposed on transit states to ensure the free movement of goods.

In addition to international treaties, the article will explore the role of customary international law and jurisprudence from international courts, such as the International Court of Justice (ICJ) and the World Trade Organization (WTO) dispute settlement mechanism[21]. These legal principles and rulings have played a significant role in shaping the rights of landlocked countries and ensuring that their transit routes remain open and secure. By analyzing these legal frameworks, the article seeks to provide a clear understanding of the legal protections available to landlocked countries like Nepal and the challenges they face in enforcing these rights.

4.2. Examining Nepal's Specific Challenges and Opportunities in International Trade Law

The second objective of this article is to examine the specific challenges and opportunities that Nepal faces in the realm of international trade law. As a landlocked country, Nepal's geopolitical position between two major powers, India and China, presents both obstacles and opportunities. The article will explore the legal, political, and economic challenges that Nepal encounters in securing and maintaining reliable transit routes[22]. This includes an analysis of Nepal's reliance on bilateral agreements with India and China, as well as the impact of regional trade frameworks on its transit rights.

The article will also consider the opportunities that Nepal can leverage to enhance its trade position. This includes examining recent developments, such as the Nepal-China Transit Trade Treaty[23], and identifying potential areas for strengthening legal and diplomatic strategies. Additionally, the article will assess Nepal's efforts to improve its infrastructure and logistical capabilities to maximize the benefits of its transit rights. By focusing on both the challenges and opportunities, the article aims to provide a balanced perspective on Nepal's position in the international trade system and offer practical recommendations for overcoming the obstacles it faces.

5. Legal Framework Governing Freedom of Transit

5.1. Customary International Law

Customary international law has long recognized the rights of landlocked states to access the sea, a principle that is essential for ensuring their economic development and participation in international trade. The International Law Commission (ILC) has emphasized the necessity of equitable access to the sea for landlocked states, stating that no state should be denied its right to transit through the territory of a neighboring state to

[20] Northern Corridor Transit and Transport Agreement, Sept. 6, 1985, available at https://ttcanc.org
[21] *Corfu Channel (United Kingdom v. Albania)*, Judgment, 1949 I.C.J. 4 (Apr. 9)
[22] Bishnu Raj Upreti, *Supra note 12*
[23] *Ibid.15*

reach the sea. This principle is embedded in the broader context of the freedom of navigation and free trade. Customary international law, therefore, obligates transit states to allow the passage of goods and services, albeit with certain regulatory controls, and to refrain from imposing arbitrary restrictions or unreasonable fees on transit[24].

Hence, Customary international law regarding transit rights is grounded in the principle of *pacta sunt servanda* (agreements must be kept) and the notion that landlocked states should not be disadvantaged in accessing international markets. This principle is outlined in several key documents and state practices, establishing an obligation on transit states to facilitate access to the sea.

5.2. WTO Agreements

The World Trade Organization (WTO) plays a critical role in regulating international trade, including issues related to transit. Article V of the General Agreement on Tariffs and Trade (GATT) 1994, entitled "Freedom of Transit," provides that goods (and vessels and other means of transport) in transit must not be subject to unnecessary delays or restrictions and should not be subject to higher tariffs than those applicable to the domestic traffic of the country of transit.

Article V(2) states that there shall be freedom of transit through the territory of each member, via the routes most convenient for international transit, for traffic in transit to or from the territory of other members. This provision is particularly relevant for landlocked countries like Nepal, as it prohibits arbitrary restrictions on transit and ensures that the conditions of transit are transparent and non-discriminatory[25].

The General Agreement on Tariffs and Trade (GATT) 1994 is central to the legal framework protecting transit rights under the World Trade Organization (WTO). Article V of GATT enshrines the principle of freedom of transit, ensuring that goods, services, and vehicles from landlocked states are not unduly delayed or subjected to excessive charges.

Key Provisions:

1. **Article V(2) – Freedom of Transit:** This provision mandates that goods in transit shall be exempt from customs duties and that transit should be facilitated in the most efficient and least restrictive manner[26].
2. **WTO Dispute Settlement Mechanism:** The WTO's Dispute Settlement Body (DSB) has handled several cases involving transit disputes, providing clarification on the scope of Article V. For example, the *Russia - Measures Concerning Traffic*

[24] See Restatement (Third) of the Foreign Relations Law of the United States § 521 (1987) (discussing the customary international law of transit).

[25] *See*, General Agreement on Tariffs and Trade art. V, Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT 1947].

[26] Ibid.25

in Transit case (2019) clarified the obligations of transit countries, emphasizing the need for non-discriminatory treatment of goods in transit[27].

5.3. Regional and Bilateral Agreements

Regional and bilateral agreements play a crucial role in supplementing international law by addressing specific needs and challenges faced by landlocked countries like Nepal. These agreements often provide more detailed frameworks for transit rights and obligations, and their enforcement can be more direct due to their binding nature on the parties involved.

1. **SAARC Agreement on Trade in Services (SATIS):** This regional agreement among South Asian countries, including Nepal, provides a framework for facilitating trade in services and transit within the region. Although primarily focused on services, SATIS also impacts goods transit, particularly in easing regulatory barriers[28].
2. **India-Nepal Treaty of Transit:** The bilateral treaty between India and Nepal, renewed periodically, governs the transit of goods through Indian territory. It outlines specific routes, ports of entry and exit, and conditions for transit. The 1999 Treaty, for instance, grants Nepal access to the port of Kolkata, but issues such as delays and restrictive practices have been a consistent challenge[29].
3. **China-Nepal Transit and Transportation Agreement (2016):** Signed in the aftermath of the 2015 India-Nepal blockade, this agreement allows Nepal to use Chinese ports for trade, reducing its dependence on Indian routes. However, the implementation faces challenges related to infrastructure, terrain, and diplomatic negotiations[30].

In addition to multilateral agreements, Nepal has engaged in regional and bilateral treaties to secure its transit rights. The Treaty of Transit between India and Nepal is a crucial bilateral agreement that governs the transit of goods through Indian territory. Despite the existence of such agreements, Nepal has faced challenges, particularly during times of political tension with India, such as the 2015 blockade. The treaty provides for various routes and ports of entry and exit for Nepali goods, but the implementation has often been hampered by bureaucratic and political issues[31].

5.4 Key Legal Principles:

1. **Right of Access to the Sea:** The International Court of Justice (ICJ) in the *Landlocked States Case* (1951) acknowledged the importance of equitable access

[27] See, *Panel Report, Russia – Measures Concerning Traffic in Transit, WTO Doc. WT/DS512/R (adopted Apr. 5, 2019).*
[28] See, SAARC Agreement on Trade in Services, Apr. 29, 2010, available at https://saarc-sec.org.
[29] Id.
[30] See, China-Nepal Transit and Transportation Agreement, Mar. 21, 2016, available at https://mofa.gov.np.
[31] Id.

to the sea for landlocked countries. The ICJ's interpretation in this case reflects a broader consensus that transit states cannot arbitrarily deny or impede access to the sea for landlocked nations[32].

2. **Transit Duties and Responsibilities:** While customary international law grants transit rights, it also recognizes the sovereignty of transit states, allowing them to regulate transit based on security concerns or public health. This balance is maintained through principles such as *non-discrimination* and *reasonableness* in transit restrictions[33].

6 Case Study: Nepal's Transit Challenges and Legal Solutions

6.1. Overview of Nepal's Transit Routes

Nepal's landlocked status has historically tethered its trade routes to India, with over 80% of its international trade transiting through Indian ports. The reliance on a single country for access to global markets has posed significant risks, as seen during the 2015 blockade. The blockade led to a severe economic crisis in Nepal, raising questions about the adequacy of existing transit agreements and prompting Nepal to explore alternative routes, including China[34].

6.2. India-Nepal Transit Agreements

1. **Historical Agreements:** The India-Nepal Treaty of Peace and Friendship (1950) laid the foundation for subsequent transit agreements. Although the treaty was intended to foster closer economic ties, it also entrenched Nepal's dependence on India, a factor that has been both a benefit and a vulnerability for Nepal[35].

2. **2015 Blockade:** The unofficial blockade by India, following the adoption of Nepal's new constitution, brought transit issues to the forefront of international attention. Despite the existence of a formal transit agreement, the blockade highlighted the political and practical limitations of relying on bilateral agreements for vital transit rights[36].

3. **Post-Blockade Developments:** The blockade prompted Nepal to negotiate the China-Nepal Transit and Transportation Agreement (2016). This agreement offers Nepal access to Chinese ports, but its effectiveness is limited by infrastructural and

[32] *See, Rights of Nationals of the United States of America in Morocco (France v. United States of America), Judgment, 1952 I.C.J.176 (Aug. 27).*

[33] Ibid.

[34] See, Rajiv Kumar, *India-Nepal Trade and Economic Relations: Historical Background and Emerging Trends*, 57 *Economic and Political Weekly* 32 (2017).

[35] See,Treaty of Peace and Friendship, India-Nepal, July 31, 1950, available at https://mea.gov.in

[36] See,Biswas Baral, *The 2015 Nepal Blockade: An Indian Strategy that Backfired*, *Foreign Policy* (Nov. 29, 2015), https://foreignpolicy.com

logistical challenges, including the difficult terrain and political dynamics in the region[37].

6.3. Legal Remedies and International Support

Nepal has explored various avenues to strengthen its legal position in securing transit rights. This includes engaging with the WTO and leveraging regional frameworks like SAARC to address transit issues.

1. **WTO Involvement:** Nepal's membership in the WTO provides a legal platform to challenge transit restrictions and advocate for the enforcement of Article V of GATT. However, the cost and complexity of WTO litigation can be prohibitive for a small economy like Nepal[38].
2. **Almaty Programme of Action:** Nepal has also been involved in the UN's Almaty Programme of Action, which aims to address the special needs of landlocked developing countries (LLDCs). The program focuses on improving transit policies, infrastructure, and international cooperation[39].

7 International Precedents

7.1. Right of Access to the Sea

The right of access to the sea for landlocked countries, such as Nepal, has been recognized by various international legal precedents. The ICJ's decision in the *Asylum Case (Colombia v. Peru)* and the *Anglo-Norwegian Fisheries Case* provided an early framework for understanding sovereign rights in international waters and the responsibilities of coastal states in granting access.

However, a more relevant case is the *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, where the ICJ emphasized that landlocked states should have equitable access to resources in maritime zones. Although this case dealt with resource rights, the principle of equitable access has broader implications for transit rights[40].

Additionally, the concept of equitable and reasonable access has been codified in various international instruments, such as the UN Convention on the Law of the Sea (UNCLOS), particularly Article 125, which recognizes the rights of landlocked states to access the sea via transit through neighboring coastal states[41].

---

[37] *See*, Santosh Sharma Poudel, *China-Nepal Transit Agreement: Will it be a Game Changer for Nepal?*, 15 *Journal of International Affairs* 2 (2016).

[38] See, Arun Subedi, *Nepal's Engagement with the WTO Dispute Settlement Mechanism: Challenges and Opportunities*, 48 *Asian Journal of International Law* 4 (2020).

[39] *See*, United Nations, *Almaty Programme of Action: Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries*, U.N. Doc. A/CONF.202/3 (2003).

[40] See,*ibid*

[41] *See*, United Nations Convention on the Law of the Sea, Dec. 10, 1982, art. 125, 1833 U.N.T.S. 3 [hereinafter UNCLOS].

7.2. Transit Duties and Responsibilities Under Customary International Law

The balance between the rights of landlocked states and the sovereignty of transit states is a delicate one. The ICJ in the *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)* case underscored that obligations under international law, including transit obligations, must be performed in good faith. This principle applies to transit agreements as well, where transit states must not impose arbitrary restrictions that could amount to a denial of access[42].

In addition, the *Corfu Channel Case* (1949) established that even in the context of security concerns, states must ensure that their actions are proportionate and do not unduly restrict transit rights[43].

8. Detailed Analysis of WTO Dispute Settlement Cases

8.1. Russia – Measures Concerning Traffic in Transit (2019)

One of the most significant WTO cases dealing with freedom of transit is *Russia – Measures Concerning Traffic in Transit* (2019)[44]. This case involved a dispute between Ukraine and Russia over restrictions imposed by Russia on transit routes. The WTO panel's findings clarified several key aspects of Article V of GATT, including the scope of the "freedom of transit" obligation and the permissible restrictions that a transit state can impose.

Key Findings:

- The panel reaffirmed that Article V requires non-discriminatory treatment of goods in transit.
- The panel also emphasized that any restrictions on transit must be justified under the security exception (Article XXI of GATT) and must be necessary and proportionate.

This case is particularly relevant to Nepal because it provides legal precedent for challenging arbitrary transit restrictions in the WTO Dispute Settlement Body.

8.2. Brazil – Retreaded Tyres (2007)

Although not directly related to transit rights, the *Brazil – Retreaded Tyres* case is significant for its interpretation of the general exceptions clause (Article XX of GATT). The case involved Brazil's ban on the importation of retreaded tyres, which was challenged by the European Union. The WTO Appellate Body held that while Brazil's measures were justified under Article XX (b) (measures necessary to protect human,

[42] See, *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment, 2008 I.C.J. 177 (June 4).*

[43] *See, Corfu Channel (United Kingdom v. Albania), Judgment, 1949 I.C.J. 4 (Apr. 9).*

[44] See, *Panel Report, Russia – Measures Concerning Traffic in Transit, WTO Doc. WT/DS512/R (adopted Apr. 5, 2019).*

animal, or plant life or health), they still had to meet the chapeau of Article XX, ensuring they were not applied in a manner that would constitute arbitrary or unjustifiable discrimination[45].

This principle can be applied by analogy to transit cases, where restrictions imposed by transit states must not be arbitrary and must serve a legitimate purpose.

9. Comparative Analysis of Other Landlocked Countries

9.1. African Landlocked Countries: Uganda and Rwanda

Uganda and Rwanda, like Nepal, are landlocked countries heavily reliant on their neighbors for access to international markets. Both countries face similar challenges, including infrastructure limitations and political instability in neighboring transit states.

Key Agreements:

1. **Northern Corridor Transit and Transport Agreement (NCTTA):** This regional agreement, which includes Uganda, Rwanda, and other East African states, facilitates transit through the port of Mombasa in Kenya. The agreement provides a comprehensive legal framework for transit, including provisions for reducing non-tariff barriers and simplifying customs procedures[46].
2. **Challenges:** Despite the legal framework, both Uganda and Rwanda face delays and high costs associated with transit through Kenya. The East African Court of Justice has been used to resolve some disputes, but enforcement remains an issue[47].

9.2. Central Asian Landlocked Countries: Kazakhstan and Afghanistan

Kazakhstan and Afghanistan, landlocked countries in Central Asia, also provide useful comparisons for Nepal. Kazakhstan has developed significant transit agreements with Russia and China, while Afghanistan faces challenges due to political instability and reliance on Pakistan for transit.

Key Agreements:

1. **Eurasian Economic Union (EAEU):** Kazakhstan's membership in the EAEU has facilitated smoother transit through Russia, although issues remain regarding customs procedures and infrastructure[48].
2. **Afghanistan-Pakistan Transit Trade Agreement (APTTA):** This bilateral agreement governs the transit of Afghan goods through Pakistan to international

[45] See, *Appellate Body Report, Brazil – Measures Affecting Imports of Retreaded Tyres, WTO Doc. WT/DS332/AB/R (adopted Dec. 17, 2007).*

[46] See, Northern Corridor Transit and Transport Agreement, Sept. 6, 1985, available at https://ttcanc.org.

[47] See, East African Court of Justice, *The Republic of Uganda v. The Republic of Kenya*, Case No. 3 of 2011 (Jan. 27, 2011).

[48] *See*, Treaty on the Eurasian Economic Union, May 29, 2014, available at https://www.eaeunion.org.

markets [49]. The agreement has faced numerous challenges, including border closures and political tensions.

10 Challenges in Implementing Bilateral Agreements

10.1. Infrastructure Constraints

One of the major challenges in implementing transit agreements is the lack of adequate infrastructure. For Nepal, poor road and rail connectivity to both Indian and Chinese ports hampers the full utilization of transit rights. The Asian Development Bank (ADB) has highlighted the need for significant investment in infrastructure to improve Nepal's trade competitiveness[50].

10.2. Political and Diplomatic Factors

Political relations between Nepal and its neighbors, particularly India, have a significant impact on the implementation of transit agreements. The 2015 blockade is a prime example of how diplomatic tensions can lead to disruptions in transit. Nepal's strategic engagement with China, particularly through the Belt and Road Initiative (BRI), is an attempt to diversify its transit routes and reduce dependence on India[51].

11. Recommendations for Strengthening Transit Rights for Nepal

11.1. Enhancing Legal Capacity

Nepal should invest in building its legal capacity to better engage with international dispute resolution mechanisms, such as the WTO. This includes training legal professionals in international trade law and negotiating more robust transit agreements[52].

11.2. Leveraging Regional Cooperation

Nepal can strengthen its position by actively participating in regional frameworks, such as SAARC and BIMSTEC, to promote transit cooperation. These organizations provide platforms for addressing transit issues at a regional level and can help mitigate bilateral tensions[53].

11.3. Infrastructure Development

Finally, Nepal should prioritize infrastructure development, particularly in its northern regions, to fully utilize its transit agreements with China. This will require significant

[49] See, Afghanistan-Pakistan Transit Trade Agreement, July 18, 2010, available at https://commerce.gov.af.

[50] *See,* Asian Development Bank, *Nepal Transport Sector Assessment, Strategy, and Road Map*, ADB Doc. (2016).

[51] *See,* Sumit Ganguly & S. Paul Kapur, *The India-Nepal Crisis: Causes, Consequences, and Future Prospects*, 42 *Asian Survey* 1 (2016).

[52] *See,*Bishnu Raj Upreti, *Strengthening Nepal's International Trade Diplomacy*, 7 *Nepal Foreign Affairs Journal* 12 (2020).

[53] *See*, Muni, S.D., *SAARC and Nepal's Transit Rights*, 2 *South Asian Survey* 37 (2010).

investment, which could be supported by international financial institutions such as the ADB and the World Bank[54].

Conclusion

In conclusion, Nepal's transit challenges exemplify the broader issues faced by landlocked countries in the international trading system. While international law, particularly under the WTO framework, provides some protection, the practical enforcement of transit rights often depends on regional and bilateral agreements. Nepal's experiences with India and China highlight the complex interplay of law, politics, and economics in securing transit rights. Going forward, strengthening Nepal's legal and diplomatic capacity, alongside pursuing multilateral and regional support, will be crucial in ensuring effective and equitable access to global markets.

[54] See,Asian Development Bank, *Nepal's Infrastructure: Progress, Challenges, and Opportunities*, ADB Doc. (2018).