

STATE SOVEREIGNTY AND TRADE LIBERALIZATION: WHITHER THE WORLD TRADE ORGANIZATION AND THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT OPTIONS

By

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Abstract:

Sovereignty as a continuing ineluctable attribute of a state has come under critical reappraisal under contemporary International Law. This is more so given the proliferation of international organisations whose existential raison d'être straddle into areas that were once the traditional and exclusive preserve of states. This work will be limited to the exercise by a sovereign state of its powers within and external to its territory vis-à-vis the influence of international organizations such as the World Trade Organization and the impact the exponential spread of transnational commerce have brought to bear in the creeping re-definition of the pristine meaning of state sovereignty. Such developments have modified the authority of nation states to the extent that it is no longer plausible in contemporary times with the attendant wave of globalization (if it ever was) to suggest that states are sovereign in the sense of being free from external control. With the establishment of the General Agreement on Tariffs and Trade (GATT) and subsequently the World Trade Organization (WTO), trade liberalization amongst nation-states witnessed significant growth. The goal of trade liberation requires member states to maintain national measures and policies consistent with the fundamental principles of the WTO and other treaty based trading institutions. This work analyzes how the WTO multilateral trading system affects state sovereignty. These issues are considered in light of the options that are available to African countries within the African Continental Free Trade Agreement, which is currently undergoing ratification when juxtapositioned with the sovereignty of African States. It also shows the challenges of the WTO and its impact on state sovereignty as well as the implementation challenges of the AfCFTA and its implications for African nations' sovereignty.

keywords: State, Sovereignty, International Organization, WTO, AfCFTA

Introduction

The meaning of the concept, State Sovereignty is largely dependent upon the context in which it figures¹. Over time, much of the literature on the subject have been devoted to discussing the concept of Sovereignty in relation to the exercise by a sovereign state of its powers within and external to its territory. While traditional International Law was concerned

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¹ D. Sarooshi, "Sovereignty, Economic Autonomy, the United States, and the International Trading System: Representations of a Relationship" available at [Sovereignty, Economic Autonomy, the United States, and the International Trading System: Representations of a Relationship | European Journal of International Law | Oxford Academic \(oup.com\)](#) accessed on 15th April 2024. See also HC Alisigwe, "The International Court of Justice In A Changing World: The Concept of Sovereignty In Perspective" (2013) JPL Vol.1No.1.301 et.seq; CC Wigwe, "The Impact of ECOWAS Single Monetary Policy on The Sovereignty of Member States" in OVC Okene et al (Eds.) *Credible Governance: Legal Essays* (Zubic Infinity Concept, 2020).458,483-489

primarily with the Westphalian understanding of sovereignty, involving the exercise by a sovereign state of its powers within and external to its territory, modern International Law has tilted more toward the different approaches of arriving at the concept. The concept of Sovereignty has arguably been broadened to include other actors and also to contain values such as legitimacy, autonomy, freedom, accountability, security, and equality². The elements of Sovereignty have always been contested, and the outcome of these contests at a particular time has established where Sovereignty can be said to rest at a particular time³. However, for the purpose of this work, the meaning of State Sovereignty will be limited to the power of a state to exercise its powers within and outside its territory.

The legal order upon which the concept revolves evolved dramatically over time. The 19th century saw the introduction of new actors in the International Law scene. With the establishment of the League of Nations and, subsequently, the United Nations and the recent wave of globalization since the turn of the twenty-first century, traditional international law evolved into a contemporary and universal law open to new players, ultimately bringing the continued applicability of the concept in its pristine form into question. The influence of international trade institutions, such as the World Trade Organization and exponential trade and commerce amongst states have modified and limited the authority of nation-states. It can now be arguably said that states have transferred some of their sovereign rights and powers to international institutions in an attempt to deal with co-ordination problems and regulate global commercial dealings. Today, it is no longer plausible to suggest that states are sovereign in the sense of being totally free from external control.

Nation-states have over time entered into bilateral and multilateral agreements to aid trade liberalization. Among these agreements are the General Agreement on Tariffs and Trade (GATT) and the Agreement creating the World Trade Organization. The primary aim of these agreements is to liberalize trade among states around the world. It is no doubt that they have greatly contributed to the expansion of world trade, raised living standards, created jobs, and improved people's lives.

More recently, African countries, under the auspices of the African Union, ratified the African Continental Free Trade Agreement. The ratification of this agreement was a landmark event in Africa's quest to achieve intra-African trade. The agreement is designed to facilitate a single continental trade regulation and integration framework for trade discipline and is intended to boost African trade.

It has often been argued that the introduction of trade liberalization has eroded the core attribute of statehood to wit: sovereignty. Critics of trade liberalization opine that it has led to states surrendering their sovereignty to an international or regional agreement, thus deviating from the core attributes of statehood. This raises the question: *what is the effect of trade liberalization on state sovereignty, considering the World Trade Organization and the African Continental Free Trade Agreement?*

Thus, this article will discuss the evolution of sovereignty, the rise of international organizations, the emergence of trade liberalization, the WTO and AfCFTA, their challenges, and finally, the impact of trade liberalization on nation-state sovereignty.

² *Ibid.*

³ *Ibid.*

State Sovereignty

Sovereignty has been contested ever since its inception and has been described as a concept that implies a supreme omnipotent power located in a single source and unrestrained by law⁴. The first modern thinkers to organize the theory of the state systematically around the concept of sovereignty were Jean Bodin and Thomas Hobbes, who established the parameters of the dominant conception of sovereignty for centuries to come. Hobbes defined sovereignty as a supreme authority instituted by individuals through the social contract and embodied in a singular person who makes law at his command⁵. According to Hobbes, sovereignty is seen as the unity, indivisibility, unconditionality, and unlimitedness of an absolute power unbound by the covenant that institutes it⁶. This helps to highlight the novel concept of supreme political authority and its unity with the enactment and enforcement of laws. Hobbes' theory gave rise to the interpretation of sovereignty as an absolutist exercise of power by someone who himself is not subject to the law⁷. According to Morgenthau, the principle of sovereignty, since its inception in the sixteenth century, has always accepted the principle of supreme power over a certain political territory with the appearance of a centralized power that exercises its law-making and law-enforcing authority within the territory⁸.

In understanding the principle of state sovereignty, the starting point is to review the traditional definition as well as the contemporary understanding of the concept. The traditional meaning of sovereignty connotes legitimacy, territorial integrity, and equality amongst individual sovereign states⁹. Also referred to as Westphalian Sovereignty, it calls for non-intervention in the affairs of a sovereign state.

Here, the Sovereign has absolute power over a particular territory and can exercise those powers to the exclusion of anyone from the external world and any limitation on the State's sovereignty can only arise with the consent of the sovereign. However, present-day International law has shown that a state is not an island and cannot survive alone. In other words, it has to interact with other sovereign states at the international level. Therefore, the continued application of the traditional meaning of sovereignty has been brought into question.

According to Morgenthau, although the doctrine of sovereignty has retained its importance, its meaning has been subject to various revisions, reinterpretations, and attacks, especially in the field of International law and of late, by international economic experts¹⁰. Peter Sutherland agrees that "these components of sovereignty were never absolute, but together

⁴ P. Gumplová, "On Sovereignty and Post-sovereignty" available at https://www.researchgate.net/publication/340053401_On_Sovereignty_and_Post-sovereignty accessed on 14th January, 2024. HC Alisigwe, *supra*, (fn.1).301; CC Wigwe *supra* (fn.1).483-489

⁵ A. Pongracz', "Cardinal Aspects of Liberalization of International Trade, and its effect on Nation-State Sovereignty" available at https://www.researchgate.net/publication/332230025_Cardinal_Aspects_of_Liberalization_of_International_Trade_and_its_Effect_on_Nation-state_Sovereignty accessed on 14th January, 2024

⁶ *Ibid.*

⁷ *Supra* (fn. 4)

⁸ I. Chihuri, "A Critical Analysis of How the WTO is Affecting the Principle of Sovereignty" available at https://www.academia.edu/16392987/A_CRITICAL_ANALYSIS_OF_HOW_THE_WORLD_TRADE_ORGANISATION_WTO_IS_AFFECTING_THE_PRINCIPLE_OF_SOVEREIGNTY accessed on 18th January 2024

⁹ *Ibid.*

¹⁰ *Ibid.*

they offered a predictable foundation for a World Order” in the Westphalia setting¹¹. It is therefore submitted that in understanding the true meaning of sovereignty, one should consider the traditional meaning of sovereignty in light of the new meaning acquired through its evolution and transformation. Understanding the true meaning of sovereignty today is paramount in analyzing the effect of trade liberalisation on nation-state sovereignty.

The benefits of international intercourse are so enormous that no state can afford to exist in isolation. Thus, states that previously held the policy of isolationism have rescinded it in the 21st century¹². The rise of international organisations has seen states inadvertently limit their sovereignty by acquiescing to the conditions for membership in these organisations because of the benefits of membership in these organisations. These interactions lead to states signing and accepting the conditions attached to treaties and various protocols, which further limit their sovereignty. The new forms of multilateral and bilateral co-operations challenge the powers vested in the various organs existing in these sovereign states. The traditional meaning has thus been modified and should be read and understood in the proper context that promotes the development, interactions, and integration of world trade. Thus, it should be accommodative of other principles, bearing in mind that the institution of sovereignty is the basis of the contemporary international system. This goes on to show that the principle of sovereignty is no longer focused on the absolute powers of a state rather, it has evolved and now considers issues on how a sovereign state can cope with other states either bilaterally or multilaterally.

International Organisations

International organisations generally refer to international governmental organisations or organisations with universal membership of sovereign states¹³. The most prominent is the United Nations, with 191 members. It can be said to be an institution drawing membership from at least three states, having activities in several states, and whose members are held together by a formal agreement¹⁴. They are formed for various purposes, including the maintenance of peace and security as well as achieving international co-operation in various fields, including economic, social, cultural, educational, human rights, etcetera¹⁵.

Modern International Law has seen the rise of various International institutions, including the United Nations, the World Trade Organisation, and the African Union, etcetera. The obligations of states under these international organizations are usually contained in their constitutive documents. The essence of the role of international organisations in the world order centers around the possession of international legal personality, and once this is established, they become subjects of international law and thus capable of enforcing rights and duties upon the international plane as distinct from operating merely within the confines of separate municipal jurisdictions¹⁶.

¹¹ *Ibid.*

¹² E. U. Ukoyo, “Globalization and Sovereignty” available at https://www.academia.edu/31811052/GLOBALIZATION_AND_STATE_SOVEREIGNTY accessed on 18th January 2024

¹³ International Organizations (United States Institute for Peace) available at <https://www.usip.org/international-organizations-0> accessed on 18th January 2024

¹⁴ K. Mingst (Britannica); International Organization available at <https://www.britannica.com/topic/international-organization> accessed on 18th January 2024

¹⁵ O. Nwebo & M. Nwankwo, “International Organizations in maintaining World Peace and Security” in O. Nwebo(ed) *Contemporary Issues in International Law and Diplomacy* (2020) .536-538

¹⁶ *Ibid.*

The restructuring of the General Agreement on Tariffs and Trade into an international organisation, the World Trade Organization, brought about the institutionalisation of a multilateral trading system. Given that states that are parties to the agreement creating the WTO are bound by the policies of the institution, there is no doubt that these policies have influenced the domestic policies of these countries by setting agendas for the country, controlling the domestic policymakers and reducing the power of protection of interests. The WTO has further increased trade liberalisation in the world, and states that do not obey the regulations and policies of the WTO are liable to sanctions. The benefits of the role of the WTO in liberalizing trade among states cannot be overemphasized. The global system of trade rules operated by the WTO has helped in developing the economies of member states, setting and enforcing rules of international trade, collaborating with international economic institutions, and reducing tariffs and other barriers to trade. Also, while a border dispute between two nations once may have produced a bilateral settlement or armed conflict, today global governance regimes might shift the decision to a body like the International Court of Justice. Similarly, a trade dispute that might once have provoked retaliatory tariffs will now be resolved by the WTO¹⁷.

Recently, various countries have come together to form regional economic communities. African countries are not left out of the trend. African countries under the umbrella of the African Union recently ratified the African Continental Free Trade Agreement. This agreement aspires to liberalise trade among countries in Africa. The agreement is designed to facilitate a single continental trade regulation and integration framework for trade discipline and intended to boost African trade.

Trade Liberalisation

Trade involves the action of buying and selling goods and services¹⁸. Liberalisation, on the other hand, is the removal or reduction of restrictions or barriers to economic activities¹⁹. Therefore, trade liberalisation refers to the removal or reduction of restrictions or barriers to the buying and selling of goods and services. It connotes the removal of restrictions or barriers to the free exchange of goods between nations. Trade barriers refer to government-imposed policies to restrict international trade. Therefore, it includes the removal or reduction of both tariffs (duties and charges) and non-tariff obstacles (licensing rules, quotas, and other requirements)²⁰.

After the experiences of the Second World War, one of the central issues for the new world trade system was the rebuilding effort in Europe. The Atlantic Charter already proposed the

¹⁷ Julian & J. Yoo, "Globalization and Sovereignty" available at <https://www.bing.com/ck/a?!&&p=19cd95031199793bJmltdHM9MTcwNTk2ODAwMCZpZ3VpZD0yY2FkYTBMYS0zNmY5LTZkNjgtMzRiOSliMTBiMzJmOTYzZGYmaW5zaWQ9NTQ1MA&ptn=3&ver=2&hsh=3&fclid=2cada0fa-36f9-6d68-34b9-b10b32f963df&psq=Julian+%26+John+Yoo%3b+Globalization+and+Sovereignty&u=a1aHR0cHM6Ly93d3cucmVzZWZlY2hnYXRILm5ldC9wdWJsaWNhdGlvi8zMjM1MzQ5NDBfR2xvYmFsaXphdGlvl9hb mRfU3RhdGVfU292ZXJlaWdudHk&ntb=1> accessed on 18th January 2024

¹⁸ C. Nordqvist; Market Business News, "What is trade, Definition and meaning" available at <http://marketbusinessnews.com/financial-glossary/trade-definition-meaning /amp/> accessed on 18th January, 2024

¹⁹ Oxford English Dictionary: Liberalization

²⁰ P. Muchiri, "Trade Liberalization" available at https://www.academia.edu/27777744/Trade_Liberalization accessed on 18th January 2024

establishment of a world trading system in 1941; in this, access to national markets was defined as resting on the grounds of equal opportunity and the requirement of openness in all national markets²¹. During the World Trade Conference in New Hampshire, a three-fold international organisation system was created in the interest of a stable international economic order. These include the International Monetary Fund (IMF), the International Rebuilding and Innovation Bank (World Bank), and the International Trade Organisation (ITO). Although the International Trade and Labor conference organized by the United Nations in Havana in 1947 constructed the Havana Charter, which defined the multilateral order of international trade and would have even created the ITO, the organization remained only a skeleton and could not begin its actual operation yet²². While the basic by-laws of the ITO were declared in the Charter signed by 56 nation-states, the USA didn't ratify them rendering the whole thing ineffectual. Richard Senti says that the main reason for this was that "the ITO was too liberal for the protectionists and too protectionist for the liberals, so most representatives rejected the agreement, albeit with diametrically opposed arguments."²³ The General Agreement on Tariffs and Trade (GATT), was created in 1947 with the participation of 23 nations, and thus became the system of agreements between the signatories concerning their policies on foreign trade. The agreement was a provisional agreement that came into force in January 1948 and was to disappear with the treaty creating the International Trade Organization.

However, this treaty never entered into force, and so GATT remained. This agreement did not provide any institutional continuity, thus it did not have members but "contracting parties," a term that highlighted the purely contractual nature of the agreement. Without an international organisation, it had no separate international legal personality and could only operate through its contracting parties and with the support of the Interim Commission for the International Trade Organisation (ICITO), a provisional commission responsible for establishing the International Trade Organization. This agreement greatly contributed to expansion of world trade, and as a true multilateral trade system, it realized a significant reduction in the customs fees on industrial goods, but it was less successful in the fight against other obstacles to commerce, such as quantity limits and subventions. The agreement, however, had the obvious advantage of allowing member states to freely and voluntarily choose for themselves whether they accept a particular contract as binding or not²⁴. Notwithstanding the obvious achievements of GATT, it faced many problems, including; many areas of economic relations that were not included in the agreement, it did not address the international trade of intellectual products, and failed to gain the influence of transnational corporations.

It was not until about 50 years later, as a result of the Uruguay round series of negotiations that the GATT system was restructured. This agreement signed on 15th April, 1994 in Marrakesh (Morocco) marked the completion of the 12-year-long negotiation and gave birth to the World Trade Organization, which officially came into being on 1st January, 1995. This organization brought about the institutionalization of a multilateral trading system. The overall objective of the WTO is to help its members use trade as a means to raise living standards, create jobs, and improve people's lives, as well as set and enforce rules of

²¹ *Supra* (fn. 8)

²² *Supra* (fn 8)

²³ *Supra* (fn 8)

²⁴ *Supra* (fn 8)

International trade, collaborate with international economic institutions and reduce tariffs and other barriers to trade. Simply put, the World Trade Organization aims at liberalizing trade amongst states signatories to the Agreement creating the WTO.

Modern International Law has seen the rise of regional trade agreements whose primary aim is to liberalize trade within a particular region. African countries recently ratified the African Continental Free Trade Agreement (AfCFTA) which aims at creating a single continental trade regulation and integration framework for trade discipline in Africa. The agreement marked a landmark event in the quest to achieve an intra-African economic community as envisaged in the Lagos Plan of Action and Abuja Treaty²⁵.

The interplay between Sovereignty and Global Trade

The rise in global trade has often been criticized for infringing on a state's ability to govern itself. Critics are of the view that it is a state's responsibility to regulate its economy, protect its industries, and enact laws to serve the best interests of its citizens.²⁶ They suggest that international institutions such as the World Trade Organisation create a power dynamic where supranational corporations have more influence than the state itself, therefore, undermining state sovereignty. However, contemporary International Law scholars argue that these agreements instead enhance state sovereignty by providing opportunities for co-operation and mutual benefits²⁷. They suggest that trade among nations can promote economic growth and increase the state's bargaining power in international negotiations. They equally suggest that membership in International organisations such as the World Trade Organisation which promotes global trade can help a state diversify its economy and expand its markets, making it less vulnerable to external economic shocks. It leaves no surprise as to why African countries under the umbrella of the African Union ratified the African Continental Free Trade Agreement. Its major aim is to promote intra-African trade, foster regional value chains that can facilitate integration into the global economy, and energize industrialisation, competitiveness, and innovation²⁸.

The World Trade Organisation, Establishment, Functions, and Principles

After the Second World War, the desire for peace and security drove the creation of a new global economic system. The world witnessed a new economic system characterized primarily by state intervention. This paradigm shift led to the establishment of the International Monetary Fund, the World Bank, and the International Trade Organisation. The International Trade Organisation, however, remained only a skeleton and could not begin its actual operation yet. Various nations therefore came together to sign the General Agreement on Tariffs and Trade (GATT) to regulate international trade. GATT was not an international

²⁵ Both treaties set out the plan to establish an AEC in six stages, with full integration by 2028. See Key Pillars of Regional Integration in Africa (2018, UN Economic Commission for Africa)

²⁶ M.D.M.S.Dasanayaka, "The Impact of International Trade Agreements on State Sovereignty A Case Study of the European Union" available at https://www.researchgate.net/publication/369799395_The_Impact_of_International_Trade_Agreements_on_State_Sovereignty_A_Case_Study_of_the_European_Union accessed on 18th January 2024

²⁷ *Ibid.*

²⁸ C. Nwankwo & C. Ajibo, "Liberalizing Regional Trade Regimes Through AfCFTA: Challenges and Opportunities" available at https://www.academia.edu/89998407/Liberalizing_Regional_Trade_Regimes_Through_AfCFTA_Challenges_and_Opportunities accessed on 18th January, 2024

organisation but a mere international agreement that operated between nations that are signatories to the agreement and operated for about 50 years until the Uruguay Round.

The Uruguay round of the General Agreement on Tariffs and Trade (GATT) gave birth to the World Trade Organisation (WTO). The 12-year-long round ended with the members of GATT signing an agreement establishing a new organisation referred to as the World Trade Organization. The organisation was officially constituted on January 1, 1995, in Marrakesh, and it took the place of GATT, thus leading to the institutionalisation of a multilateral trading system. The negotiations during the Uruguay round introduced a set of agreements including the General Agreement on Tariffs and Trade 1994; the General Agreement on Trade in Services (GATS); the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); the Understanding on Rules and Procedures Governing the Settlement of Disputes, which established rules for resolving conflicts between members²⁹; the Trade Policy Review Mechanism, which documented national trade policies and assessed their conformity with WTO rules³⁰; and four plurilateral agreements, signed by only a subset of the WTO membership, on civil aircraft, government procurement, dairy products, and bovine meat (though the latter two were terminated at the end of 1997 with the creation of related WTO committees)³¹, all of which formed an integral part of the agreement establishing the WTO.

The World Trade Organisation is the only global international organisation dealing with the rules and regulations related to international trade between nations. It can be identified as an international economic institution that mainly concerns itself with the rules of trade between states, exerting its influence through the following activities: establishing, policing, and supervising international trade agreements and mediating emergent conflicts. The WTO can be viewed as a two-faced institution³². Proponents of globalization or “free-global competition” think that the WTO is the “most harmonic mediator” of trade policy debates between nation-states, the “manager” of the liberalisation of international trade built upon the foundation of “solid international legal principles” and operating by a neutral and professional protocol³³. Critics of globalization, however, see the WTO as nothing but an omnipotent organisation “representing the interests of transnational corporations,” which is “a severe danger to citizens and democracy,” putting trade above all values and “treating the whole world as marketable goods,” thus decreasing the maneuverability of state trade policy while increasing the power of transnational players in the economic game³⁴.

The WTO is comprised of 163 members, accounting for over 97% of world trade, and its functions include:

- The implementation of rules for the review of trade policy³⁵
- It serves as a forum for member countries to discuss future strategies³⁶
- Implementing and administering bilateral and multilateral trade agreements³⁷.

²⁹ K. Anderson, Britannica, “World Trade Organization” available at <https://www.britannica.com/topic/World-Trade-Organization/Resolution-of-trade-disputes> accessed on 14th February, 2024. On its Dispute Settlement System, see, “Alisigwe HC & Agama F, An Overview of The World Trade Organisation Dispute Settlement System, *NJLS* Vol..X 2011/2012.21 *et.seq*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Supra* (fn 5)

³³ *Supra* (fn 5)

³⁴ *Supra* (fn 5)

³⁵ Vedantu “WTO- World Trade Organisation” available at <https://www.vedantu.com/commerce/world-trade-organisation> accessed on 14th February, 2024

³⁶ *Ibid.*

³⁷ *Ibid.*

- Trade Dispute Settlement³⁸
- Maximizing global resource utilization³⁹
- Assisting international organizations such as the International Monetary Fund and the International Bank for Restructure and Development in establishing coherence in universal economic policy determination.

Challenges to WTO Authority

According to the World Trade Organization, trade liberalization has witnessed significant growth since its establishment. It has been reported that since its establishment, global income has increased to as much as \$510 billion. The WTO rules, its dispute settlement mechanism, and the work of its secretariat have been credited as being central to the management and smooth functioning of global trade. Despite the WTO's undeniable success, a changing international economic environment creates a series of significant challenges for the organization.

These challenges are outlined below:

- The decline of nation-state sovereignty during the WTO regime
- Failure to accommodate the increasingly broad array of issues that have not been traditionally associated with trade negotiations
- The need for a comprehensive competition law to enhance competition and promote economic efficiency
- The introduction of trade restrictions by WTO members covers a substantial amount of international trade.
- The failure to conclude the Doha Development Round—the current round of multilateral trade negotiations to further liberalize trade and reform the WTO—.
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Impact of the WTO on State Sovereignty

International trade and policy have always been linked with a country's control over its domestic economic environment, and it is not surprising that international institutions are seen as a threat to the national sovereignty of their members⁴⁰. The post-World War II age saw a paradigm shift from the traditional concept of state sovereignty. This paradigm shift received government approval from the global powers and led to the establishment of international institutions such as the International Monetary Fund, the World Bank, and the World Trade Organisation. This further introduced the idea of globalization and called for uniform rules in the international economic space. The new actors completely revamped the old argument about economic relations being built upon trade and monetary relations between sovereign nation-states. This meant that for the first time since the Second World War, global-international organisations have appeared that not only determine general goals for national states but also establish rules and mechanisms of conduct in such vitally important areas as finances and world trade⁴¹.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Kent Albert Jones, "Who's afraid of the WTO?" available at <https://archive.org/details/whosafraidofwto00jone/mode/1up?view=theater> accessed on 14th February, 2024

⁴¹ *Supra* (fn 5)

The emergence of the World Trade Organization saw the institutionalization of an international institution dealing with the rules of trade between nations. The WTO members are obligated, under the ratified WTO agreements, to honor and abide by the rules of the organization. It can be observed that, with globalization and the emergence of the WTO, states have abandoned much of the border sovereignty they possessed before the Second World War. The forces of globalization and interdependence pose increasing challenges to the traditional concept of the sovereignty of nation-states. With the emergence of international organizations like the WTO, there is a growing interdependence in world economic and political relationships, which means that events or circumstances in one part of the world can have remarkably large and often swift effects in distant parts of the world. The problems that arise from international organization for states and state systems are mainly jurisdictional conflict and overlap, including the problem of extraterritoriality and a weakening of national control over economic matters. The question that arises is: Can a strict rule of non-interference in a nation-state's sovereignty work in this interdependent world?⁴² While internal sovereignty is absolute in theory, it is rarely absolute in practice. The 'exclusive right to determine the framework of rules, regulations, and policies within a territory' is compromised every time a state enters into a bilateral treaty or agrees to conform to the rules of an international organization⁴³. While, again in theory, the absence of a central authority makes each state the final arbiter of whether or not it will abide by treaties and remain in an international organization, the interdependent world economy of the last half of the 20th century imposed serious constraints on states' room for maneuver⁴⁴. External sovereignty, on the other hand, is much closer to an absolute construct. In the modern interstate system, economic and political governance are a function of borders and geographic jurisdiction⁴⁵. The defining principles of the system are mutually exclusive territorial sovereignty and mutual recognition by other nations. Compromising external sovereignty compromises the state and the system⁴⁶.

With the emergence of the WTO, the center of gravity in world politics has shifted from the public agencies of the state to private bodies of various kinds, and from states to markets and market operators. This has resulted in the weakening of the authority of the governments of all states and the integration of national economies into a single global economy. Since the WTO is about world trade, it requires international cooperation, which means that all states are bound by some minimum requirements of international law without being entitled to claim that their sovereignty allows them to reject basic international regulations. It is interesting to note that the criteria for membership in the WTO are not limited to a sovereign entity but instead to a state or separate customs territory possessing full autonomy in the conduct of its external commercial relations. Many of the problems under the WTO relate to treaty clauses that penetrate deeply into a nation-state's sovereignty decisions about economic regulation. Thus, any international cooperative mechanism will, of necessity, clash with national sovereignty and with special national interests whose own economic well-being will be affected by international decisions.

⁴² R. Chhetri, "Changing Sovereignty in the Light of WTO" available at <https://www.legalserviceindia.com/article/1403-Changing-Sovereignty-In-The-Light-Of-WTO.html> accessed on 14th February, 2024

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

Some critics of the WTO have equated the expansion of global trading rules with the loss of state sovereignty. These international trade agreements not only confer rights to their signatories regarding the actions of other governments but also impose obligations and thus constrain a country's actions. Countries accept these constraints because international trade agreements provide beneficial bargains that strengthen their interests in world markets. However, the negotiation of trade agreements is an exercise that bespeaks the application of national sovereignty. WTO signatories have delegated specific functions to the WTO and its secretariat involving the administration of the trading system. The organization can rule on the conformity of national practices with the rights and obligations undertaken in the WTO, but member countries are then responsible for ensuring compliance. WTO members have an obligation under international law to comply with the WTO rules, but the WTO itself has no means to force countries to honor those obligations. Trade agreements and membership in the WTO do not involve a significant sacrifice of state sovereignty since such an international institution has no control or enforcement power over national legislatures. Member countries yield some trade policy autonomy by participating in international trade agreements, but there is otherwise no sacrifice of national law-making or enforcement powers. Also, in managing the conflict between national policies and multilateral trade agreements, the most the WTO can do is agree on rules regarding trade policy to judge if member countries' laws and policies are consistent with the rules, and finally to allow compensation or retaliation in case a violation is found in the dispute settlement procedure. Unlike other international bodies, WTO members explicitly did not establish supranational bodies with the power to change laws or extract fines or other penalties from member countries. Nonetheless, concerns about whether the WTO agreement infringes upon state sovereignty still resurface and merit a straightforward response. These concerns are based on two misperceptions: that states will be compelled to change their laws at the behest of WTO decisions, and that majority voting by WTO members will rewrite the trade rules to the disadvantage of major trading powers.

In the current WTO system, state sovereignty enters the debate only insofar as WTO rules affect the scope of trade policy actions taken unilaterally by its members.

The African Continental Free Trade Agreement, Goal and Objectives (AfCFTA)

The agreement creating the African Continental Free Trade Area was brokered by the African Union and signed in Kigali, Rwanda on the 21st of March, 2018 and became operational on 7th July, 2019. It is expected to lead to the creation of a single African market for goods and services, facilitate the free movement of people, mobilize regional investments and see to the creation of a continental customs union. Article 3 of the agreement provides for the general objectives of the AfCFTA and these objectives are stated below;

The general objectives of the AfCFTA are to:

- a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063⁴⁷;
- b) create a liberalised market for goods and services through successive rounds of negotiations⁴⁸;
- c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs⁴⁹;

⁴⁷ Article 39(a), African Continental Free Trade Agreement available at <https://au-afcfta.org/wp-content/uploads/2022/06/AfCFTA-Agreement-Legally-scrubbed-signed-16-May-2018.pdf> accessed on 14th February, 2024

⁴⁸ Article 39(b), African Continental Free Trade Agreement *Ibid*.

- d) lay the foundation for the establishment of a Continental Customs Union at a later stage⁵⁰;
- e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties⁵¹;
- f) enhance the competitiveness of the economies of State Parties within the continent and the global market⁵²;
- g) promote industrial development through diversification and regional value chain development, agricultural development and food security⁵³; and
- h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes⁵⁴.

The agreement also mandates state parties to the agreement to;

- a) progressively eliminate tariffs and non-tariff barriers to trade in goods⁵⁵;
- b) progressively liberalize trade in services⁵⁶;
- c) cooperate on investment, intellectual property rights and competition policy⁵⁷;
- d) cooperate on all trade-related areas⁵⁸;
- e) cooperate on customs matters and the implementation of trade facilitation measures⁵⁹;
- f) establish a mechanism for the settlement of disputes concerning their rights and obligations; and establish and maintain an institutional framework for the implementation and administration of the AfCFTA to fulfill and realize the objectives set out in Article 3.

Implementation challenges of the AfCFTA

Just like other developmental policies, the AfCFTA has faced economic, social and political challenges that have proven to be a cog in the wheel and stalled the full implementation of the agreement. The majority of the challenges involve a clash between the goals of the AfCFTA and states trying to promote their national interests. These challenges are discussed below:

- National Legal Framework: the legal framework of various states provides for the system of implementation of treaties. While a mere ratification of the AfCFTA makes it operational in monist states, the laws in dualist states will provide for further steps for the implementation of the agreement⁶⁰.
- National Interests: free trade agreements require some form of compromise and these compromises must not interfere with the promotion of the national interests of states. Trade liberalization among states requires Governments to adjust their policies and jurisdictional control over the matters contained in the agreement creating the free

⁴⁹ Article 39(c), African Continental Free Trade Agreement *Ibid.*

⁵⁰ Article 39(d), African Continental Free Trade Agreement *Ibid.*

⁵¹ Article 39(e), African Continental Free Trade Agreement *Ibid.*

⁵² Article 39(f), African Continental Free Trade Agreement *Ibid.*

⁵³ Article 39(g), African Continental Free Trade Agreement *Ibid.*

⁵⁴ Article 39(h), African Continental Free Trade Agreement *Ibid.*

⁵⁵ Article 4(a), African Continental Free Trade Agreement *Ibid.*

⁵⁶ Article 4(b), African Continental Free Trade Agreement *Ibid.*

⁵⁷ Article 4(c), African Continental Free Trade Agreement *Ibid.*

⁵⁸ Article 4(d), African Continental Free Trade Agreement *Ibid.*

⁵⁹ Article 4(g), African Continental Free Trade Agreement *Ibid.*

⁶⁰ For example, section 12 of Nigeria's 1999 Constitution

trade area. Also, states must entertain the idea that national trade policies could be disrupted by their treaty obligations⁶¹.

- Regional versus Continental Interests: despite the majority of African states signing the agreement creating the AfCFTA, their regional interests need to be taken into consideration. The African Union must ensure that these regional trade protocols are not overturned by the need to ensure the success of the AfCFTA⁶².
- Institutional Capacity: trade integration has for decades been spearheaded by the various regional trade communities in Africa. Trade liberalization and integration cannot happen without a proper legal and institutional framework. While the agreement creating the AfCFTA provided for institutions to guide its implementation, past failures of African institutions to carry out their mandates cast doubt on potential success⁶³.

The African Union has however put in measures to ensure the realization and full implementation of the AfCFTA. These include;

- The conclusion of the AfCFTA Phase One and Two Protocols which provide a legal basis to advance the operationalization of the trading. The conclusion of the AfCFTA negotiations will ensure that the market access under the AfCFTA will be for SMEs, women and young Africans in trade to also grow their businesses⁶⁴.
- The Pan African Payment System (PAPSS) will ensure an efficient and secure flow of money across African borders. PAPSS works in collaboration with central banks in the continent to provide a payment and settlement service to which commercial banks, payment service providers and fintech organizations across the continent can connect as participants⁶⁵.
- The elimination of Non-Tariff Barriers Mechanisms (NTBs) is critical to boosting intra-Africa trade and achieving the objectives of the AfCFTA. It will reduce the costs of trading across borders and ease the cross-border movement of goods⁶⁶.

Implications for African nations' Sovereignty

African states under the auspices of the African Union recently signed and ratified the African Continental Free Trade Agreement. The emergence of the AfCFTA saw the establishment of the biggest free trade area since the formation of the World Trade Organization. The Agreement aims at liberalizing trade amongst African countries as well as providing a broader and deeper economic integration across the continent while boosting trade, providing jobs, reducing poverty and increasing shared prosperity in Africa. State parties to the Agreement are obligated to honor and abide by the rules stated in the Agreement. The emergence of the AfCFTA created interdependence amongst African countries ultimately leading to the fact that events and circumstances in one part of Africa

⁶¹ V. Mlambo & M. Masuku, "Africa Trade with Yourself: Challenges in Facilitating the African Continental Free Trade Agreement" available at https://www.researchgate.net/publication/363157196_Africa_Trade_with_Yourself_Challenges_in_Facilitating_the_African_Continental_Free_Trade_Agreement accessed on 14th February, 2024

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ African Union, "Theme of the Year 2023: Acceleration of AfCFTA Implementation" available at <https://au.int/en/theme/2023/acceleration-of-afcfta-implementation> accessed on 14th February, 2024

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

can greatly affect another. The question then arises: what are the implications of the African Continental Free Trade Agreement on African nations' sovereignty?

While sovereignty has traditionally been within the purview of nation-states, the emergence of international organizations and subsequently trade liberalization are deconstructing that notion thereby molding new actors in the International law scene. The concept of sovereignty which was premised on the Westphalian understanding of sovereignty has metamorphosed with the introduction of modern International law. It is interesting to note that many of the problems of the AfCFTA relate to the clash between balancing national policies and the provisions of the AfCFTA. Thus, cooperation amongst these African states will, of necessity clash with national sovereignty. Just like the critics of the World Trade Organization have argued that state sovereignty suffered a huge blow with the introduction of international organizations and subsequently trade liberalization, the African Continental Free Trade Agreement has not been left out.

The implementation of the African Continental Free Trade Agreement will result in weakening the authority of the governments of states; and the integration of the economies of African states into a single market. Since the AfCFTA promotes economic integration amongst African states, it requires cooperation amongst these states which means that these states are bound by some minimum requirements of international law without being entitled to claim that their sovereignty allows them to reject basic international regulations. The transfer of sovereign powers to a regional treaty founded organisation will lead to a divergence of opinion on the extent of the primacy of regional laws over national constitutions.

Some critics of the AfCFTA have equated the promotion of intra-African trade with the loss of state sovereignty. The ratification of this Agreement will not only confer rights but will impose obligations and constrain a country's actions. These countries accept these constraints because regional trade accords provide beneficial bargains that strengthen their interests in world markets. Although the respect for state sovereignty gives autonomous rights to act and protect the national security of member states, economic integration will nonetheless necessitate a closer collaboration between states. Membership of the AfCFTA does not involve a significant sacrifice of state sovereignty since such an agreement has no control or enforcement power over national legislatures. Member countries yield to some trade policy autonomy by participating in regional trade agreements, but there is otherwise no sacrifice of national law-making or enforcement powers.

It has however been argued that the implementation of the Agreement respects the national sovereignty of African states and the very negotiation of the Agreement is an exercise in the application of national sovereignty. Also, it is worthy to note that Article 10(2) of the AfCFTA and Article 4(1) of the AfCFTA Dispute Settlement Protocol vest in the Assembly the exclusive power to adopt authoritative interpretations of the Agreement. The obvious effect of these provisions is to protect the sovereignty of the AfCFTA member states regarding the interpretation of the Agreement⁶⁷. In effect, member states have carved out for themselves the exclusive authority to determine the provisions of the AfCFTA acceded to⁶⁸.

⁶⁷ A. Ansong, "State Sovereignty and Interpretation of AfCFTA Law" available at <https://www.linkedin.com/pulse/state-sovereignty-interpretation-afcfta-law-alex-ansong/> accessed on 14th February, 2024

⁶⁸ *Ibid.*

Conclusion

Law reflects the conditions and the cultural traditions of the society within which it operates. Societies always (albeit randomly) evolve certain specific set of values which inevitably stamps its mark on the legal framework. International Law is a product of its unique environment, thus developing within the purview of prevailing notions of international relations. This dynamism has seen International Law develop in many directions as the complexities of life in the modern era as well as contend with tensions between rules already established and the constantly evolving forces that seek changes within the system⁶⁹. Nowhere are these tensions more expressed than in the rules governing sovereignty, regionalism, trade liberalisation, economic integration and development. The concept of sovereignty, which remains one of the vital attributes of the modern state given its pristine usage in municipal law, presents some perplexity when transposed to the international arena⁷⁰. More so given the realisation by states that some rules are necessary to guide inter-state intercourse. From the foregoing, it is pertinent to submit that there is a need to strike a balance between the sovereignty of states and trade liberalisation and economic integration, particularly looking at the World Trade Organisation and the African Continental Free Trade Agreement. This is anchored on the benefits accruing to states from the various interactions. One such benefit is economic integration, which is the primary aim of the World Trade Organisation and the African Continental Free Trade Agreement. This integration will help promote trade in goods and services, eliminate trade barriers, and lead to a more efficient economy. Functional internationalism anchored on the need to engender peace and economic development of members of the international community must necessarily lead to a diminution in the concept of sovereignty in favour of the strengthening of instruments of economic integration and development.

⁶⁹ MN Shaw, *International Law*, 5th Edn.(Cambridge University Press,2004)P.42

⁷⁰ HC Alisigwe, *Supra* (fn. 1).306