

THE ECONOMIC PERSPECTIVE OF THE LAW OF INTERNATIONAL INSTITUTIONS

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ABSTRACT

This article reviews through an economic lense the law of international institutions, which through managing the relationship among states is gradually leading to the emergence of a global regime with imperial tendencies. Nations express their interest in belonging to international institutions for the purpose of gaining socio-economic and political benefits achievable under a harmonised system of mutual dependence. Although this article does not seek to analyse whether the developing nations are better off belonging to international institutions, it nonetheless reviews the rationale behind developing nations maintaining their membership of international institutions despite the widening gap between the rich and the poor nations. The strategic positioning of the international institutions sways favourably towards indirectly aiding developed countries to continue dominating the developing nations. Exercise of power by international institutions bring to the fore that states - the less developed states in particular - are gradually losing their sovereignty and inherent power to superintend their domestic affairs without external influence. This accentuates the notion that international institutions are gradually assuming an imperial status, which has successfully replaced colonialism with neo-colonialism, to be favoured on the global market. The international legal movement is thus reflected in and by economic consequences unfavourable to developing nations.

Keywords: economic relations, international institutions, developing nations, developed-country dominance, economic integration, trade law, state sovereignty, WTO

INTRODUCTION

Consequent to the ruinous war in Seventeenth century Europe, states met at the city of Westphalia for a conference that desired to put a stop to the war and fashion

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out a new way for state cooperation. The 1648 Treaty of Westphalia brought to an end the thirty years war by recognising the sovereignty of various European princes. This signalled the emergence of traditional international law, based on principles of territoriality and state autonomy.¹ Some of the terms of the Treaty included the recognition of the territorial integrity and political independence of the participating states such as Germany, France, Sweden and Denmark.² This further allowed them to govern without external interference. The Treaty established the principle of *cuius regio, eius religio*, translates to “whose realm, their religion” thereby giving rulers the right to determine their state’s religion while ensuring religious tolerance for other minority groups. The Treaty further confirmed the autonomy of states like Switzerland and Dutch Republic establishing that each state had the power over its internal affairs, free from external influences, the Treaty laid a solid foundation for the modern system of sovereign nations, emphasizing non-intervention and the equality of states in international law. This also helped discourage the influence of transactional powers thereby solidifying the importance of state sovereignty in European politics.³ Acknowledging the existence of independent states and the principle of sovereignty became the driving concept of international relations among nations.⁴

With recognition of independence status, competition and drive for relevance resulted in unhealthy competition among states. Some three hundred years later, this was the fulcrum of the Great Depression, and a forerunner to World War I.⁵ The effort to end the war of 1914–1918 and forestall a reoccurrence of the death and destruction saw the emergence of the League of Nations. A key part of Article 22 of The Covenant of the League of Nations states that “The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as mandatories on behalf of the League. The character of the mandate must differ according to the stage of the development of the people, the geographical situation

¹ M Matsushita, *The World Trade Organisation: Law, Practice and Policy* (OUP 2006) 12.

² B Philip, *The Shield of Achilles: War, Peace and the Course of History*, 1st edn (Anchor Books 2003).

³ Philip (n2).

⁴ Matsushita (n1) 12.

⁵ D Palmeter and PC Mavroidis, *Dispute Settlement in the World Trade Organisation: Practice and Procedure* (Kluwer Law International 1999) 3.

of the territory, its economic conditions and other similar circumstances.”⁶ The League of Nations specifically addressed the position of territories and its people who were considered not yet competent and independent of self-governance after World War I especially in regions such as Pacific, German Colonies in Africa and the former Ottoman Empire and anywhere else. The League introduced the concept of the “*Mandate System*” which sought to ensure territories were placed under the temporary control of more advanced and developed countries with the sole aim of guiding and directing them towards total independence. The emergence of the mandate system marked the beginning of international relations thereby ensuring that newly freed nations were able to develop alone but also operated in a unique way for other dominant powers to maintain influence over these developing regions. This succeeded in keeping the world safe until 1939 when the outbreak of World War II again breached world peace.

It therefore became apparent that the world needed to do more through cooperation to save humanity from the devastating effect of both major intrusions into global peace and harmony, World Wars I and II. As a result, the world came together after the shock of Nazi Germany electing to form international bodies such as the United Nations (UN).

Chapters IX and X of the United Nations Charter focuses on international cooperation and the needed structures in place to promote social and economic development globally.⁷ Specifically, Chapter IX addresses the International Economic and Social Cooperation which emphasises on the importance of global cooperation in addressing the social, humanitarian, cultural and economic areas. It has some objectives on the promotion of higher standards of living, full employment and conditions of economic and social progress. In addition, it addresses solutions for international economic, social, health and related problems. Furthermore, it supports universal respect for human rights as well as fundamental freedoms without distinction.⁸ Two key articles in Chapter IX are Articles 55 and 56. The former calls for the UN to promote conditions of stability and well-being important for peaceful relationships among nations and support better living conditions and full employment. The latter requires the UN member states to take joint and separate actions in the cooperation with the UN to achieve the purposes set out in Article 55.⁹

⁶ The Covenant of the League of Nations: League of Nations Official Journal (Feb 1920) www.libraryresources.unog.ch/ld.php?content_id=32971179 accessed 17 September 2024.

⁷ United Nations Charter <www.un.org/en/about-us/un-charter/full-text> accessed 18 September 2024.

⁸ UN Charter (n7).

⁹ UN Charter (n7).

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Chapter X of the UN Charter establishes the Economic and Social Council which is a principal organ of the United Nations dedicated solely to the advancement and integration of international social, economic and developmental policies.¹⁰ The key articles are Articles 62, 63 and 64. Article 62 is authorized to make or initiate reports and studies in regards to international economic, social, cultural, educational, health and other related matters. Article 63 empowers the Economic and Social Council (ECOSOC) to enter agreements with other specialized agencies to coordinate their work in the economic and social fields as the case maybe. Finally, In Article 64, ESOSOC has the responsibility of receiving regular reports from specialized agencies and other member states of the UN.¹¹

In summary, the above chapters and key articles emphasize the UN's role in promoting international cooperation for development as well as a platform for member states to integrate and collaborate on social and economic issues.

Through its Charter, the UN made a commitment that a state would no longer be permitted to act in relation to its own citizens as it deemed fit without having to answer to other states in accordance with international relations, although it was recognised that Nazi Germany acted towards its citizens within the terms of their domestic laws.¹² This was stated in Article 1(3) of the Charter

“To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion; and...”¹³

To gain more economic, social and political relevance, the powerful states in Europe embarked on an expedition on the African continent, ultimately leading to the division of Africa among themselves. The original expansion of the early seventeenth century which generated the Slave Trade, involved Portugal, Germany, Britain, Belgium, the colonialists presiding over African colonies, denying them nation status. The major achievement of the Westphalia conference was precisely the subjugation of nationhood so that the colonial powers could exploit the people and the country economically.¹⁴ The powerful nations ruled exerting influence on Africa and other colonies, for their selfish socio-economic benefit. World Wars I

¹⁰ UN Charter (n7).

¹¹ UN Charter (n7).

¹² J H Jackson, *The World Trading System. Law and Policy of International Economic Relations* 2nd edn (MIT Press 1997) 11.

¹³ UN Charter (n7).

¹⁴ UN Charter (n7).

and II led to further intervention, ensuring that the defeated nations, particularly Germany, lost control over its former territory. This subsisted until intense pressure from within and outside the African continent wrestled independence from the colonial powers.¹⁵

Gaining political independence did not necessarily pave the way for independently driven economic development for the once dominated territories. In spite of gaining independence, the developing countries continued to wallow in under-development while the developed nations retained their dominance. This domination is partly the reason why developing nations seek to withdraw their membership of international institutions, although this aspiration has remained a mirage.¹⁶

The nations unduly rely on international institutions has elevated the international institutions to the state of a new global government with imperial features.¹⁷ The world appears to have rotated full circle in the adoption of a new world order under the aegis of international institutions and globalization. This effectively has ridiculed the Westphalian system of government that stood for statehood. It returns the world to the period of dominance of states by their more powerful colonisers.¹⁸

A perusal of the emergence of international institutions and their roles reveal this clear transformation away from independent statehood. That transformation has been marked by the decline of national sovereignty, the attendant increase of international regimes, institutions, non-state actors and the nonexistence of the public-private distinction.¹⁹

To meet the objective of their membership status, states devise strategies that best place them without losing focus of the established principles of international relations. By this, nations invent cooperative ideas to track a complex, multifaceted long-run national interest, in which compliance with negotiated legal norms act as a winning long-term strategy.²⁰

¹⁵ UN Charter (n7).

¹⁶ E Petersmann, *International Trade Law and the GATT/WTO Dispute Settlement System* (Kluwer Law International 1997) 37.

¹⁷ Petersmann (n16).

¹⁸ S Lester and B Mercurio, *World Trade Law: Texts, Materials and Commentary* (Hart Publishing 2008) 8.

¹⁹ RE Hudec, *Enforcing International Trade Law* Salem (Butterworth Legal Publishers 1993) 44.

²⁰ P Gilles and G Moens, *International Trade and Business: Law, Policy and Ethics* (Cavendish Publishing Ltd 2000) 23.

THE EMERGENCE OF INTERNATIONAL ORGANISATIONS

International institutions have existed in various forms and this predates human history. Officially, they are rooted in Europe as they are known in present times from the Peace of Westphalia, which signaled the end of the 30-year war in Europe. The Peace of Westphalia is represented by a series of peace treaties signed in 1648 after five years of negotiations to put an end completely to the European religious war. The Westphalia conference, therefore, is the first contemporary multilateral peace conference.²¹

The Westphalia conference is traditionally credited as being the first of several attempts to establish something akin to world unity based on states exercising unfettered sovereignty over certain territories and played second fiddle to no earthly authority. The first major instance of organised international cooperation occurred with the peace of Westphalia in 1648, which brought to an end the brewing religious fracas of central Europe and formally birthed the modern secular nation state structure of politics in Europe. It attained success by bringing the war to an end and charting a course to state sovereignty and independence.²²

The pact failed to eliminate the tendency for war by modern states, but at least, it paved the way for states to resort to dialogue as a civilised and diplomatic way of settling their rifts. The 1815 Vienna Congress at the end of the Napoleonic wars is a consequence and proof of this as generating the dialogue and diplomacy that characterizes today's approach to nation states' disputes, as was the 1919 Paris Conference as reflected in the Treaty of Versailles. A precedent for regular congresses, albeit, on ad hoc bases, was created by the Congress of Vienna to tackle rifts between states.

The necessity to have institutions in a representative capacity, making them responsible for organising and holding the conferences, became apparent. This need became even more pronounced by the fact that, the desirability of hosting a fresh conference each time inter-nation state breakdown in relations was complicated. This led to delayed international cooperation as the challenge to coordinate international meetings was driven with political challenges. The conferences were not set out in a debate format, and were convened by the host state, the conferences strictly adhering to equality of states and proportional voting on decisions generated from consensus as opposed to the will of the majority.²³ The twin

²¹ S Lester and B Mercurio (n18).

²² R E Hudec (n19).

²³ Mizanie Abate and Alemayehu Tilahun, 'The Historical development of International Organizations' *Abyssinia Law*, (2012) <<http://www.abysinnialaw.com>> accessed 31 August 2017.

motivations of international institutions - building the desire to promote coordinated responses by states to the challenges of peaceful coexistence in a period of growing economic, social, and technical interdependence, and the recognition of the desire of mediating conflict in the political and military circles - became operative during this period.⁹

International organisations are now the medium through which states fashion formal cooperation, institutional in nature and managing their affairs and interdependence so as to neutralize dominance of some states, subjugation of others. As rightly observed:

In the wake of the Allied victory in World War II, the architects of the post war system replaced the preexisting loose customary web of state centric rules with an ambitious positivistic order, built on institutions and constitutions: international institutions governed by multilateral treaties organizing proactive assaults on all manner of global problems. These global 'constitutions' sought both to allocate institutional responsibility and to declare particular rules of international law.²⁴

INTERNATIONAL ORGANISATIONS

United Nations

The United Nations (UN) emerged in 1945, after World War II, directly replacing the League of Nations, with the clear mandate of facilitating international cooperation and to establish international order to forestall the outbreak of another world war. The aims of the UN include maintaining international peace and security, protection of the environment, fostering social and economic development, protection of human rights, providing humanitarian aids to member states from natural disaster and armed conflict.²⁵

As at its inception, the UN had 51 members and today heralds a membership of 193 countries across the world, with its headquarters in New York. The UN is tasked with promoting friendly relations among nations; together with promoting social progress and improved living conditions. The UN comprises six bodies with clear-cut functions - The General Assembly, Security Council, Economic and

²⁴ AO Popoola, 'WTO and the Dynamics of International Trade in an era of globalization, Grievances Redress Mechanism in focus' in DA Guobodia and PT Akper (eds) *Foreign Investment Promotion in a Globalised World* (NIALS 2006) 5.

²⁵ E Denza, *The Relationship Between International and National Law* (OUP 2006) 435.

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Social Council (ECOSOC), Trusteeship Council, Secretariat and an International Court of Justice (ICJ).²⁶

Its functions, as performed by the General Assembly is to discuss, debate, and make recommendations on a spectrum of subjects relating to international peace and security. The UN is an international organisation structured to make the enforcement of international law, security, economic development, social progress, and human rights easier for countries to achieve.²⁷

The General Assembly represents the main deliberative and policymaking organ of the UN and the Presidency of the General Assembly rotates among members at each annual session, the incumbent of the office elected by the body itself. The UN Security Council comprised five permanent members - United States of America (USA), China, Russia, France, the United Kingdom (UK) and ten rotating members, with the permanent members each having the right to veto any move by the Council.²⁸

The UN is at the forefront of peacekeeping missions in troubled countries all over the world. In Africa, for example, since 1960 the UN has carried out a number of peacekeeping missions since 1960, occasioned by civil wars or conflicts in Africa including Angola, the Congo, Liberia, Somalia, and Rwanda. The UN, as the foremost international organization, has remained very important in resolving worldwide conflicts and producing roadmaps for even development.²⁹

World Bank

Established after World War II for the reconstruction of countries that were heavily impacted by the effect of the war, its role has since expanded to cover economic development. The World Bank thus shifted its focus from reconstructing Europe to funding development activities and supporting policy blueprints in almost all the world's developing countries.³⁰

The World Bank is well placed to respond to the developmental needs of its less developed member states. It makes capital available for countries of the world for capital projects. As rightly noted:

²⁶ AO Popoola (n24).

²⁷ E Denza (n25).

²⁸ VC Manuel, 'The Four Doctrines of Self-Executing Treaties' [1995] 89 AmJInt'l L 695-723, 695.

²⁹ NJ Ndombana, 'How should we then live? Globalization and the New Partnership for Africa's Development' [2002] 20 (2) Boston University International Law Journal 210.

³⁰ Ndombana (n29).

The World Bank also gives interest-free loans and grants (similar to foreign aid) to the poorest developing countries. This aid has been heavily used in Africa; indeed, in 2003, 51 percent of it went to sub-Saharan Africa. This overlap of missions, proliferation of adjustment loans, and expansion of conditionality are central issues today.³¹

The present activities of the World Bank traverse various areas of interest. Today, the World Bank functions as an international organisation fighting poverty by offering developmental assistance to middle-income and low-income countries.³² By giving loans and offering advice and training in both the private and public sectors, the World Bank aims to eliminate poverty by helping people help themselves.³³

World Trade Organisation

The World Trade Organization (WTO), which succeeded the 1947 General Agreement on Tariffs and Trade (GATT), was established in 1995 and sought to eliminate tariffs between countries. The WTO is the only globally recognised organisation mandated to regulate trade between member states ensuring that trade flows seamlessly, predictably and freely. It aims at encouraging trade liberalisation by fostering negotiations among member countries to bring down trade barriers.³⁴

The Ministerial Conference is the apex decision making body of the WTO and holds its meeting at least once every two years. Membership in the WTO has risen significantly over the years, from 23 in 1947 to about 160 presently. Like the International Monetary Fund (IMF) and World Bank, the WTO (GATT) was originally a negotiating medium for the developed countries; its effect on the developing countries has grown steadily over the years.³⁵

The WTO system is structured into a multilateral trading arrangement comprising of WTO's agreements, negotiated and endorsed by a vast majority of the world's trading nations. Even though they are negotiated and endorsed by

³¹ CM Vázquez, 'Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties', [2008] 122 HarvL Rev 599.

³² Manuel (n8).

³³ I Feichtner, 'Realizing Utopia through the Practice of International Law' [2012] 23 European Journal of International Law 1143.

³⁴ NL Njoku, *Studies in Western Imperialism and African Development* (Lagos Wedeke Publishing Company 2008) 28.

³⁵ Njoku (n34).

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governments, their aim is to encourage producers of goods and services, exporters, and importers carry out their business and the resultant effect is a more accountable, prosperous and peaceful economic world.³⁶

WTO brings to the barest minimum the risk of dispute between member states, and developing countries are afforded better trading opportunities through trade liberalisation. Trade liberalisation policy has become acceptable for most developing countries; barriers in the developing world have shrunk notably since 1980. WTO has involved itself more in domestic policy issues owing to the controversies surrounding trade barriers and has made efforts to tackle the challenges of the developing nations more directly through the Doha Round of trade negotiations. With appreciable lowering of tariffs and quotas, many domestic policies like intellectual property laws, environmental policy, domestic subsidies, and tax laws, are now viewed as affecting trade flows and thus residing within the jurisdiction of the WTO.³⁷

African Union

The African Union (AU) was established as the Organization of African Unity (OAU), on 25 May 1963. The AU is a regional organisation of the 55 African countries launched in 2002. The apex decision making body of the AU is the Assembly of the African Union and it is headquartered in Addis Ababa.

The core objectives of the AU include recording greater unity and solidarity between the African countries and Africans, defending the sovereignty, territorial integrity and independence of member states and to encourage and defend African position on issues of common interests. The AU equally has the mandate of accelerating political and socio-economic integration of African countries, promoting peace, security and stability, and promoting sustainable development in economic, social and cultural as well as economic integration.³⁸

The AU has the mandate to strengthen a people-oriented Union through actively communicating the programmes of the Union, the branding of the Union and participation of Member States and other stakeholders in setting out and executing the African agenda.³⁹ Illiteracy, poverty, inadequate health infrastructure and undemocratic governments are some of the problems plaguing the AU.

³⁶ WTO, 'The WTO in brief - WTO, What is the WTO?' <<http://www.wto.org>> accessed 15 March 2020.

³⁷ WTO (n37).

³⁸ African Union, <<http://www.au.int>> accessed 15 March 2021.

³⁹ African Union, 'Towards a Peaceful, prosperous and Integrated Africa' <<http://www.au.int>> accessed 15 March 2021.

EXPERIENCES OF DEVELOPING COUNTRIES

The core aspect of the experiences of developing countries' membership of international institutions that is of concern to this article is the fact that many of the developing countries are yet to attain economic growth despite their membership of such institutions. This is not surprising because most of the international organisations were not established specifically for the purpose of facilitating economic growth and development in developing countries. They were established for the protection of the general interests of members irrespective of their status. It follows that their inability to support development in developing nations does not ipso facto translate to complete failure in their mandate.⁴⁰

At no time have many developing nations, particularly in Africa, recorded appreciable growth that could be credited to their being members of the international institutions. Instead, according to statistics, there is a growth pattern for the developed countries as against that of the developing countries. Since 1980 the world's poorest countries have fared worse economically than the richest. In the 1980s, the high-income countries of the Organisation for Economic Co-operation and Development (OECD) grew at 2.5 per-cent annually and in the 1990s at 1.8 percent; the developing countries grew at 0.7 percent and 1.7 percent, respectively.⁴¹

Countries in the West African sub-region majorly attained independence in the 1950s and 1960s. But the economic growth visible in the region has not been prominent—indeed the opposite is the case. This has transpired through the absence of pellucid policy to promote self-sustainability in growth and development. The rate of dependence on external sources has remained alarmingly high. None of the countries is, presently, within a touching distance of self-sustenance, growth and economic independence. A country with an economy dictated by external dependence, will find it difficult to attain or hold any significant degree of control over the rate of growth in its economy.⁴² The pattern of growth in the region does not appear to indicate membership benefits.

What remains of utmost concern is that development was promoted in the region by the Bretton Woods programmes and policies on privatisation, austerity

⁴⁰ A Agwu, *National Interest International Law and Our shared Destiny* (Ibadan. Spectrum Books Limited 2009) 18.

⁴¹ ZN Jobodwana, 'Participation of African member states in the World Trade Organisation (WTO) Multilateral Trading System [2006] 1 (2) Int J Afr Renaissance Studies 244–264.

⁴² SKB Asante, *The Political Economy of Regionalism in Africa: A Decade of the Economic Community of West African States (ECOWAS)* (Preager Publishers 1986) 109.

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measures, capital market liberalisation, deregulation, and so on. These policies lack the required institutional foothold to sustain them, hence their seemingly lack of success. Annual per capital growth for the developing countries averaged 0 percent for the years from 1980 to 1989, whereas from 1960 to 1979 their growth had averaged about 2.5 percent annually.⁴³

Economic models imposed by the international institutions frustrate the pattern of domestic growth adopted by developing nations. The bait and switch on policy pattern and implementation has not favoured economic growth. The World Bank's infamous structural adjustment policies received such scathing criticisms that the name was changed to poverty reduction and growth facility. The bailouts, financial packages and reforms of IMF, are clothed with notoriety leaving many nations in poverty and stumbling under huge debt.⁴⁴ Policies are geared towards supporting nations in establishing governments that are market orientated governments, disciplined and modernised through bringing in reforms like privatisation and civil service reform.⁴⁵ Aiding developing nations to outline governmental solutions is not a challenge, but the approach is what sometimes has proved challenging.

TRADE INCENTIVES FOR DEVELOPING NATIONS

Without any doubt, with the right environment, developing nations can leave an indelible mark on the international scene. Various incentives exist in the form of trade agreements to assist developing countries gain leeway into the markets of the developed countries.⁴⁶ These types of incentives are not in short supply but their existence does not translate to their accessibility or efficacy towards economic development.

In an increasingly hostile world economic environment, developing nations need these palliatives to enable them to navigate the tumultuous path of the global market. Competitiveness is difficult to achieve when dealing with more powerful and economically advanced counterparts. Thus, it is valuable now to review partnership initiatives by some developed countries/regions aimed at assisting the African region achieve economic development.⁴⁷

⁴³ Asante (n42).

⁴⁴ ML Tupy, 'Trade liberalisation and Poverty Reduction in Sub-Saharan Africa' [2005] 10 *Pol Anal* 1–23.

⁴⁵ SW Chang, 'WTO for Trade and Development Post-Doha' (2007) 10 (3) *J Int Econ Law* 553–570.

⁴⁶ Agwu (n40).

⁴⁷ JMM Akech, 'The African Growth and Opportunity Act: Implications for Kenya's Trade and Development' [2001] 33 *NYU J Int'l L & Pol* 651.

African Growth and Opportunity Act

African Growth and Opportunity Act (AGOA) is the first ever US trade pact with Africa which was signed into law in May 2000. It aims at achieving accelerated growth and development of Sub-Saharan Africa and the integration of the continent into the world economy through trade liberalization, enhanced market access, finance and investment.⁴⁸

AGOA provides duty-free access to textiles and apparel subject to the wearing apparel provisions, having their own requirements and rules of origin.⁴⁹ Textiles are eligible if manufactured in AGOA beneficiary country whereas apparel from less developed beneficiary countries are duty-free even when the fabric used is from a third country.

The opportunity created by AGOA is that of hope and optimism evidenced in the palpable presence of African trade in the international market:

The increase recorded in volume of trade by the African region is significant but is more on the energy sector. Of the total \$8.2 billion in AGOA – qualifying goods in 2001, the energy-sector was about 83 percent, accounted for largely by Nigerian crude oil.⁵⁰

AGOA is implemented by a sub-committee within the US Trade Policy Committee (TPSC) and based on certain eligibility criteria including products that will be duty free in accordance with the generalised system of preferences; selection criteria for garments and other textile, products, establishment of an annual US-Africa Forum on trade, the economy and investments and for technical assistance to eligible countries. It has a special rule for the least Developed countries (LDCs) allowing for free access for their textile products without application of rules of origin principle.⁵¹

⁴⁸ CC Wigwe and IF George, 'Dumping and Anti-Dumping in International Trade: The International Economic Law Perspective' [2017] 9 (1) *Journal of Jurisprudence and Contemporary Issues* 22–31.

⁴⁹ AGOA, 'Eligibility Products', <<http://www.agoa.info>> accessed 19 March 2021.

⁵⁰ C Carrere, 'Revisiting the Effects of Regional Trade Agreements on Trade Flows with Proper Specification of the Gravity Model' [2006] 50 (2) *European Economic Review*, 223–247.

⁵¹ JG Agbeyegbe, *Trade Liberalization, Exchange Rate Changes, and Tax Revenue in Sub-Saharan Africa*. IMF Working Paper 2004-178 (September 2004).

Everything But Arms

Everything But Arms (EBA) is a brainchild of the EU coming into effect on March 5, 2001. The initiative extends duty and quota free access to all products originating in less developed countries (LDCs), except arms and ammunition. This initiative has made EU the world's first major trading power to commit itself to opening its market fully to the world's poorest countries, offering more assistance and incentives.⁵²

Tailor-made to the specific needs of LDCs, the EU's EBA arrangement was established to give all LDCs full duty-free and quota-free access to the EU for all their exports with the exception of arms and armaments, making it the most generous form of preferential treatment to LDCs globally.⁵³ The only eligibility criterion for this initiative is that the product is not arms or ammunition.

Eligibility into the EBA scheme is automatic and has no time limit. The EBA scheme was reformed in 2014, and through that, the effectiveness of the EBA arrangement was strengthened. Being a scheme for LDCs, once countries successfully move up the development ladder, their efforts are recognized and they are no longer considered 'least developed' by the UN.⁵⁴ With that status, such country ceases to be eligible for the EBA initiative.

Based on this initiative, products from most countries in Africa, the Caribbean and the Pacific (ACP) enter the European Union markets duty-free. As succinctly put by J I Isemede:

The trade package is liberal, as it was designed to encourage ACP business to sell manufactured and processed products in Europe, and to expand their new types of exports alongside their traditional export of commodities and raw materials. It was also designed to promote ACP exports and diversify ACP export products. For the ACP States, it offers favourable conditions of access to the EU market and stabilizes export earnings of base commodities. For the EU, it secures essential supplies.⁵⁵

⁵² A Capling, 'Preferential Trade Agreements as Instruments of Foreign Policy: an Australia-Japan FTA and its implications for the Asia Pacific region' [2008] 21 (1) *The Pacific Review*, 27–44.

⁵³ European Commission, 'Everything but Arms (EBA) - who benefits?' <<http://www.trade.ec.europa.eu>> accessed 19 March 2021. In 2013, EBA beneficiaries accounted for exports worth 14.1 Billion GBP – more than 15% of all the preferences under the EU's Generalised Scheme of Preference (GSP).

⁵⁴ European Commission (n53).

⁵⁵ JI Isemede, *Exporting in West Africa: A Practical Guide* (Malthouse Press, 2003) 145.

The Cotonou Agreement (Lome Convention I to IV)

The Treaty that regulates the relationship between the EU, African, Caribbean and Pacific (ACP) states is the Cotonou Agreement. The Treaty was signed in 2000 and came into force in 2003. The forerunner to the Cotonou Agreement is the Lome Convention I, II, III and IV, which outlines the principles and objectives of the EU's cooperation and relationship with the ACP states. The core features of the Convention are the partnership principle, the contractual nature of the relationship, and the combination of aid, trade and political aspects, together with its long-term perspective.⁵⁶

The Cotonou Agreement covers a period of twenty years with a review option and a protocol indicating the total amount of resources allocated to ACP States through European Development Fund (EDF). The Cotonou Agreement is aimed at poverty eradication, sustainable development and the gradual integration of ACP countries into the world economy. It has three dimensions - political, trade and financial; it has three areas of priority – economic development, human and social development and regional integration and cooperation. The political component is based on respect for human rights, democratic principles, and rule of law managed by the European Development Fund (EDF) which is managed by the European Investment Bank (EIB) and can be assessed for political and economic reforms debt relief, institutional development and technical cooperation and has been accessed by states and joint institutions, private sector and civil societies.⁵⁷

The Cotonou Agreement between the EU and the ACP states mark five generations of agreement between ACP-EC sovereign states and it is the world's largest financial and political framework for North-South cooperation.⁵⁸ In the ACP group of countries, Africa lays claim to over three-fifths of the entire population of the group; in trade, it claims five-sevenths of the total volume of trade.⁵⁹

The relationship is characterised by its non-reciprocal trade benefits for ACP states including unlimited entry to the EC market for 99 per cent of industrial goods and many other products, especially for the Least Developed Countries

⁵⁶ European Commission, 'Development and Relations with African, Caribbean and Pacific States' <<http://www.ec.europa.eu>> accessed 19 March 2021.

⁵⁷ European Commission (n53).

⁵⁸ European Commission (n53).

⁵⁹ G M Caporale and others, 'On the bilateral trade effects of free trade agreements between the EU-15 and the CEEC-4 countries' [2009] 145 (2) *Review of World Economics* 189–206.

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(LDCs), which number is 39 in the ACP group.⁶⁰ The unique feature of the Agreement is dialogue and joint administration of its content by the parties and the ACP states are free to table requests, which are mutually negotiated with the EU.⁶¹

CONCLUSION

The background of international institutions reveals the yearning by states for partnership and cooperation among states and the need to enjoy standard rules of engagement. The increasing powers of international institutions pose a challenge and subtle threat on the fundamental principle of sovereignty and state independence. Despite the implication of such cooperation in their potential and real impact on the powers of the states, membership of international institutions holds a great attraction for states.

As a result of their membership in various international institutions, multilateral cooperation and concessionary arrangements exist, aimed at assisting developing nations gain access to foreign markets. These trade arrangements and incentives are sometimes viewed as a means of keeping the developing nations under the control of the developed nations, which has become more like a rivalry competition among developed nations. Whatever the intention, it is noteworthy that the incentives, good as they seem, have not provided the desired economic development roadmap for developing nations.

There may be need to build corresponding institutions and policies for trade expansion and infrastructure required for competitive economic growth. This will require consistency in the policies of developing nations and not the total reliance placed on policies of international institutions some of which are contradictory. The majority of the borrowing member states of the institutions have abandoned their political and economic ideologies, including their fundamental directive principles of states, at the insistence and under the influence of WB and IMF policies.

⁶⁰ Caporale (n59).

⁶¹ T Chaney, *The Gravity Equation in International Trade: An Explanation* (Centre for Economic Policy Research 2011) 19.