UNIVERSITY OF ILORIN

THE TWO HUNDRED AND FORTY-SEVENTH (247TH) INAUGURAL LECTURE

"AFRICA IN THE GLOBAL ECONOMIC TRADE LAW CONUNDRUM"

By

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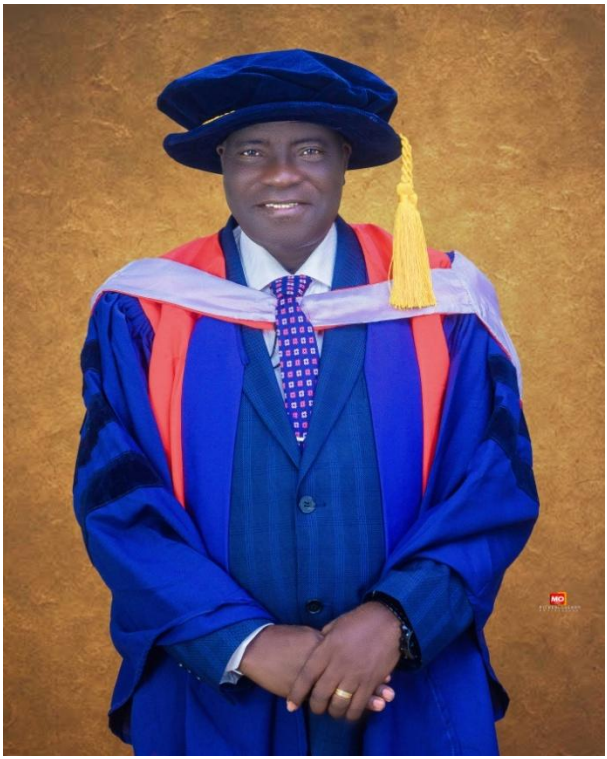

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Distinguished members of the Bench and the Bar,
Members of Staff,
My Lords Spiritual and Temporal,
Students of this great University, in particular students of the Faculty of Law,
Members of my Family-nuclear and extended,
Gentlemen of the Print and Electronic Media,
Ladies and Gentlemen.

Preamble

In one of Ayinla Omowura songs (Challenge Cup, 1974), he said

"Eyin E f'awon were sile	"Leave the crazy ones
K'anroko si wa	To comb the bush for us
K'awaperan to bayoju"	To enable us to kill the animal that comes out"

Mr. Vice-Chancellor, This song clearly mirrors the unfortunate situation of African states in the global economic trade law and politics. The African are the crazy ones, the West being the wise ones to kill the animal (raw materials) for the benefit of their people (Europeans)!

Mr. Vice-Chancellor, it is with nostalgia that I stand here today to reflect on the purposes of the premise on which certain activities and actions are initiated. My thoughts reflect on the

purpose for which our colonial masters decimated the boundaries of the continent of Africa, relying on such international law doctrines such as *Uti possidetis* to sustain the divisions of a great continent. Consequently, my area of research for almost two decades is in the Jurisprudence of International Economic Law. This is a socio-legal research in International Economic Policy making. It is basically an area that is closely interwoven with the legal rationale behind international trade policy and development. Thus, the question I have grappled with majorly in my academic sojourn is, was and; is Africa designed to be whipped? In the alternative, is Africa a whipping child in the global economic trade matrix?

Introduction

Vice-Chancellor, Sir, I humbly stand before this august audience to present the 4th inaugural lecture to be delivered from the Department of Jurisprudence and International Law, Faculty of Law of the University of Ilorin. However, this inaugural lecture is the first to be delivered on International Economic Law from the Faculty of Law. Consequently, it is the first to be delivered in that field of research in this great University. Similarly, it is the first to be delivered since the assumption of office of the first legal practitioner and Senior Advocate of Nigeria, Professor Abdulwahab Olasupo Egbewole the Vice-Chancellor of this great University. This inaugural is also the first to be delivered at the time of the first female Dean of the Faculty of Law, University of Ilorin, Professor Nimah Abdulraheem.

Mr. Vice-Chancellor, a major classical right in the context of legal framing is the right to life and human dignity which is strongly linked to development. While reflecting on The Legal Perspectives of the United Nations Conference on Trade and Development (UNCTAD), **Olatoke** (1998,p.60) underscores the importance of development as a global phenomenon. **Olatoke** *et al*., (2020, p.246) has also conceived development as a process of economic and social advancement in terms of quality of human life. The absence of development is directly

correlated to violation of human dignity. Mr. Vice- Chancellor, the indices of development is unarguably, the basis of the divide between the Global North and Global South countries, the West and the rest, Super Powers and less powerful states and the sad nomenclature of Africa as a third world continent. A major factor that plays a role in this matrix is that of international trade law and its implications on development and developing countries.

The essence of development in the global trade law and policy can never be over-emphasised. Development can be measured in terms of cultural wealth, education, healthcare, and opportunities, and can be commonly classified in terms of Human Development Index (HDI), a standard measure based on 3 factors: life expectancy, literary /education, and standard of living (**Olatoke** *et al*. 2020, p.246).

The right to development stemming from the sovereign rights of the then developing world and newly decolonised nations to determine their own developmental pathways and to exert their autonomy in global affairs has become increasingly recognised among the comity of nations. To date, the right to development has become one of the prominent third generational rights in international human rights law. For instance, Eso JSC in *Rasom Kuti v. AG Federal* (1985) NWLR (PT. 6) 211 held that human rights in general are those rights that are above the ordinary laws of the land. In 1981, the right to development was *abinitio* given recognition by the African Charter on Human and Peoples' Rights (ACHPR). According to article 22 (1) (2) ACHPR:

(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

(2) States shall have the duty, individually or collectively to ensure the exercise of the right to development.

At the municipal level and specifically in the Nigerian legal system, the major sources of our law are found in the statute as opposed to English law where the basic sources are in case law. However, all enactments are mere skeleton and remain redundant until life is breath into them by courts of law (**Olatoke**, 2012, p.1).

Similarly, in international law, which International Economic Law takes significant part of; life is breath into it through domestication. In the *State v. Ilori* (1983) I SCNRL 92, the Supreme Court held that the Attorney General of the Federation is the Chief Law Officer, who should under normal circumstances lead the states in a matter between countries (**Olatoke** *et al.* 2018, p.35). This can also be found in *Unipetrol Nig Plc v. Edo State Board of International Revenue* (2006) CRT 28. However, in exercising his power, the Attorney General according to section 174 (1) (a) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). "shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process". This process as far as international economic law is concerned is not limited to Nigeria but a global phenomenon and Africa inclusive. **Olatoke**, Onuora-Oguno and Akubo (2020, p.243**)** reiterate the role of the Judiciary towards realising the right to development in our nation, thus the place of the judiciary in ensuring the realisation of the right to development cannot be over emphasised.

Vice-Chancellor, Sir, it is imperative that I draw attention to the believe that in the beginning, it was widely held that Africa is the cradle of civilisation. From the histories of Egyptian Pyramids, Timbuktu trades, the NOK terracotta in Nigeria to mention but a few are great examples of the strides that Africa made. Consequently, why has Africa which was ideally a front runner now considered to be third world? This again reechoes my thought that was Africa nurtured to be whipped? Where is the civilisation? Why has Africa turned the whipping child of the West? Why is Africa glory turned to gory?

Mr. Vice-Chancellor, these questions have driven my academic sojourn over the last decades and informed the focus of my academic voyage. My first assumption is that; the answer is in the reality that Africa lost its economic power and the inability to properly utilise international economic law. If you lose your economic power, you lose your political power, if you lose your economic power, you lose your identity. The hypothesis that the political economy dictates power, power control politics, politics control security, and security dictate development and/or underdevelopment was ventilated by **Olatoke** (2016, p.158) in the examination of **"**The New Partnership for African Development (NEPAD) as a Tool for African Development." Conceding to this conundrum, I have engaged my thoughts on how the narrative could be changed using the law as a tool.

The forte of the African society in the past was trust and honesty, which in my opinion are important in the international trade cycles. Vice-Chancellor, Sir, Africa was self-sustained and socio-culturally secured. I remember when I was in my village in the 1970s whenever we were going to the farm, it was a common sight to see heap of yam with certain numbers of stones placed on it. Anyone interested in buying the yam will simply pack the yam and replace the stone with cash, left on the same spot, for the yam owner to pick any time he/she returns. That was African Security, Trust, and Economic Law. Gradually, these ideals have eroded us alongside the insincerity of our colonial masters. This has driven Africa and the world in search of a panacea. Invariably, in a search to ensure that Africa weeps no more, series of economic law related organisations such as the World Trade Organisation (WTO), the New Partnership for African Development (NEPAD), the United Nations Conference on Trade and Development (UCTAD) have all been formed.

The Jurisprudence of International Economic Law

Vice-Chancellor, Sir, quoting the seminal work of Johnson (2007, p.5)'s "International Economic Law'' is not by any means a new phenomenon as International Law always had considerable 'economic content'…including trade, investment,

commerce, and navigation". The need for the unraveling of the jurisprudence of International Economic Law, however, has come to the fore with the world becoming smaller than a micro village. Understanding the pivotal role of law as holding point for all human relationships is what I have done in the decade's past. For this, the vicarious extension and latitude of global control of the universal economy through the law is of paramount concern.

One of the numerous challenges confronting Africa and the legacy left behind for us by the colonialists is the challenge of lack of equitable distribution. According to (Kleven, p.2014), equitable distributing drives the benefits and detriments of democratic society which impacts on development. Mr. Vice Chancellor, Sir, in Africa, the major challenge after the spate of independence was unequal distribution of wealth, forced labour as well as strategic exploitation of African riches by her colonial masters. **Olatoke** (2016, p.158) opines that those continental developmental challenges are hinged on lack of equitable distribution of not only resources but goods and knowledge are clogs in the African economic development. Most government institutions and practices which the African countries had to make use of at independence were bequeathed from their colonial overlords. The realisation of this fact has led to undying yearnings by African countries to solve their problems collectively through the jurisprudence of International Economic Law.

Jurisprudence literarily connotes scientific study of law. However, jurisprudence in a wider usage is an analytical exploit of a certain cause. The what, why, and how are jurisprudential tools useful in finding answers to social phenomenon are the instant interest of my academic sojourn - development and economic law. Jurisprudence as a subject according to Egbewole (2013, p.3) is "as big as law and bigger". Thus, the investigations I have engaged in towards ascertaining if Africa is a whipping child or nurtured to be whipped has taken me on manifold voyages into diverse areas of laws.

Today, the frontiers of jurisprudential knowledge have been expanded with interdisciplinary studies and research. Jurisprudence, frankly speaking, could be said to be the scientific study of legal concepts in the workings of the law and how it can be used as a scientific tool to solve legal quagmires.

Vice-Chancellor, Sir, through the instruments of international law, various International Economic Regulatory Bodies, Agencies, and Organisations were created. Thus, International Economic Organisations such as the New Partnership for African Development (NEPAD), the World Trade Organisation (WTO), the Organisation of the Petroleum Exporting Countries (OPEC), the African Continental Free Trade Agreement (AfCFTA) and the United Nations Conferences on Trade and Development (UNCTAD) were all created to pilot the regulatory tendency and protection of international trade and economy. Unfortunately, Mr. Vice Chancellor, our research found that after their formations, the achievement of their founding goals due to non cooperative attitude of the member states has become a monumental crisis especially with respect to African States. To solve this crisis, the world trade players had to seek refuge in international politics, the politics out of which the World Economic Order emerges. **Olatoke**, Adimula, Akintoye and Ballah (2012) while examining the "The World Trade Organisations' Policy on Agriculture" from a Neo-Colonial lens reechoes the unfortunate deficiencies in these institutions. We concluded in the paper that, the WTO''s policy on Agriculture is part of instrumentality of subjugation of African economy to European influence and control. While African states produced, Europe determines the price.

Vice-Chancellor, Sir, the identified gaps have led to tension in the global economic struggle through series of competitive world trade market covering and control. It must, however, be reaffirmed that the story is not all gloomy as International Economic Law has provided a platform to douse the tension facing the development of the global economy despite Africa being at the wrong end of the ladder. With the

help of International Economic Law, the third world's nations can secure protective legal instruments for their trades and also seek some form of solidarities - the COVID-19 Vaccine Solidarity is a most recent example. In addition, efforts by the third world countries to succeed in standing up to the strong force of multinational capitalists also constitute part of what gave rise to the formation of series of organisations on the African continent. For all these organisations to be effective, the application of International Economic Law is a *sine qua non*.

The power of trade gimmicks cannot be overemphasised. This explains the pivotal reason why knowledge of the jurisprudence of International Economic Law a must for all in our present-day society. Let me draw the attention of everybody that during the Middle East war, the Arabs in 1973 used oil through the Organisation of Arab Petroleum Exporting Countries (OAPEC) as a weapon to bring the Middle East War to an end (**Olatoke**, 1997, p.3). This happened on the first day they decided to raise the price of oil to $5.12 dollars. Following closely on this, the Arab met through OAPEC and it was agreed that an immediate cut-back of 5% in oil production be effected until Israel withdrew from the whole Arab territories (Agwami, 1968, p.38 and Soremekun, 1986). The price hike and embargo proved effective. In fact, this occurrence was quite sensational because for the first time in the history of international economic relations, the industrial world found itself on the defensive (**Olatoke,** 1997, p.3). It was this kind of stance that led to a more holistic and robust international economic law response and greatly affected the African continent and gave credence to the whipping or whipped child nomenclature in perspective.

Why International Economic Law

Vice-Chancellor, Sir, my first contact with this field of study was at the Obafemi Awolowo University, then University of Ife during my master's degree programme. However, my interest in international economic law blossomed with my association with Professor Ademola Popoola. This gentle man to the extreme rekindled my interest more in the field of

international economic law. My inner eyes were further opened to the tricks and several antics of the global economic policies through the law. My national and international law practice further exposed and enhanced my understanding of international economic law.

Mr. Vice-Chancellor, Sir, one main finding from our long-time research in international economic law issue is the fact that every international economic issue got its root from national economic issue. Therefore, the World Trade Organisation (WTO) will function best if its member countries obey its articles and domesticate its provisions. The New partnership for African Development (NEPAD) and other international economic related organisations will be effective if and only if the member States permit its functionality by obeying the provisions in their articles. In short, no international law will have a binding effect without either ratification and or domestication of such international agreement. May I flag a *caveat* here that countries are encouraged to respect the doctrine of *Pacta Sunt Servanda* as contained in the Vienna Convention of Treaties. Thus, the jurisprudence of international economic law is the analytical exposition of international economic politics and its intersection with development strides of Nations and in this context Africa. The common findings in our research is that the developed countries such as United State of America (USA), the United Kingdom of Great Britain and Ireland, and France frequently play a domineering role in most of the global economic policy making and that this often leaves Africa as a whipping child or one nurtured to be whipped (**Olatoke** *et al,* 2019, p.22).

Mr. Vice-Chancellor, Sir, it is found in most of our research efforts that, despite the significant position the International Economic law holds in the stability and regulatory strive of global trade policy, most countries of the world, both developed and developing are in the habit of not following the provisions of the charter/ clauses in the law to the letter. The worst aspect, apart from the refusal to follow the provisions of the law is that, most developed countries frequently use veto

power to have their way. Invariably therefore, Africa in most of the decisions in global trade policy and politics are the whipping child; nurtured to be whipped" in the global economic trade law.

In the application of international economic law to global trade dispute, what is good for the goose may not necessarily be good for the gander due to series of manipulations, tricks, antics and bullying that developed countries are fond of constantly using and/or apply to have their way. Vice-Chancellor, Sir, all these to us are purely an extension of colonialism, otherwise known as neo-colonisation. Be that as it may, we ask again, is there any hope for the hopeless? Is there any hope for Africa in the global economic politics and policy making through the law?

African States in Traditional and Contemporary Trade - A mutating Conundrum

From the premise of my thesis on jurisprudence and its many rooms, I recall at this junction, my experiences of trades from a multidisciplinary lens. Mr. Vice-Chancellor, I vividly remember how villagers fighting over portion of land would come to our village head to settle quarrel and whatever the village head said would be the final. Justice, equity, and fairness prevailed and were accepted by all parties in good faith. Price determination was mutual in all aspects with the villagers deciding the price for their farm produce, no imposition, no exploitation and no force in the way and manner the product should be sold. The freedom to determine whatever you produce, how to produce and how to sell squarely rest on the producers.

Today, however, through various international economic law paradigms, the situation is mutating. International organisations regulate the global economic trade and, in some situations, weaponising same. The conundrum I have identified in my various research works like **Olatoke J.O.** (1997): "Organisation of Petroleum Exporting Countries (OPEC) and the New International Economic Order (NIEO)", **Olatoke J.O** (2016):"The New Partnership for African Development (NEPAD) as a Tool for African Development" and **Olatoke J.O.** (2017) "Economic

Rationales for Anti-Dumping Laws Of The World Trade Organisation (WTO) Appraised" are hinged on the fact that virtually all these powers have been taken away with the coming of colonialism and now neo-colonialism where the identity, economy, self respect and even African Native Law is almost in extinct.

Not surprising, African law is now categorised as customary law and before same could be applied to any issue, it must pass through repugnancy tests! What an irony! The question has always been whose repugnancy? Who and what determines that repugnancy test? who makes the test? The truth is that all these are determined by the colonialists without the impute of Africans.

Mr. Vice-Chancellor, after the independence of most African States, neo-colonisation set in the control, exploration as well as exploitation of African resources which continue unabated; though indirectly. Economically, powerful nations still decides the price of African agricultural products and they may even subject same to frequent reduction in the international market (**Olatoke** *et al*, 2012, p.29). Africa produce raw materials, the West purchased same cheaply and export same back to Africa and still dictates the price of the finished product, what an irony! In all these, Africans must share the chunk of the blame as they have refused to add value to their products thus subjecting its teeming populace to the overall decision of the colonialist. The sad situation in the Crude Oil Sector of Nigeria is a stark reality of this challenge sir.

Before the formation of OPEC, the control over world's oil industry was in the hands of the seven sisters: Exxon (ESSO); Shell, British Petroleum (B.P), Gulf, Texaco, Mobile and Standard Oil/Chevron. These were the big multinational companies that are technological advance and dominated the international oil industry. **Olatoke** (1997) in examining the functioning of OPEC and the new International Economic Order observed helplessly that these companies determined the revenues and posted prices to pay the host government and operated freely without due regard to the overall economic

interest of the oil producing countries. Productions and marketing were equally controlled by them and the profits which were derived from these multi-national corporations were usually transferred to the home countries. Without any consultations with the producing countries, these seven multi-national oil companies in February 1959 cut the posted prices with serious adverse effects on the producing countries' revenues. The inability of African States to respond suggests that Africans must have been nurtured as a whipping child and one to be whipped!

In December 1961, the change in thinking by developing countries on her developmental problem was reflected in a General Assembly resolution on "International Trade as the Primary Instrument for Economic Development" (https:// digitallibrary.un.org/record/204606?ln=en, accessed on 12th February, 2023). The urgent need to accelerate the rate of development of the less developed countries had been fully recognised since the end of the Second World War, but measures by developed countries to assist this had concentrated almost exclusively on economic aid and technical assistance, while the developing countries themselves had emphasised import substitution rather than an expansion of exports.

To check the situation, the General Assembly resolution 1995 (xix) provides that the Trade and Development Board "shall keep under review and take the appropriate action within its competence for the implementation of the recommendations, declarations, resolutions and other decisions of the conference…" Soon after the Board started functioning, a controversy arose between the developed and the developing countries about the scope of implementation of Final Act of the first UNCTAD in pursuance of this provision. The developing countries argued that the passing of the recommendations contained in the Final Act *ipso facto* signified the acceptance of corresponding commitment by countries to implement them, particularly where the recommendations had been unanimously adopted.

Mr. Vice-Chancellor, there was however, this handicap for them that very few provisions of the Final Act had been adopted without dissent; and only two of 15 general principles were adopted without dissent; and only two of 13 special principles were adopted unanimously. Of the 57 substantive recommendations, 29 were adopted unanimously and the rest were passed after voting had been taken. Further, some of the recommendations contained qualifying expressions such as 'to the extent possible', which detracted considerably from the commitment to act. The developed countries, accordingly, questioned the binding nature of the recommendations contained in the Final Act. To them, the provisions of the Final Act, unlike multilateral contractual instruments, created only moral or political obligations, as opposed to legal obligations. What an irony!

Vice-Chancellor, Sir, the pitiful situation of African State was well captured in an assessment by Gustavo Magarinos that:

> If we look upon UNCTAD as an instrument to solve the problems faced by the poor nations to obtain greater benefits from international trade and promote their economic development, it has undoubtedly been a great failure. Its three conferences have produced very few significant solutions; in particular, the last meeting held this year at Santiago clearly proved that the distance between the conceptual approaches of the industrialised countries and the underdeveloped ones concerning world problems is as large as the so-called development gap.

This is a pitiful situation. The agricultural policy of the WTO is just a platform where the rich and developed countries are using to further colonise African trade. The mode of reaching decision at the WTO otherwise called "consensus", too is indirectly an imposition of ideas of developed nations over the developing ones. In a nutshell, the World Trade Organisation is today one of the most secretive international bodies on earth, established to feed the greed of the rich in the name of trade liberation' (Tonny, 2009 and Olokooba, 2009, p.200).

Vice-Chancellor, Sir, even though many countries have gotten their independence before the formation of the WTO, many of them lack the capacity to produce enough for their local consumption talk less of exportation. Many African societies were predominantly full of small scale and subsistence farmers. What they produce was just for their immediate family and in some instances for the survival of the extended family. Despite this, they are still exploited by the West through various international organisations that must do the biding of the West - IMF, UNO, UCTAD and WTO are part of such paraphernalia of modern-day colonisation of African trade, law and economy.

Equality Framed in Unequal Skeletons: Further Peep into the Activities of UNCTAD, WTO, NEPAD and AfCFTA

In December 1964, the General Assembly of the United Nations established the United Nations Conferences on Trade and Development (UNCTAD) as an organ of the General Assembly for the consideration of the Trade and Development problems of the less developed Countries (**Olatoke**, 1998, p.60). The birth of the United Nations Conference on Trade and Development could be attributed largely to the feelings of frustration which the developing countries had experienced with GATT as a forum for the solution of their basic problems (**Olatoke**, 1998, p.60).

The permanent organ of the Conference, the Trade and Development Board, consists of 55 members elected by the Conference from among its members. The principal functions of the Conference are to promote international trade, with a view to accelerating economic development between developed and developing countries, and to formulate principles and policies on international trade and related problem of economic development (**Olatoke,** 1998, p.60). Specifically, the Conference was to improve access to primary commodities in the developing countries. Unfortunately; Mr. Vice-Chancellor, the basic result on our research on UNCTAD reflected that positive results have not been achieved in these efforts. According to the Secretary of the Conference, the fundamental explanation for this lack of

success is due to prevailing circumstances. Though intellectual advances have been achieved in understanding the problems, but they have never been followed by the recognition of the need for action. When circumstances were favourable a few years ago, no significant trade measures were taken to transfer resources to the developing countries. Thus, despite the formation as well as membership of UNCTAD, Africa has not fared better in the global trade politics.

The World Trade Organisation (WTO)

The importance of the World Trade Organisation in trade affairs cannot be overemphasised. It is beyond doubt that the WTO matters a lot as far as trade is concerned, as it is the primary instrument of neo-liberal globalisation to further economic globalisation in international trade. It seeks to achieve the liberalisation of trade through a range of actions chief of which was the removal of trade barriers and the provision of rules to bind all participants in trade (**Olatoke,** 2016, p.220).

The foundation of the World Trade Organisation can be traced back to the General Agreement on Tariffs and Trade (GATT). This Agreement provided for the rules that governed global trading from 1947 to 1994. GATT was intended to be a provisional trading arrangement, a stop gap pending the coming into existence of the International Trade Organisation (ITO) as the main international trade institution and a specialised agency of the United Nations (**Olatoke,** 2016, p.220).

Vice-Chancellor, Sir, the major reason for the formation of the WTO was for a global effort to actualise the UN's effort in a bid to roll back hindrance to free commerce through the painstaking intervention of the GATT through UNCTAD (Emeka, 2009, p.224). However, in some quarters, it is now believed that the WTO's emphasis has slipped from concentrating on these public interest goals to an organisation formed to exploit the less developed countries' economy (Whip Africa). In a nutshell, WTO is now primarily an organisation for liberalising trade and help trade flow as freely as possible at the detriment of some member nations especially the African

countries (David, 1997, p.75). Other writers from East Africa and Asian countries were also of the same opinion. To them, the WTO's public interest and objectives remain out of reach of the Less Developed Nations (See for instance Read and Kevin 2009; Wolfe 2003).

WTO Agricultural Programme

Agriculture is one of the newest policies in the WTO agreement. The talk which started in 2000 is also part of the Doha agenda. The WTO Agriculture agreement was negotiated in the 1985-94 Uruguay Round and is a significant first step towards fairer competition and a less distorted sector. WTO member governments agreed to improve market access and reduce trade-distorting subsidies in agriculture.

The Agreement on agriculture establishes several generally applicable rules regarding trade related agricultural measures, primarily in the areas of market access, domestic support and export competition. These rules relate to country specific commitments to improve market access and reduce trade-distorting subsidies which are contained in the individual country schedules of the WTO members and constitute an integral part of the GATT.

The Agreement established a committee on Agriculture. The committee oversees the implementation of the Agreement on Agriculture and affords Members the opportunity of consulting on any matter relating to the implementation of commitments, including rule-based commitments. For this purpose, the committee usually meets four times per year. Special meetings can convene if necessary (**Olatoke**, Adimula, Akintoye and Ballah, 2012, p.28).

The major target of this policy is to search for and secure the guarantee for open market and competitive grounds for agricultural produce of members. Amongst the underlining reason for this policy is also the issue of concessions and increase international support in the form of subsidies. In other words, this policy is to provide for commitments by member

states around market access and export competition which should have less home government influence.

Though with some positive effect i.e., market expansion, and higher subsidy for African produce, our research on WTO Agricultural Policy found more negative effects compared to positive effects (**Olatoke**, Adimula, Akintoye and Ballah, 2012). Flooding of African market with varieties of foreign agricultural products as well as food without any restriction can render the developing nations' farmers unproductive and economically unviable. Furthermore, the policy may kill the developing economy of African states (**Olatoke**, Adimula, Akintoye and Ballah, 2012, p.30).

WTO policy on agriculture is not beneficial to African agricultural and economic programme in the sense that if African market is open to global export competition, there is likelihood that it is the economic powerful nations that will be deciding the prices of African agricultural products; and may even subject them to frequent reductions in the international market. As it is now, the whole import/export relationship between African and its trading partners is one of unequal exchange (Rodney, 2005, p.27).

African countries are still less developed industrially, scientifically, and thus our agricultural programme is still developing; whereas it is the other way round for the developed countries (**Olatoke**, 2012, p.28).

The Interconnection between Trade Law and Human Rights

The Universal Declaration of Human Rights (UDHR) contains a list of human rights inherent in all human beings regardless of race, sex, nationalities, ethnicity, language, religion or other status (**Olatoke** & Okwudili, 2015, p.413). The largest concentration of rights in the UDHR can be categorised as civil rights which are rights related to one's physical integrity and protection under the law, as well as economic, cultural, and social rights.

Unfortunately, many criticisms have been advanced against trade law practices as being very insensitive to human

rights especially as it relates to observance of its principles in its operations and activities. This is not unconnected with the fact that these institutions are not *ipso facto* human rights organisations. However, it seems settled that all state and non state actors are obligated to adhere to internationally recognised human rights.

Taking the WTO for instance, the question is, does the WTO violate human rights? According to Pogge (2005, p.718), human rights violations involve both the non-fulfilment of a human right and a certain causal responsibility of human agents for its non-fulfilment. Thus, a simple analysis of the criticisms of the WTO with regards to its non-compliance with the Universal Declaration of Human Rights would cut across two segments, to wit: Non-fulfilment and Actual Violation.

Vice-Chancellor, Sir, our research on WTO stand on Human Rights shows that without any shred of controversy the WTO indeed is not at home when it comes to adherence to the Universal Declaration of Human Rights and other human rights instruments (**Olatoke** & Okwudili, 2015, p.415).

Internal Tax Regime of WTO

Internal Tax Regime of the WTO is also an issue beclouded with controversy. The underpinning reason for the programme is more detrimental to the African states than it benefits them. According to (**Olatoke** *et al*, 2018, p.19), Article iii, paragraph 1, of the WTO article on the Internal Tax Regime is a general provision that forbids member states from using internal tax measures for the protection of domestic production. In fact, the second paragraph in the article gives the restriction in more precise language. This in fact is inconsistent with tax principle because the role of taxation economically, socially, and politically in the developmental effort of any nation cannot be underestimated. Unfortunately, the actual position of the internal regimes of the WTO is a clog to economic progress of African states as well as a detrimental paraphernalia to African relevance in the international economic policy making (**Olatoke** *et al*., 2018, p.19).

The devastating effect of this is that, African countries' trade policy is disappearing into oblivion, local economic politics are already dead and invariably, what is happening now is a complete destruction of local control of African trade and economy by the Africans themselves which simply and literarily translate to the fact that, in the global trade policy making, the status of African membership of the World Trade Organisation remains irrelevant (**Olatoke** *et al.*, 2018, p.19).

New Partnership for African Development (NEPAD)

The New Partnership for African Development (NEPAD) was formed for specific purposes and intents especially to provide peer review mechanism within the continent as well as exchange notes on the issues of development. In this wise, the case of New Partnership for African Development (NEPAD) is no different as it was formed for the purpose of ensuring the development of Africa. Thus, I argue that the coming into existence of NEPAD is a watershed in the annals of African development as it becomes a major catalyst toward African development and sustainability (**Olatoke**, 2016, p.158).

It must be noted that NEPAD is basically a long-term integrated and comprehensive programme with sole aim of improving the political, economic, and social conditions of people in the African continent. NEPAD is a comprehensive and integrated sustainable development initiative for the revival of Africa through a constructive partnership between African themselves and between Africa and developed world. It can be regarded as a philosophy of development which appears to have a lot in common with the neo-liberal approach to development (Shimelia, 2004, p.94).

NEPAD is an African plan, designed and envisaged to address the key social, economic, and political priorities of the African continent. The prevalent phenomenon which NEPAD seemingly sought to combat was one of utter underdevelopment enmeshed in poverty that had bedeviled the African continent as an aftermath of colonialism. Most African countries are mired in

crises of one form or another with inadequate access to resources, malnutrition, diseases, and low intensity violence being the prevailing norms.

NEPAD is a pledge by African leaders, derived from a common vision for Africa, and a firm and shared conviction that they have an urgent duty to alleviate the incidence of poverty and place their countries, individually and collectively, on a path of sustainable growth and development, while at the same time participating actively in the global economy and the body po1ity (Agbu, 2005). It must be conceded; however, that degrading poverty, diminishing natural resources, and increasing joblessness all feed ethnic and social tensions which no doubt fuel crises. Thus, in a bid to solve this problem, NEPAD was created.

Mr. Vice-Chancellor, Sir, the origin of NEPAD could be traced to the concept of "African Renaissance" which later became the burning issue at the Extra Ordinary session of the Organisation of African Unity held in Sirte, Libya in September 1999. However, our research on NEPAD found that *ex facie*, the long- and short-term objectives of the organisation have not been achieved due to political instability, military coups, tyranny, cold war politics on African affairs, huge foreign debts, declines in social development, and failure of international market institutions (**Olatoke**, 2016). One could be quick to argue that NEPAD like its predecessors has been more of a talking shop and not working one. In most cases even where it is needed for the voice of the organisation to be heard, NEPAD has been way too mute. This has necessitated a re-think and an efficient initiative to wit a call for a new international economic order through which self-reliant and culturally relevant strategies could be drafted.

The African Continent Free Trade Area (AfCFTA)

The African Continent Free Trade Area (AfCFTA)which was established on 21st May, 2018 in Kigali, Rwanda, has three (3) frameworks which are an overarching establishment of the African Continental Free Trade Area; a protocol on Trade in

Goods, comprising a framework of general obligation and nine Annexes, as well as provision for national schedules of tariff concessions yet to be negotiated; and a Protocol on Trade in Services, also comprising a framework of general obligations, with provision for Annexes (sectoral and cross-cutting) and national schedules of specific commitments, also yet to be negotiated. AfCFTA, thus, serves a means of achieving the vision of an African Economic Community (AEC), set out in Article 3 of the Abuja Treaty.

The coming into being of the AfCFTA in Africa has proven to be a watershed as far as African trade is concerned. This is not unconnected with the fact that it proves to be the continent's most fundamental efforts at achieving regional integration and economic stability (**Olatoke**, 2020, p.109). The Agreement has the main aim of promoting industrialisation, economic growth, and development in Africa. Overall, the AfCFTA is to make Africa very attractive for investment, expand trade, provide better jobs, reduce poverty and increase shared prosperity for all citizens (https://www.google.com/search?q=Aims+and+objectives+of+The+African+Continent+Free+Trade+Area+(AfCFTA)&oq=Aims+and+objectives+of+The+African+Continent+Free+Trade+Area+(AfCFTA)&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCjE2MzEzajBqMTWoAgCwAgA&sourceid=chrome&ie=UTF-8, accessed on 7th September, 2023).

The AfCFTA amongst other things has the aim of ensuring the promotion of industrialisation, economic growth, and development in Africa, boost intra-African trade, stimulate investment and innovation, foster structural transformation, improve food security, enhance economic growth and diversification of export, and rationalise the overlapping trade regimes for the main regional economic communities. It is also aimed to be a marked integration agreement which presents equal opportunities for an open market to the benefit of all the ratifying countries in the continent, thus removing hindrances to the ease of movement of goods and services within the continent

and consequently establishing a customs union with the free movement of capital and persons.

Unfortunately, Mr. Vice-Chancellor, Sir, our research on the operation of AfCFTA found that despite its noble formative objective, most member states in order to protect their local market are found of jettison the open market policy of the organanisation (**Olatoke**, 2020). A typical example was on 14th October 2019 when the Nigerian government announced a total ban on the importation of goods through its land borders which served as a follow-up to its partial closure of its borders to inhibit the importation of goods. The slapping of a ban on land border in Nigeria could be said to be counter-productive to the Agreement. It is not out of place to submit that the closure of the Nigerian borders was against the spirit and tenor of the AfCFTA which by its Agenda 2063 seeks to ensure the creation of a continental market. As laudable as the benefits of trade protection are, and as legitimate as the reasons for border closure in Nigeria are, it is expedient to state at this juncture that this form of trade protection is one which has the tendency of breaching Nigeria's commitment to the AfCFTA. In a nutshell, the border closure by the Nigerian government on the 14th of October 2019 was a complete turn-around by Nigeria from its commitments to the AfCFTA (**Olatoke**, 2020: 105).

From the foregoing, the deductible conclusion is that, despite the formation of NEPAD, UCTAD, WTO, AfCFTA etcetera, the backwardness of most African countries in the global economic policy making persists. A clear reason why this has not achieved the intended impacts is due to certain factors. To which I turn my attention to one of them- dumping of goods in African states, a Nigerian example through my research (**Olatoke**, 2017).

International Economic Law and Impact of Anti-Dumping and Anti-Subsidy Regime

Nigeria ratified the General Agreement on Trade and Tariffs (GATT) in 1960 shortly after independence and was a founding member of the World Trade Organisation (WTO) in

January 1995. The instrument of acceptance of the Uruguay Round Agreement and the Marrakesh Agreements establishing the WTO was signed by the then Head of State, General Sani Abacha, on 2nd December, 1994.

Nigeria for the first time signed the WTO Agreement and/or treaty in 1995 and same remained binding till today having being part of our law. This can be found in (Section 12 of the Constitution of Federal Republic of Nigeria, 1999 (as amended) and Section 3 of Customs and Excise Duties (Dumped and Subsidised Goods) Act Cap 87 Laws of Federation of Nigeria 2010). Nigerian law in Section 3 of Customs and Excise Duties (Dumped and Subsidised Goods) Act Cap 87 Laws of Federation of Nigeria 2010) recognise that a good is dumped on its territory when it provides as follows that; "For the purpose of this Act, imported goods shall be regarded as having been dumped":

a. if the export price from the country in which the goods originated is less than the fair market price of the goods in that country;
b. in a case where the country from which the goods were exported to Nigeria is different from the country in which they originated;
c. if the export price from the country on which the goods originated is less than the fair market price of those goods in that country;
d. if the export price from the country from which the goods were so exported is less than the fair market price of those goods in that country;

Goods shall be regarded as having originated in a country:

a. if those goods were wholly produced in that country; or
b. if some stage in the production of goods was carried out in that country and the cost of carrying out such stage, if any, in the production of the goods as was carried out after those goods last left that country (but before the import of the goods into Nigeria) was less

than 25% of the cost of production of the goods as so imported; or

c. if some stage on the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such stage in production as was carried out after those components or materials last left into the goods as imported into Nigeria was less than 25% of the cost of production of the goods so imported.

To exhibit the commitment of the Nigerian Government to the enforcement of WTO anti-dumping laws, it enacted Customs Duties (Dumped and subsidised Goods) Act (Cap C48 LFN 2010) to authorise the imposition of duties of customs where goods have been dumped or subsidised to discourage dumping where it appears to the President:

(a) That goods of any description are being or have been imported into Nigeria in circumstances in which they are under the provision of the Act to be regarded as having been dumped; or

(b) that a government or other authority outside Nigeria has been giving a subsidy affecting goods of any description which are being or have been imported into Nigeria and

(c) that, having regard to all the circumstances, it would be in the national interest.

The President of Federal Republic of Nigeria may exercise the power conferred on him by the Act to impose and vary duties of customs in such manner as he thinks necessary to meet the dumping or the giving of the subsidy provided that where the President or Head of State is not satisfied that the effect of the dumping or of the giving of the subsidy is such as to cause or threaten material injury to an established industry in Nigeria, or is such as to retard materially the establishment of an industry in Nigeria, he shall not exercise that power if it appears to him that to do so would conflict with the obligations of the

Federal Government under the provisions for the time being in force of the General Agreement on Tariffs and Trade concluded at Geneva in the year 1947.

Vice-Chancellor, Sir, a careful perusal of the above provisions of the Customs Duties (Dumped and Subsidised Goods) Act which vest the administration of World Trade in respect of dumped goods in the President of Federal Republic of Nigeria shows clearly that it is this law that is responsible for non-anti-dumping experience and/or investigations in Nigeria when compared with its other counterparts such as Chile, Argentina, and South Africa.

The volume of work to be attended to by the President of Federal Republic of Nigeria is so enormous that he hardly finds time to discharge his duties under section 3(1) of the Act. This has also been the responsible factor why many people had been clamoring for the withdrawal of membership of Nigeria from the WTO as many other countries have dumped their goods on its territory and there has not been a single anti-dumping investigation and/or action hence the untimely death and/or winding up of its local industries. Fast forward to the present liberalisation of the Forex market and the recent lifting of ban on about 43 items by the government we are faced with a further research interest to investigate the impact of such trade decisions on Nigeria local industries.

Nigeria in the Middle of the Equation: Effects and Opportunities

The entrance of Nigeria into the World Trade Organisation might be responsible for the unrestrained imports at the expense of the local market and domestic production (**Olatoke** & Adeboye, 2016, p.217). The negative trend has led to a weaker naira that we are witnessing today, while local industries barely thrive. As of today the 23rd November, 2023, ₦1,145.00k (black market), ₦804,393.00k (official rate) is equivalent of a $1 dollar (https://investorsking.com/2023/11/23/ black-market-exchange-rate-today-23rd-november-2023/ accessed on the 23rd November, 2023). Nigerian manufacturers

now operate under extreme odds and can hardly expand or create employment. The cumulative result had been a fragile economy which is unproductive and lacks energy to face global market competition.

The genesis of Nigeria's problem in the politics and policies of the WTO was that Nigeria signed the WTO Agreement without negotiating concessions. Thus, any country of the world can easily ferry their good and dump same in Nigeria. On the contrary, countries like India and China joined only after insisting on and securing concessions that two hundred and fourteen (214) and one hundred and thirty (130) items respectively, would not be exported to their countries (**Olatoke**, 2017, p.280)

The Government of Federal Republic of Nigeria further expressed its concern for the problem of dumping when on 23rd December, 1999 it had a parley with the Organised Private Sector (OPS) on some of the effects of dumping activities of the economic growth of the country as well as its damming effects on the private sectors in the country (*Daily Champion* Vol. 13 No. 4 issue of 6th January, 2000, p.9-10). Vice-Chancellor, Sir, at the said, meeting Kola Jamodu who led the OPS narrated the catalogue of woes being faced by many industries in Nigeria as a result of WTO bilateral trade regime which stem from large scale dumping of similar goods manufactured locally into the country and that the more worrisome aspect of this is that the products are of very low quality but kept entering the country. Similarly, Mr. John Odah, the National Secretary, Nigerian Labour Congress in *The Guardian* 27th December, 1993, p.8, called upon the Federal Government to disregard the ideas of World Trade Organisation (WTO) where such ideas conflict with the national interest. He further stressed that a careful observation of the WTO revealed that both the United States of America and the European countries have been observing WTO in breach, adding that if the so-called champions of trade without restriction are the one breaching the same principle they preached, a struggling

country such as Nigeria would be obeying WTO principles at its own peril.

Vice-Chancellor, Sir, other negative effect of dumping is that developed countries dictate the price of Nigeria's manufactured goods. Consequently, the economy is unfittingly run to sustain jobs in those countries from where Nigeria imports, while the economy is plagued by the problems. This might not be unconnected with the fact that from the beginning, during the negotiation that gave birth to WTO, African countries, including Nigeria, were not adequately represented. This necessitates the frequent calls by manufacturers for further negotiations of the WTO treaty, such that the Nigerian economy could be freed from massive dumping of foreign goods.

The only way by which Nigerian Government is presently pursuing dumping is through the ban on importation of selected goods through the Nigerian Customs Service. This method of curtailing dumping will only produce economic loss to the country as the custom duties Nigerian government is supposed to collect from importers will be taken to other countries such as Togo, Benin Republic etc. and this invariably amounts to loss of revenue for this country. Lamenting the ineffectiveness of the WTO's rule on dumping, a chieftain of Nigeria's economic interest groups, Chief Olusegun Oshunkeye, one time president of the Nigerian Employers Consultative Council and Chairman of Nestle Foods PLC in the *The Punch* Wednesday of 4th August, 2004) said Nigeria was not ripe for World Trade Organisation membership.

Vice-Chancellor, Sir, the Federal Government's failure to correctly identify and design sound policies to achieve economic breakthrough in the interest of the nation constitutes a major factor in the rising import profile and weak local production. Even when policy pronouncements suggest a clear understanding of the issues, the Federal Government's policies are arbitrary, incoherent, and inconsistent. A good example has been the government's plan to boost rice, cassava, textile, and poultry production. But after announcing the policy, the

government's most tangible achievement in this direction has been the setting up of committees or foreign travels by officials to study what obtains in other lands. The recent summersault in policy by the government which could be unconnected with demands from WTO and possible IMF are interesting pointers of research that will occupy my interest going forward.

Other Professional and Administrative Contributions

Mr. Vice-Chancellor, Sir, in addition to my contributions in the area of research, I have also carried out many administrative responsibilities and community services in the University of Ilorin and beyond. I have successfully supervised several LL.M dissertations, Ph.D. theses and numerous undergraduate final year projects.

Currently, I am a member of the Faculty of Law Accreditation Monitoring Committee as well as member, Budget Committee of the Senate, University of Ilorin. In the past, I have also had the privilege to serve as the Head of Department, the Department of Jurisprudence and International Law; member, University of Ilorin Industrial Harmony Committee; member, Continue Legal Education Committee; member, Committee on Review of Legal Practitioners Act; Level Adviser; member Faculty of Law Committee on Diploma and M.Phil Programme, Postgraduate Coordinator of the Department of Jurisprudence and International Law; Chairman, Departmental Website Ring Committee in the Department of Jurisprudence and International Law; Chairman, Departmental Seminar Committee, Department of Jurisprudence and International Law. I was also a Special Assistant to two Attorney Generals of the Federation and Minister of Justice of the Federal Republic of Nigeria; Mr. Adetokunbo Kayode (SAN) and Muhammed Bello Adoke (SAN).

Conclusion

Vice-Chancellor, Sir, from my research works, it is clear that in the global economic politics and policies Africa is a whipping child and was nurtured to be whipped in the global

economic trade law conundrum. She has been whipped all round, whipped from all directions. Africa till the ground, plant crop, harvests the crop but not allowed to determine the price for the crop. Africa's labour and labourers are still at the mercy of the former colonial masters. The agony and gory state of African economy, politics and policies are today crying for protectors and pleading for saviours.

My research works have found that law and diplomacy must be embraced as it portends hope for changing the narrative. As regards the growth and development of any society, the machinery of the law cannot be dispensed with. Where the will of the leaders are weak, the sanctions that come with the law is enough motivation to steer them to do the right thing (**Olatoke**, 2017, p.196).

Vice-Chancellor, Sir, according to Egbewole (2013), judex is the hope for the hopeful and the hopeless. This is because law has always been the protector of the weak but now even the strong. It is through the law that the oppressed can escape the torment of the oppressor. Law is the only established socio-engineering paraphernalia of the well-being of any given society. However, in most of our findings in our research works in the field of International Economic Law, it is the combination of law and effective use of diplomacy that can save African states from being the whipping child of the West. The Judiciary must, therefore, be strategically repositioned to play its roles.

Recommendations

It is incumbent on my part to make the following recommendations:

1. **Exercise of Attorney General of the Federation (AGF)'s Power in Every Situation Without Fear of Favour**. Since the Attorney General of the Federation (AGF) is the Chief Law Officer of the Country, it is pertinent for the AGF to be up and doing and must be ready to prosecute any breach of International Economic Law to a logical conclusion. A situation where the AGF will refuse to prosecute any suspect found to have

committed offence against the State as it happened in the instances of Willbros Halliburton and Siemens corrupts scandals should be discouraged.

2. **International Law and Diplomacy to Protect the Developing Member States against Commercial Degradation**. The theoretical exposition of the rationale for anti-dumping laws reveals that, the developing countries are the endangered species in their relationship with the developed countries. Accordingly, they need to be protected by law and legal institutions with the view of redressing the imbalance in the trade relationship where the developing countries are consigned to the trade or commercial degradation.

3. **Unified Monetary System among Developing Countries**. It will be of great importance for the African continent to look within and have its own unified monetary system which would reduce its undue dependence on the economy of European world.

4. **Amendment of Article III Paragraph 1 Protocol and the General Agreement on Tariffs and Trade (GATT)**. Almost all the World Trade Organisation's programmes when reviewed are having one negative effect or another on the economic strive of African Nations. There are more biased politics in the policies of the World Trade Organisation against African States and the level of African development in this century is yet to catch up with the West. The effort to also move domestic tax regime to turn things around seems not to be functional either. To check and improve this situation, this study recommends for the unification of African member states to check and lobby against the introduction of any new issues that will be detrimental to African trade and development. Similarly, the amendment of Article III paragraph 1 I Protocol, and the General Agreement on Tariffs and Trade (GATT) is also necessary to give effect to the functionality of the

internally controlled tax regime of goods, trades and services imported into the developing countries. Doing this will afford the developing member nations of the WTO to have greater avenue for revenue generation to facilitate and actualise their developmental plans.

5. **There is a Need for African Leaders and Nigerian Government to show more Commitment to the AfCFTA**. Trade conflicts and trade problems should be resolved through the medium of dialogues but not through the imposition of trade restrictions or border closures. We are advocating for this because our research found that while states are pursuing a policy of strengthening and expanding preferential trade relations worldwide through the well-functioning multilateral trade system under the auspices of the WTO, Africans on the other hand are busy slapping trade ban on each other. When Nigeria closed her Idi-Iroko Border, Ghana raised her Border charges against Nigerians buying goods across border. Change of attitude is highly necessary to achieve free flow of trade among members' states.

6. **There must be a Nexus between Addressing Local Trade Problems by Countries with International Obligations**. Countries in trying to solve their trade related and economic problems should not do so in flagrant disregard of their international obligations as Nigeria's unilateral border closure has shown. Trade problems should be solved in line with the AfCFTA agreement especially in relation to its trade-enabling provisions. Thus, Nigeria could embody the Agreement in their industrialisation plans to ensure that same is done in line with the Agreement. Other forms of agreement including the ECOWAS Protocol and the General Agreement on Tariffs and Trade (GATT) ought to be respected by the Nigerian government.

7. **The Need for Sovereignty in Form and Character for African Countries**. Nigeria and indeed Africa needs to be sovereign in form and character because it is through practical sovereignty that the ceremonial independency of most African States can be meaningful. Practical sovereignty connotes freedom from within internal and external influence. Unfortunately, due to neo-colonial garb which Nigerian nay African nations are shrouded in, sovereignty in the real sense is not exhibited in most of the international economic relationship of African States.

8. **Aggressive Action Need from African Countries while Putting Forward their Position at the International Economic Policy Making**. Though NAFTA is reputed to have created the world's largest free trade area in Europe, however, just because the agreement did not put United States of America (USA) above other country member states, Donald Trump in June 2015 threatened to build a wall between America and Mexico. This singular act attracted some trade concession for the USA. Looking at this positive effect of the threat on US economy, it is our submission that African states should also be a bit aggressive while putting forward their position at various fora of international economic policy making.

   It is, therefore, imperative that for the narrative to change law and policy must be reappraised. Proper implementation must be pursued as this will change the present nurtured states of Africa to be whipped and as a whipping child in the international trade law matrix.

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