

**Examining the Impact of Export Restrictions During Covid-19 Pandemic on African Countries in the perspective of International Economic Law and Global Health**

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## **Certification**

This is to certify that Kemi Akinlade with matriculation number LCU/PG/003131 carried out the research work titled “Examining the Impact of Export Restrictions During Covid-19 Pandemic on African Countries in the perspective of International Economic Law and Global Health.” In the Department of Law, Faculty of Law, Lead City University, Ibadan, Oyo state, for the award of the Master of Laws (LL.M) Degree and that this has not been previously submitted.

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## APPROVAL PAGE

This research entitled “International Economic Law and Global Health: Examining the Impact of Export Restrictions During Covid-19 on African Countries” written by KEMI AKINLADE has been approved as meeting the standards of the faculty of law in partial fulfilment of the requirement for the Award of Master of Laws (LLM) degree of Lead City University, Ibadan

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## **DEDICATION**

This research is dedicated to my beloved mother, Mrs. Taiwo Omobonike Alao.

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## Acknowledgement

The successful completion of this LLM degree is a token of God's grace and faithfulness. I bless God for giving me the grace for his feat. It is by His grace that the challenges that came alongside the course did not overwhelm me. I appreciate God for being my help always.

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## Abstract

*Prioritizing health can be a catalyst for a broader virtuous cycle of growth, and trade in essential health supplies cannot be overestimated in a time of a global pandemic. The emergence of the novel disease known as Covid-19 caused significant disruptions in the international community, with grievous attendant effects on global health and economic development. The existing framework for international economic policies prior the pandemic was greatly challenged by a sudden trend of trade protectionist measures. Although the World Trade Organization (WTO) principles frown at trade restriction, many members of WTO imposed restrictions on some essential supplies in response to the pandemic. This thesis adopts a qualitative research methodology and is essentially library based. It is noteworthy that while these restrictions may be for the good of the countries using them, this thesis reveals that the restrictions had massive unintended consequences on the health and economies of many other countries. Notably, the world's Least Developed Countries (LDC) were greatly impacted. Africa as a continent is home to 33 out of the 46 total world's LDC and is integrated into the world economy mainly as a buyer. Undoubtedly, the trade protectionist measures, especially export restrictions by Africa's trading partners exacerbated the impact of the pandemic on the region. This unprecedented situation has shed light on the critical nexus between trade and health in an increasingly interconnected world. This thesis concludes that African's over-reliance on external market became a disadvantage during the pandemic and hindered Africa's ability to respond promptly and adequately, especially at the beginning of the pandemic.*

**Key Words: International Economic Law, Global Health, Trade Policies, Covid-19 Pandemic.**

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## **List of Abbreviation**

API- Active Pharmaceutical Ingredient

AU-African Union

ASDB-Asian Development Bank

COVAX- Covid-19 Vaccine Global Access

COVID-19 Corona Virus Disease 2019

EU-European Union

FDI-Foreign Direct Investment

GATS- General agreement on Trade in Services

GATT- General agreement on Tariff and Trade

IMF- International Monetary Fund

IBRD-International Bank for Reconstruction and Development

ICSID-International Center for Settlement of Investment Disputes

ICJ-International Court of Justice

IDA-International Development Association

IHR-International Health Regulation

LDC-Least Developed Countries

LMICS- Low-and-Middle Income Countries

MFN- Most-Favoured Nation

MIGA-Multilateral Investment Guaranty Agency

NAFTA- North American Free Trade Area

NT\_ National Treatment

IFC-International Finance Cooperation

PPE-Personal Protective Measures

PHEIC- Public Health Emergency of International Concern

TRIPS-Trade Related Aspect of Intellectual Property

UN-United Nations

US- United States

UNCTAD- United Nation Conference on Trade and Development

WHO- World Health Organisation

WTO- World Trade Organisation

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# Chapter One

## Introduction

### 1.1 Background of Study

International economic law is a vast and encompassing field of law which cut across subjects such as trade in goods, trade in services, development law, business regulation, corporate governance, financial law, economic integration, intellectual property and so on.<sup>1</sup> International economic law developed as a distinct aspect of international law during the post World War II era when then the Bretton wood institutions<sup>2</sup> were established with the aim of rebuilding the world economy through international cooperation, among other factors. In the past few decades, the role of international economic law is becoming more and more recognised in the field of public health.<sup>3</sup>

Particularly without gainsaying, international economic law directly touches on global health as it regulates matters including trade in health services, access to medicine, health-related transfer of technology and other matters of global health concerns. Significantly, international economic law is crucial to facilitating cooperation among nations and international organisation especially in times of global crises, such as during Covid-19 pandemic, which was itself described as a global health and economic crisis.<sup>4</sup> For the first time in the twenty-first century, the UNCTAD reported a surge in global poverty level during the pandemic.<sup>5</sup> The global economic turndown

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<sup>1</sup> Jean M. Wenger “International Economic Law” E-Resource Guide, American Society of International Law 2015.

<sup>2</sup> The Bretton Woods institutions include the World Bank and the International Monetary Fund (IMF) which were established in 1944.

<sup>3</sup> Maria Eugenia Bodra and Fernando Mussa Abujamra “Global Health and Economic Law: Private Sector Regulation on the Global Agenda” *Revista Brasileira De Politica Internacional*, Vol 65, no. 1, 2022.

<sup>4</sup> See generally United Nations Conference on “Impact of Covid-19 Pandemic on Trade and Development.” Available at <http://creativecommons.org/licenses/by/3.0/igo/>. (last accessed October 6 2023).

<sup>5</sup> See UNCTAD Report “Impact of Covid-19 Pandemic on Trade and Development: Lessons Learned” UNCTAD/OSG/2022/1.

was described as worse than the global financial crisis of 2008/2009 (UNCTAD 2021) and was held to be associated to the massive decline in global trade as a result of protectionist measures adopted by states during the pandemic.

As the scope of international economic law also covers subject including public international law of trade, private international law of trade, international commercial law, and the law of international finance and investment, the interlink between global health and trade became more evident during the Covid-19 pandemic, when trade policies became a crucial tool in addressing the unprecedented wave of the novel disease.<sup>6</sup> States emerged strongly as the main determinant of economic policies.<sup>7</sup> At the early stage of the pandemic, Global Trade Index<sup>8</sup> indicated that countries took more than 220 actions banning or limiting the export of certain products for Covid-19-related reasons between January 2020 and the beginning of April 2021.

International economic law is often regarded as the most important aspect of international law. It helps nations to harness their respective and unique natural endowment (such as material resources and labor force), level of development, technological advancement and other advantages to facilitate cooperation and development through interconnected economy. The Covid-19 pandemic however challenged the trade and economic precedence and new policies emerged across states and geographic zones. Foreign direct investment reported declined sharply during of the pandemic.<sup>9</sup>

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<sup>6</sup> See Generally, International Monetary Fund “Policy responses to Covid-19, July 2021 available at <<https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>>. (last accessed October 6 2023)

<sup>7</sup> Ibid.

<sup>8</sup> Global Trade Alert, January 1, 2020 – April 1, 2020.

<sup>9</sup> Imad A. Moosa and Ebrahim Mersa “The Effect of Covid-19 on Foreign Direct Investment Inflow: Stylised Facts and some Explanation” Future Business Journal (2022), available at <<https://doi.org/10.1186/s43093-022-00129-5>>. (last accessed October 6 2023).

Trade has long been understood as critical to public health, particularly international trade.<sup>10</sup> It is a phenomenon which influences health both positively and otherwise. For instance, trade can be the cause of unhealthy health practice and it can also be used to facilitate good health through interconnected economy. It is therefore a common practice among countries to pursue health goals and one of the main methods of doing this is by intentional outsourcing of commercial opportunities offered by trade in health service, such as transfer of health-related technology.<sup>11</sup> In accordance with the Report on the technical Barrier to trade by WTO committee 2014, WTO notes that protecting health is a dominant trade concern among members who seek to “strike a balance between trade and health” as they face potential economic costs and legal challenges when introducing new health measures WTO.<sup>12</sup>

While international trade has been in existence before the world wars, the development of the current framework for international trade began after Bretton Wood institutions were established.<sup>13</sup> Today, the WTO, in collaboration with other international organisations have progressively labored to remove tariff and non-tariff barriers in trade. Among its other achievements, some WTO agreement relating public health include GATS, Trade Related Aspect of Intellectual Property (TRIPS), the Agreement on the Application of Sanitary and Phytosanitary Standards, and the Agreement on Technical Barriers to Trade. Moreso bilateral and regional agreements are proliferating, and the provisions are based on the WTO and North American Free Trade Agreement (NAFTA) framework.

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<sup>10</sup> Edvardo Missoni “Understanding the Impact of Global Trade Liberalization on Health Systems Pursuing Universal Health Coverage” *Value in Health* 16 (2013) 514-518 Available online at [www.sciencedirect.com](http://www.sciencedirect.com). (last accessed October 6 2023).

<sup>11</sup> For instance, S of the Nigerian constitution sets out the health goals of the country.

<sup>12</sup> Report on the technical barriers to trade formal committee meeting 18–19 June 2014. WTO news. 2014. Available at [https://www.wto.org/english/news\\_e/news14\\_e/tbt\\_18jun14\\_e.htm](https://www.wto.org/english/news_e/news14_e/tbt_18jun14_e.htm). (last accessed October 6 2023).

<sup>13</sup> Ibid.

Although trade agreements have been proliferated in the decades, the sudden emergence of covid-19 pandemic and the consequent protectionist measures taken by many countries around the world, portrays the vacuum in existing trade agreements in dealing with such global crisis.<sup>14</sup> The initial lack of cooperation between countries during the pandemic did not only affect public health, it further exacerbated the economic situation of the world. The geopolitical tensions and distrust between trading partners also became more apparent.<sup>15</sup> Also, countries that are more dependent on export felt the brunt of the pandemic. Africa countries for instance imports about 90 percent of their pharmaceutical products from outside the continent.<sup>16</sup> The pandemic and the trade barrier resulted in severe economic set down in the continent.<sup>17</sup>

As the world continued to grapple with the crucibles of the pandemic, initiative began to break out calling for the strengthening of international cooperation particularly with respect to trade for the purposes of preserving public health, regional epidemic preparedness and the maintenance of supply chain connectivity.<sup>18</sup> This culminated in the overhaul of international agreements and also perspective to trade, particular during the time of the pandemic. There is no doubt that a longtime solution will however be necessary to secure public health. The reality of Global health policy is continuously redefining the approach of independent state interests against global health threats. Chapter four of this thesis delves further into these perspectives and overhaul in international trade during the pandemic.

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<sup>14</sup> Prachai Agarwal and Mulenga Chonzi Mulenga “Impact of Covid-19 on International Trade: Lessons for African LDCs” A contribution to the Policy Hackathon on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and other Trade Agreements.

<sup>15</sup> Robert Muggah, David Steven and Liv Tørrer, “We urgently need major cooperation on global security in the Covid-19 era” World Economic Forum, 23 Apr 2020, <https://www.weforum.org/agenda/2020/04/we-need-major-cooperation-onglobal-security-in-the-covid-19-era/> (accessed on June 18, 2020).

<sup>16</sup> United Nations Economic Commission for Africa (UNECA), “Policy Brief: Economic Impact of the Covid-19 on Africa”, <https://www.uneca.org/publications/policy-brief-impact-covid-19-africa> (accessed on June 20, 2020).

<sup>17</sup> Ibid.

<sup>18</sup> See generally “Statement on Covid-19 by APEC Ministers Responsible for Trade”, 8 May 2020, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/GC/213.pdf> (accessed on June 24, 2020).

## 1.2 Statement of The Problem

On January 30, 2020, the Director General of the World Health Organization declared the outbreak of Covid-19 as a Public Health Emergency of International Concern (PHEIC)<sup>19</sup> The coronavirus disease 2019 (COVID-19) described as the pathogenic severe acute respiratory syndrome-2 (SARS-CoV-2) virus, started in Wuhan city in China during late 2019<sup>20</sup> and spread exponentially across the globe. By July 2023, a total of 767,972,961 confirmed cases of Covid-19 has been reported by the World Health Organisation including 6,950,655 reported cases.<sup>21</sup> The pandemic was indeed one of the greatest challenges of the United Nations.

As a result of the Covid-19 pandemic, trade policies emerged as a pivotal instrument of governance, wielding significant influence over the global response to the health crisis.<sup>22</sup> Governments around the world swiftly adopted export and import regulations to address the challenges posed by the pandemic.

It is worthy of note that the general principle under WTO framework is that trade restrictions, whether in form of import or export restrictions are prohibited.<sup>23</sup> The reason for this is not farfetched, trade restriction undermines globalisation and liberalisation, which are the very essence of the WTO.<sup>24</sup> Interestingly, the pandemic spurred a massive use of trade restriction all over the world. According to the Global Trade Alert, more than 220 restrictive measures have

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<sup>19</sup> WHO “Looking Back at a year that changed the World: WHO’s response to Covid-19” Available at <[https://www.who.int/doc/default-source/coronavirus/who\\_sprp\\_eopyr\\_2020\\_24022021.pdf?sfvr...](https://www.who.int/doc/default-source/coronavirus/who_sprp_eopyr_2020_24022021.pdf?sfvr...)> (last accessed October 6 2023).

<sup>20</sup> WHO “Origin of SARS-CoV-2” WHO/2019-nCoV/FAQ/Virus\_origin/2020.1, available at <[https://apps.who.int/iris/bitstream/handle/10665/332197/WHO-2019-nCoV-FAQ-Virus\\_origin-2020.1-eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/332197/WHO-2019-nCoV-FAQ-Virus_origin-2020.1-eng.pdf)>

<sup>21</sup> See <https://covid19.who.int/>

<sup>22</sup> Brendan Vickers, Salamat Ali and Collin Zhuawu “Trade in Covid-19-Related Medical Goods: Issues and Challenges for Commonwealth Countries” A Special Focus on COVID-19 and the Commonwealth | ISSUE 159 2020.

<sup>23</sup> GATT, article XI..

<sup>24</sup> Craig VanGrasstek “The History and Future of World Trade Organization” WTO Publications 2013.

been adopted around the world by 2020. WTO reports shows that 90% of trade restrictions related to the pandemic were export ban.<sup>25</sup>

Without gainsaying, the use of export restrictions during the pandemic constituted a huge challenge to African countries in responding adequately to the pandemic, for a number of interconnected factors. First, Africa is integrated into the world economy essentially as a buyer. Also, Africa's pharmaceutical industry is heavily reliant on importation for both raw materials and some finished goods. African countries therefore were disadvantaged as their trading partners began to impose bans and restrictions on the essential goods and services.

The disruption caused by the pandemic was felt in every facet of human life, resulting in total or partial lock downs in most countries around the world. The direct and indirect effect of this pandemic had more severe impact on vulnerable groups, such as people with disabilities, older people, people living in poverty and also people with existing health challenges.<sup>26</sup> The pandemic was also described as a global health and economic crisis.<sup>27</sup> Indeed, the effect of the pandemic was far-reaching and includes health, economic and social disruptions. Aside the health effect of the pandemic, the disruption of trade was one of its most devastating effects. Attendant effect of the pandemic was also seen in difficulties experienced in access to food, access to medicine, social isolation, family violence and other diverse and interconnected feedback.<sup>28</sup>

The Pandemic was held to have occasioned the deepest and most synchronised decline in economic growth rates across countries in the world since World War II.<sup>29</sup> However, the severity

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<sup>25</sup> Brendan Vickers, Salamat Ali and Collin Zhuawu "Trade in COVID-19-Related Medical Goods: Issues and Challenges for Commonwealth Countries" A Special Focus on COVID-19 and the Commonwealth, Issue 159, 2020.

<sup>26</sup> HM Government "Analysis of the health, economic and social effects of COVID-19 and the approach to tiering"

<sup>27</sup> Ibid.

<sup>28</sup> Yen Chin Liu et al "Covid-19: The first documented coronavirus pandemic in history" Biomedical Journal, 43 (2020), pg 328-333 Available online at [www.sciencedirect.com](http://www.sciencedirect.com).

<sup>29</sup> World Bank 202.

of the pandemic differs among states depending on pre-existing vulnerabilities.<sup>30</sup> Covid-19 was no doubt a fatal blow to the world economy. In response to this pandemic, unprecedented measures and policies emerged nationally and internationally with drastic effect on trade, development and also health.<sup>31</sup>

Among others, the pharmaceutical industry was adversely impacted by the pandemic in terms of production, supply chain and trade. In December 2021, a vaccine developed by BioNTech and Pfizer was approved for emergency use in the United States.<sup>32</sup> Many countries and the European Union also authorized or approved the use of the vaccine. While all countries across the globe were in need of vaccination against the infection, not all countries had what it takes to produce vaccines. sadly, the production of vaccines was highly specialized and was only concentrated in few countries<sup>33</sup> moreover, the goods needed to produce, distribute and administer vaccines were produced across a range of countries, and there was a pressing need to address the logistic challenges of distribution.<sup>34</sup>

The travel restrictions, lockdowns and other measures taken by countries hindered the movement of both raw materials and workers. Export restrictions was also imposed by some countries so as to secure domestic supply of essential drugs and medical equipment. This restriction hindered global trade in pharmaceutical products with varying effects on different countries. This further

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<sup>30</sup> Muhammed Akanmu Popoola and Shittu Muili “Effect of Covid-19 outbreak on socioeconomic Development in Nigeria” Net Journal of Business Management Vol. 7(1), pp. 1-5, January 2022.

<sup>31</sup> United Nations “Impact of Covid-19 Pandemic on trade and Development: Lessons learned” Geneva 2022.

<sup>32</sup> Ibid.

<sup>33</sup> OECD 2021.

<sup>34</sup> OECD “Using trade to fight Covid-19: Manufacturing and distributing vaccines” 2012 available at [https://read.oecd-ilibrary.org/view/?ref=1060\\_1060354-ie4a355ojd&title=Using-trade-to-fight-COVID-19-Manufacturing-and-distributing-vaccines](https://read.oecd-ilibrary.org/view/?ref=1060_1060354-ie4a355ojd&title=Using-trade-to-fight-COVID-19-Manufacturing-and-distributing-vaccines).

contributed to the deepened effect of the pandemic especially in importing countries of medical products.<sup>35</sup>

The Covid-19 vaccine manufacturers and distributors are highly concentrated in high income and emerging economies.<sup>36</sup> This emphasises the need for efficient trade and logistics particular in the distribution of vaccine across the globe. Sadly about 200 trade restrictions policy affecting medical goods were introduced by 2020<sup>37</sup>. This was despite the international duty of cooperation and other schemes for the distribution of vaccines such as Covid-19 Vaccine Global Access (COVAX).<sup>38</sup>

It is noteworthy that existing literature has delved into arising matters in international economic law during the pandemic, some of which are thoroughly examined in chapter two. However, a significant number of existing works focus generally on the impact of the pandemic on trade and development. Some studies have also examined the impact of the pandemic on African continent. However, no study has been exclusively dedicated to examining how export restrictions during the pandemic affected African countries, hence, my intention to delve into this area of research. Without gainsaying, this thesis will be of help to students, lecturers and more importantly, African policy makers in understanding the areas for innovation in trading orientation in Africa countries. Also, the Covid-19 experience brought to the limelight the inadequacies in the WTO framework, particularly with respect to trade during pandemic. There is no doubt that there is an urgent need for innovation in the WTO principles to cater for trade in times of global emergencies.

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<sup>35</sup> Sanchita Basu Das and Rahul Sen “Trade Interdependencies in Covid-19-Related Essential Medical Goods: Role of Trade, Asian Development Bank (ADB) Economics Working Paper Series, No. 666, July 2022.

<sup>36</sup> ADB 2020.

<sup>37</sup> ADB *ibid*.

<sup>38</sup> COVAX is a global initiative to facilitate the production and distribution of Covid-19 vaccine.

### **1.3 Aim and Objectives**

The aim of this thesis is to explore the impact of export restrictions during Covid-19 on African States. The objectives are to;

1. examine the changes that occurred within international economic policies during the pandemic.
2. explore the various types of export restrictions that were introduced during the pandemic and their effects on African countries.
3. discuss the role of international cooperation and good governance during Covid-19 and in times of global emergency.

### **1.4. Research Questions**

This study is guided by the following questions:

1. How did international economic policies change during the pandemic?
2. How were African countries affected by the various types of export restrictions during the Covid-19 pandemic?
3. How do international cooperation and good governance contribute to the response to Covid-19 and other potential global emergencies?

### **1.5. Research Methodology**

This study will use both primary and secondary sources of data. The primary source will include treaties such as the Charter of the United Nations 1945, General Agreement on Tariff and Trade (GATT) 1947, Agreement on Trade Related Aspect of Intellectual Property (TRIPS) 1995, the

Doha Declarations on the TRIPS Agreement and Public Health 2001, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1996, Agreement on Application of Sanitary and Phytosanitary Measures (SPS Agreement) 1995 shall be explored. The secondary source includes relevant materials from leading authorities, existing literature, Journal articles, research report, textbooks and so on which are expected to impact the quality and significance of this study.

### **1.6. Significance Of Study**

In the wake of the Covid-19 pandemic, trade policies emerged as a pivotal instrument of governance, wielding significant influence over the global response to the health crisis.<sup>39</sup> Governments around the world swiftly adapted their export and import regulations to address the challenges posed by the pandemic. While some policies sought to bolster importation of essential goods, a marked divergence was observed when it came to the exportation of crucial drugs and food items. Unfortunately, these restrictions had a disproportionately adverse impact on developing countries, exacerbating the economic setbacks they faced during the pandemic.

The underlying cause of this disparity lies in the urgent need for the development and distribution of vaccines to combat the novel disease. Regrettably, many countries were ill-prepared or lacked the capacity to undertake this task efficiently. Consequently, Low- and Middle-Income Countries (LMICs) heavily relied on international initiatives to access the much-needed vaccines.<sup>40</sup>

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<sup>39</sup> Brendan Vickers, Salamat Ali and Collin Zhuawu “Trade in COVID-19-Related Medical Goods: Issues and Challenges for Commonwealth Countries” A Special Focus on COVID-19 and the Commonwealth, Issue 159, 2020.

<sup>40</sup> Harshani Yarlagadda et al “COVID-19 Vaccine Challenges in Developing and Developed Countries” Cereus, Apr; 14(4), 2022.

The pandemic revealed a significant concentration of medicine and medical product production in industrialised nations. Consequently, the role of international trade in addressing the pandemic became indispensable. However, a concerning trend emerged with a decline in international trade, particularly in medical goods. A comprehensive study uncovered more than 220 policies that curtailed the export of certain Covid-19 related goods, undermining the spirit of international cooperation during times of emergency.<sup>41</sup>

The ramifications of these developments have sparked intense scrutiny into the impact of international economic law, which governs international economic policies, on global health. This thesis aims to explore the existing framework of international trade regulations pre-pandemic and assess its adequacy, particularly in the context of global emergencies like Covid-19.<sup>42</sup> A particular focus is placed on trade policies enacted during the pandemic, as these policies have far-reaching implications for public health and international relations.

The importance of this thesis lies in its exploration of the intersection between international trade and global health. By delving into the dynamics of trade policies during the pandemic, it seeks to shed light on the strengths and shortcomings of the prevailing international economic framework. Such insights are invaluable for crafting more effective and responsive policies in future crises, ensuring a coordinated and equitable global response to emergent health challenges.

In conclusion, the Covid-19 pandemic brought trade policies to the forefront of governance, influencing the movement of essential goods across borders. While some countries promoted importation, restrictions on the export of vital drugs and food created significant economic

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<sup>41</sup> United Nations “Covid-19 Report” May 2020. Available at [https://repositorio.cepal.org/bitstream/handle/11362/455112/S2000308\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/455112/S2000308_en.pdf). (last accessed October 6 2023).

<sup>42</sup> See “Export Restriction in Response to the COVID-19 Pandemic” Congressional Research Service April 2021 available at <https://crsreports.congress.gov> (last accessed October 6, 2023).

challenges for developing nations. The pandemic also highlighted the need for robust international cooperation in times of emergency, making the study of international economic law in this context imperative. This thesis seeks to contribute to the understanding of how trade policies can be optimized to better address global health crises and foster greater collaboration among nations.

### **1.7. Scope of Study**

This study has an extensive scope cutting across an intricate interlink of global health and trade policies. Aside exploring the existing framework for international trade, export restrictions introduced during Covid-19 pandemic are also examined with the relevant influence on African States. The scope of this study also covers WHO framework for public health. This study will examine the need for a greater cohesion between these fields of international law.

### **1.8. Limitation of Study**

The cogent limitation experienced in this study include

- i. Limitation in accessing and analyzing the impact of all export used during Covid-19 Pandemic
- ii. Limitation of time in analyzing the full impact of all trade policies introduced during the pandemic. This is particularly because more than 200 new trade policies were introduced during the pandemic.

### **1.9. Operational Definition of Terms**

#### **1.9.1. International Economic Law**

According to S.P Subedi<sup>43</sup>, International economic law regulates the international economic order or economic relations among nations. It has been described as encompassing a large area including International Trade Law (a collection of the international law of the WTO and GATT and domestic trade laws), International financial law and Economic Integration Law among others. International economic law is touches directly or indirect in the many facets of international relation.

Saloid and Redko<sup>44</sup> observed that the rules of international economic law are aimed at facilitating the free exercise by States of their sovereign rights in the field of international economic relations, equal cooperation of states irrespective of socio-economic systems and political regimes, economic progress of the planet as a whole and developing countries. The reason for this cooperation can be comprehended in the light of inequality in the endowment of nations and resultant interdependence.

Schwarzenberger<sup>45</sup> described the component of international economic law to include the possession of natural resources and their use,<sup>46</sup> production and distribution of goods, "Invisible" international agreements of an economic or financial nature, loans and finances, appropriate services, the status and organization of the entities engaged in such activities. International economic law has also been defined as the total range of norms (directly or indirectly based on treaties) of public international law rules with regards to transnational economic relations.<sup>47</sup>

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<sup>43</sup> S.P Subedi “: Evolution and principles of international economic law” study guide was prepared for the University of London, University of London Press, 2007.

<sup>44</sup> Saloid Stanislav Vasylovuch and Redko Kateryna Yuriivna “International economic law” lecture Electronic Resource, Igor Sikorsky Kyiv Polytechnic Institute, 2020.

<sup>45</sup> Georg Schwarzenberger “The Development of International Economic and Financial Law by the Permanent Court of International Justice” 54, JURID Rev. 21 (1942).

<sup>46</sup> See Detlev F. Vags “International Economic Law and The American Journal of International Law” The American Journal of International Law, vol. 100.No. 4, Oct 2006.

<sup>47</sup> Pieter verloren Van Themaat “The Changing Structure of International Economic Law” 1981.

### 1.9.2. Global Health

Global health has been defined, with respect to human development, as a political variable which relates to the health of the whole planet, and it transcends geographical and political boundaries<sup>48</sup>

This definition expresses the role of governance in sustaining global health. It indeed a matter for both national and international concerns.

According to Ilona Kickbusch,<sup>49</sup> the concept of global health stands for a new context. It is a new awareness and a new strategic approach in matters of international health. He defined global health from a perspective stemming from the impact of global interdependence on the determinants of health, the transfer of health risks and the policy response of countries, international organizations and the many other actors in the global health arena.

Sebastian Taylor noted that characterized global health as health issues whose causes or redress lie outside the capability of any one nation state.<sup>50</sup> He described it as a growing homogeneity of challenges common across countries at all levels of socioeconomic development.

In Kickbusch's <sup>51</sup> definition, global health refers to "those health issues that transcend national boundaries and governments and call for actions to influence the global forces that determine the health of people. It requires new forms of governance at national and international level which seek to include a wide range of actors.

### 1.9.3. Trade Policies

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<sup>48</sup> Terantola D "Global Health and national governance" American Journal of Public Health, 95(1), p.60, 2020.

<sup>49</sup> Ilona Kickbusch, Yale University 2002.

<sup>50</sup> Taylor S. 'Global health': meaning what? BMJ Glob Health 2018.

<sup>51</sup> Kickbusch, G Lister, European Perspectives On Global Health - A Policy Glossary. Brussels: European Foundation Centre 2006, 72pp. available at [www.Ilonakickbusch.Com/Kickbusch-Wassets/Docs/EFC\\_EPGH.Pdf](http://www.Ilonakickbusch.Com/Kickbusch-Wassets/Docs/EFC_EPGH.Pdf)

According to United Nations Conference on Trade and Development (UNCTAD),<sup>52</sup> a trade policy framework offers a structure for the many decisions that a country's negotiators, legislators, and litigators must make as they devise and implement policy. Trade policies allows a country to prioritize its objectives and designed goals. The trade policies adopted by a country influence both domestic and foreign investment and is therefore crucial for any development strategy.<sup>53</sup> Trade policy can take the form of specific import and export policies for host and home countries.<sup>54</sup> There is no gainsaying that trade policy in most countries today is designed to facilitate trade liberalization and market opening.

Under the WTO framework, the responsibility of collecting, assessing and disseminating information about members' trade policies is shouldered by the Trade Policy Review Body.

#### **1.9.4. Covid-19 Virus**

According to the World Health Organization, Covid-19 is the most recently discovered virus known as 'coronavirus'<sup>55</sup> It is a highly transmittable and pathogenic viral infection caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).<sup>56</sup> On January 30, 2020, the Director General of the World Health Organization declared the outbreak of Covid-19 as a Public Health Emergency of International Concern (PHEIC)<sup>57</sup>

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<sup>52</sup> UNCTAD "Trade Policy Frameworks For Developing Countries: A Manual Of Best Practices" New York And Geneva 2018.

<sup>53</sup> OECD "Trade Policy Promoting Investment for Development" OECD (2005-06-06), "Trade Policy: Promoting Investment For Development", OECD Trade Policy Papers, No. 19, OECD Publishing, Paris. Available At <<http://dx.doi.org/10.1787/182562483087>>(last accessed October 6 2023).

<sup>54</sup> Ibid.

<sup>55</sup> WHO 2020 "What is Covid-19" available at < <https://www.who.int/docs/default-source/coronaviruse/risk-comms-updates/update-28-covid-19-what-we-know.pdf>> (last accessed October 6 2023).

<sup>56</sup> Mohammed Adnan Shereen "COVID-19 infection: Emergence, transmission, and characteristics of human coronaviruses" Journal of Advanced Research 24 (2020) 91–98

<sup>57</sup> WHO "Looking Back at a year that changed the World: WHO's response to COVID-19" Available at < [15](https://www.who.int/doc/default-source/coronavirus/who_sprp_eopyr_2020_24022021.pdf?sfvr...></a></p></div><div data-bbox=)

### **1.9.5. Export Restriction**

These are restrictions on the exportation and/or the limitation of the quantity of exported goods by a country, whether generally or to specific countries.<sup>58</sup>

### **1.10. Chapterisation**

Chapter One: This chapter introduces the work broadly. It encompasses the introduction, background of study, statement of problem, aim and objectives, research questions, research methodology, significance of the study, definition of terms and the structure of the study.

Chapter Two: This chapter entails the literature review. The concept of international economic law is discussed extensively from the history, principles and the sources of international economic law. The field of international economic law is an encompassing area which touches on and interlink different other fields of law. With respect to this study, reference is restricted to the relevance of international economic law to global health.

Chapter Three: This chapter explores the changes in international economic policies during the pandemic. It discusses the legal framework for trade restrictions at WTO and examines the types and effects of the major export restrictions during the pandemic, with particular attention on Africa.

Chapter Four: this chapter delves deeper into the types, rationale and impact of export restriction during the pandemic. It discusses the use of export restrictions by Africa's major trading partner and the impact on Africa.

Chapter Five: This chapter explores extensively the concept of international cooperation and good governance, both of which are cogent principles of international economic law. It considers

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<sup>58</sup> See generally WTO Trade policy Reviews.

the role of international of international organisation in responding to the pandemic. This chapter also analyses the challenges face by these organisations as they tried to respond efficiently to the pandemic. The chapter also brings to the limelight, the role of international cohesion and political commitment in maintaining global health particularly in the time of global emergency. Indeed, states emerged as the major actor in policies making during the pandemic. It has become even more evident that strong national and local political and long-term commitment are required to achieve and sustain universal health coverage. Moreover, research literature also reveals that the biggest barrier to health reform is usually political rather than technical. The role of good governance therefore that not be overemphasized.

Chapter Six: This chapter summarises the study as a whole and presents the conclusion of the study. It also proffers certain recommendation that can be maximised to harness global health through the instrumentality of trade policies.

## Chapter Two

### Literature Review and Theoretical Framework

#### 2.1. Literature Review

The Covid-19 pandemic serves as a compelling testament to the intricate nexus that binds international economic law and global public health. It is an irrefutable reality that in times of a worldwide health crisis, the significance of international trade, encompassing both essential medical and non-medical goods and services, cannot be overstated. The widespread implementation of trade restrictions, notably export restrictions, during the pandemic has undoubtedly catalyzed a surge of scholarly exploration at the intersection of economic law and public health within this extraordinary context. In light of this, it is judicious to delve into the existing corpus of literature that grapples with this critical juncture.

According to Donatella Alessandrini and Daria Davitti<sup>59</sup>, the way states and communities responded to the Covid-19 pandemic has brought a significant spotlight onto the role of international economic law in shaping the framework of socio-political and economic globalisation. Their findings emphasize that the pandemic has laid bare the pervasive influence of international economic law in our daily lives. They observed that disparities among nations and inherent deficiencies in global trade have played a substantial part in the inadequate response

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<sup>59</sup> Donatella Alessandrini, Daria Davitti et al “International Economic Law and Covid-19” The IEL Collective, March 2020. Available at <https://criticallegalthinking.com/2020/03/27/international-economic-law-covid-19/> 1/20. Last accessed December 10, 2023.

to the pandemic. Furthermore, it was highlighted that Covid-19 has exposed how the system of free trade, driven by profit accumulation and consumerism, has not only widened the gap between the global north and south but has also exacerbated inequalities within northern countries. A tangible illustration of this is Germany's initial decision to prohibit the export of crucial life-saving medical equipment, which had a cascading impact on other European Union members, notably Italy, being reliant on Germany for medical supplies. This decision undoubtedly had repercussions for Germany's non-EU trading partners as well.

Ocholla Akoth<sup>60</sup> delved into the situation of the world's least developed nations. His research highlighted a concerning trend where the southern trade partners, such as China and Europe, ceased to be viable. This disruption had significant repercussions on the economies of the global south, particularly in the face of the pandemic. Akoth's analysis uncovered a neocolonial relationship between the global south and north. It became evident that many raw materials were sourced from the global south, only to be exported to the global north for production and then returned to the south at considerably higher prices. The pandemic further exacerbated the situation as the global south struggled to import raw materials and found themselves with limited resources and no market to export to. His findings underscored the imperative for individuals, national governments, and international institutions to collaborate in order to mitigate crises extending beyond the realm of the Covid-19 pandemic.

Leonardo Borlini<sup>61</sup> underscores that the coronavirus global pandemic has both accelerated and brought to the forefront contemporary shifts in the global economy, presenting its unique challenges. He raises important questions about the optimal policy approach, emphasizing the

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<sup>60</sup> Ocholla Akoth "International Economic Law in the Shadow of COVID-19: Perspectives from Least Developed Countries" *Afronomicslaw*, Symposium Post, May 2020.

<sup>61</sup> Leonardo Borlini "Economic Interventionism and International Trade Law in the Covid Era" *German Law Journal*, 2023, 24, pp. 1–16.

importance of diversifying domestic and external sources of supply, bolstering strategic production capabilities, and maintaining reserves. Furthermore, he highlights the pandemic's revelation of the critical need for increased health product production during crises and the necessity for collaborative efforts to ensure equitable access, particularly for vulnerable populations. It's crucial to note that the pandemic unleashed an unprecedented global economic crisis, marked by a sudden decline in economic activity that has placed considerable strain on businesses and employment, necessitating prompt and robust government interventions.

Giovanna Adinolfi and Giulio Bartolini in their research<sup>62</sup> pointed out that the Covid-19 pandemic represents the most substantial economic downturn since the Great Depression. They highlighted that various international economic organisations were compelled to evaluate their strategies and policies related to handling crises, especially those pertaining to health emergencies, in response to the ongoing economic and financial challenges. Notably, the pandemic prompted significant alterations in economic dynamics and the implementation of new strategies to address the impacts of Covid-19. They also observed a heightened focus on assessing the flexibilities within WTO agreements concerning trade restrictions and their compatibility with the principles of liberalization and non-discrimination inherent in the multilateral trading system. Remarkably, none of the trade restrictions imposed during the Covid-19 outbreak faced challenges within the WTO dispute settlement mechanisms.

Andrea Shieber,<sup>63</sup> argues that the pandemic has shed light on the negative consequences of intellectual property (IP) laws and global trade, specifically the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement), on public health. The TRIPS

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<sup>62</sup> Giovanna Adinolfi and Giulio Bartolini "International Economic Law (2020)" Yearbook of International Disaster Law Online, Volume 3 Issue 1 (2020)

<sup>63</sup> Andrea Shieber "International Economic Law and COVID-19 – Countercurrents: Critical Law at Kent" Kent University, March 2020

Agreement grants patent holders a temporary 20-year exclusive right over new products or processes. This exclusivity, driven by patents, enables pharmaceutical companies to impede the entry of more affordable generic versions into the market when they are available. This obstructs the critical demand for large-scale production required during the pandemic

Nomensen Freddy Siahaan<sup>64</sup> noted that the Covid-19 pandemic affects many things such as health, economy, social, culture, law, including Manpower, and other sectors. While focusing on manpower which is also affected by the Covid-19 Pandemic, he observed that declined economic growth forced business entities to streamline their spending by laying off some of their workforce so it will not suffer losses. Covid-19 was described as a force majeure which was not foreseen. He noted that countries prioritized the health of its citizens over the economy during the pandemic. He however concluded that the, economic growth and the health of citizens are closely related and must be able to run harmoniously because it does not mean that the economy is better but the health of citizens is worse, and vice versa.

Liangliang Zhai<sup>1</sup> and Shilin Yuan<sup>65</sup> in their research focused on impact of export restriction on food. According to them, the original shortcomings of WTO grain export restriction rules have not been substantially improved but are fraught with problems such as poor operability, and no specific punishment measures, which makes the rule unable to achieve the regulatory effect.

Akosua Sawaah Akoto and Frederick Appiah<sup>66</sup> observed that the advent of Covid-19 had many implications on governments, international organizations, stakeholders, scholars, and

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<sup>64</sup> Nomensen Freddy Siahaan “The Covid-19 Pandemic and Its Relation to the Commercial (Economic) Law, Labor Law, State and International Role” *Advances in Social Science, Education and Humanities Research*, volume 618, 2021.

<sup>65</sup> Liangliang Zhai<sup>1</sup>, Shilin Yuan et al “The economic effects of export restrictions imposed by major grain producers” *Agricultural Economics Czech*, 68, 2022.

<sup>66</sup> Akosua Serwah Akoto, Frederick Appiah Afryio “Synthesizing the Variants: An Inquisition of COVID-19 and International Economic Law”, *The IUP Journal of International Relations*, Vol. 15, No. 3, July 2021, pp. 20-33.

International Law, specifically International Economic Law. They opined that in an unprecedented global health crisis, trade is indispensable to save lives and protect livelihoods and global cooperation is required to preserve the inflow of trade. It was also noted that no country is isolated but rather interdependent in the international system. It is therefore not surprising that the unraveling public health crisis has had momentous ramifications for the global economy's effective running.

According to Jack Quirk,<sup>67</sup> the world economy is dependent on international trade and the COVID-19 pandemic has brought a great deal of attention to global trade especially to medical products that are used for medical testing, treatment, and prevention. While focusing on global supply chain, he observed that restriction during the pandemic further increased shortage. He noted that no country in the world can produce all the products it needs for medical care, nor can a single country produce all the necessary intermediate product. The Covid-19 pandemic has highlighted the world's need for global value chains. Responding effectively and efficiently to the Covid-19 pandemic undoubtedly requires an increase in global medical supply production, and well-functioning global value chains are needed to do just that. As world production increases and becomes available, international trade will be of the utmost importance when it comes to moving needed supplies from where it is abundant to where it is lacking.

Pepita Barlow, May CI van Schalkwyk, et al<sup>68</sup> in their research, observed that the Covid-19 pandemic, while primarily a health crisis, significantly impacted the international order in multifaceted ways. They highlighted that the pandemic-induced economic shocks led to a dual decrease in both demand and supply. Moreover, they concluded that amidst these challenges,

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<sup>67</sup> Jack Quirk "Covid-19 and Export Restrictions: the Case for Free Trade" Loyola University Chicago International Law Review Volume 17 Issue 2 Summer 2021 Article 4 2021.

<sup>68</sup> Pepita Barlow, May CI van Schalkwyk et al "COVID-19 and the collapse of global trade: building an effective public health response" Lancet Planet Health 2021; 5: e102–07

there are unique prospects for governments genuinely concerned about their people's welfare. To capitalize on these opportunities, governments must explicitly explore the interconnection between trade and health. They emphasized that effective global governance at the intersection of trade and health is crucial for a more cohesive global response, especially when facing future health threats. This moment, they noted, presents a valuable opportunity to reshape trade frameworks to ensure healthier and sustainable lives for all, aligning with the aspirations outlined in the UN's 2030 Sustainable Development Agenda."

Rachel D. Thrasher, Sandra Polaski, et al <sup>69</sup> highlighted that numerous emergency measures implemented by governments amid the pandemic clashed with WTO agreements, free trade principles, and international investment pacts. Yet, they underscored that these policy interventions serve as crucial tools for pinpointing existing loopholes in trade regulations that hinder an effective pandemic crisis response, prompting the need for corresponding reforms. Acknowledging the evident economic and societal repercussions of the pandemic, they emphasized the necessity for trade and investment agreements to exhibit flexibility in acknowledging governments' actions aimed at safeguarding the welfare of their citizens, achieving social fairness, and preserving the environment as paramount concerns."

Louise Curran, Jappe Eckhardt and Jaemin Lee<sup>70</sup> conducted an analysis of various trade measures adopted by countries in response to the pandemic, utilizing a comprehensive database from the International Trade Centre. They delved into the specifics, including types, characteristics, and scope of these measures, while scrutinizing their legality in accordance with WTO regulations. Their research suggests that a considerable portion of these trade measures are

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<sup>69</sup> Rachel D. Thrasher Sandra Polaski et al "Policy Responses to COVID-19 Lessons for the Global Trade and Investment Regime" Global Development Policy Center, Boston University, GDPC Report, November 2021

<sup>70</sup> Louise Curran, Jappe Eckhardt and Jaemin Lee "The trade policy response to COVID-19 and its implications for international business" Critical Perspectives on International Business, Volume 17 Issue 2, May 2021.

likely defensible. However, they observed that certain measures lack justifiability. Their viewpoint highlights that the extensive deployment of conflicting trade measures within a brief period substantially erodes global trade norms, which have long served as the cornerstone of international commerce."

Chad P. Bown <sup>71</sup> conducted an in-depth examination of the limitations imposed by the EU, US, and China, meticulously analysing their impact on developing nations. His perspective posits that export restrictions represent a costly and problematic facet of trade policy, capable of triggering a domino effect of further restrictions. By scrutinising the repercussions of export limitations on agricultural goods during the late 2000s, he identified a 'multiplier effect' exacerbating the scarcity experienced during that period. At that time, one nation's restriction not only exacerbated the global food shortage but also induced other countries to impose stricter export limitations. In the context of the Covid-19 era, they expressed concerns about the heightened vulnerability of developing countries due to widespread imposition of restrictions. This undoubtedly places them in an arduous position, isolating them from foreign supplies and significantly impeding their ability to effectively manage the pandemic."

Anna Stelling, Ingrid Berglund, et al<sup>72</sup> thoroughly explored the arguments advocating for the disruption of the global value chain in favour of bolstering local production, a movement driven by concerns over economic and health vulnerabilities arising from import dependencies. However, they argue that both the COVID-19 crisis and the long-term well-being of global populations necessitate a functioning global marketplace. Noting the predominant Research and Development (R&D) activities in the US and EU contrasted with manufacturing primarily

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<sup>71</sup> Chad P. Bown "COVID-19: Demand spikes, export restrictions, and quality concerns imperil poor country access to medical supplies" Centre for Economic Policy Research, CEPR Press, London, 2020.

<sup>72</sup> Anna Stelling, Ingrid Berglund and Henrik Isakson "How trade can fight the pandemic and contribute to global health" Centre for Economic Policy Research, CEPR Press, London, 2020.

occurring in countries like Mexico, China, and Singapore, they emphasized the interdependence within this global landscape. In their perspective, they contend that protectionism holds little promise, especially amid a global crisis. Their conclusion highlights the potential of trade as a facilitator for public health enhancement and preparation for future outbreaks. Proposing a solution, they advocate for the initiation of a fresh cycle of global tariff negotiations within the framework of the WTO to address these complexities and foster a more resilient global trade system."

Simon Evenett, Matteo Fiorini, Johannes Fritz, et al<sup>73</sup> emphasized the emergence of a wealth of new and frequent data tracking alterations in trade policies pertaining to medical products and food since the pandemic's onset. Their investigation delved into the weekly adoption of these policies by various nations from January to October 2020. Their findings notably highlighted the proliferation of measures impacting Personal Protective Equipment (PPE). What stood out was the observation that countries reacted to these challenges using diverse combinations of export and import liberalization measures, thereby instigating substantial deviations from pre-pandemic trade policy frameworks. Intriguingly, some nations refrained from employing any trade policy tools whatsoever during the entirety of the pandemic, showcasing a distinct approach amid this global crisis."

Shekhar Aiyar, Davide Malacrino, et al<sup>74</sup> in their investigation delved deeply into the ramifications of containment strategies on supply chains amid the pandemic. Their primary emphasis lay in meticulously analysing trade data at the granular level of specific products,

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<sup>73</sup> Simon Evenett, Matteo Fiorini, Johannes Fritz et al "Trade Policy Responses to the Covid-19 Pandemic Crisis Evidence from a New Data Set" World Bank Group, Macroeconomics, Trade and Investment Global Practice Working Paper 9498, December 2020.

<sup>74</sup> Shekhar Aiyar, Davide Malacrino, et al "International Trade Spillovers from Domestic Covid-19 Lockdowns" IMF working paper, WP/22/120 June 2022.

spanning from the pandemic's outset until mid-2021. Their focus centred on gauging the intensity of the pandemic, encompassing metrics such as case numbers, fatalities, lockdown stringency, and changes in mobility patterns. What they uncovered was a notable shift in consumer demand away from services and toward tangible goods.

Their research illuminated a substantial decline in service imports, notably impacting industries reliant on tourism services. Their pivotal conclusion was that the pandemic catalysed a significant reconfiguration in global trade dynamics, with countries experiencing shifts in demand patterns, notably away from services. Intriguingly, they discovered a correlation between a nation's trade partners and their respective health preparedness, indicating that the policies adopted by these partners significantly influenced outcomes, leading to consequential predictive errors. Ultimately, this suggests that the decisions taken by trading counterparts wielded substantial influence on outcomes, thereby emphasizing the interconnectedness of global economies amidst such crises.

Robert Wolfe<sup>75</sup> critical examination of transparency in trade policies amid the pandemic juxtaposed against their practical application is an essential inquiry. The individual in question underscored the imperative need to shed light on these policies, given the pervasive adoption of restrictive or discriminatory measures by governments. In his view, the exposure of these policies holds significant importance as it furnishes indispensable information for economic stakeholders and policymakers alike.

A key observation made was the correlation between transparency in trade policy and the cultivation of trust. It was posited that when these policies are transparently communicated and

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<sup>75</sup> Robert Wolfe “Exposing governments swimming naked in the Covid-19 crisis with trade policy transparency (and why WTO reform matters more than ever)” Centre for Economic Policy Research, CEPR Press, London, 2020.

executed, trust among nations and actors within the economic sphere is fortified, thereby fostering a more conducive environment for trade.

The ultimate stance taken was a clarion call for a reformation within the World Trade Organization (WTO). The argument asserted that such reform is pivotal to ensure more robust reporting mechanisms and the optimal utilization of available information. The envisaged outcome of these reforms is to cultivate a more transparent, accountable, and informed landscape within global trade, fostering better cooperation and coordination among nations for more effective policy implementation.

It is noteworthy to emphasize that while there is a body of existing literature that delves into the realm of International Economic Law in the context of the Covid-19 pandemic, a distinctive void exists, as none of the existing literature exclusively delves into the ramifications of export restrictions on African nations. This void is particularly poignant given the undeniable fact that Africa bears a substantial share of the adverse consequences brought about by the pandemic. This can be attributed to a confluence of factors, foremost among them being the fact that the African continent is home to more than 70% of the world's Least Developed Countries (LDCs) and plays an integral role in the global economy as a significant buyer. The crux of this research endeavor is to meticulously gauge the differential impact of export restrictions on African countries amid the pandemic, shedding light on an underexplored facet of the international economic landscape

## 2.2. Historical Development of International Economic law

International economic law rose to prominence during the 20<sup>th</sup> century.<sup>76</sup> Since its emergence as a significant area of law in international relation, it has evolved into a massive and dynamic aspect of law. It has also been growing rapidly and changing fast. Today, as far as the relationship of nations among themselves is concerned, international economic law is regarded as a crucial aspect of international law.<sup>77</sup> The emergence and rapid growth of international economic law have indeed been commendable.

Prior the second world war, international economic law was not regarded as real law, even by the undemanding standards of legal validity and efficacy applied by most international lawyers. At best, it was regarded as economic soft law.<sup>78</sup> Simply put, soft laws attempt to reconcile the aims of international collective action and limited constraint by creating largely subjective obligations. They are vague with respect to their content or weak with respect to the requirements of the obligation. Also, international treaties and textbooks usually contained little or no information about this aspect of law.<sup>79</sup> This was because there were few rules governing this aspect of law. Also, less attention was paid to it and it was sometimes not regarded as real law.

Today however, international Economic law is one of the most prominent areas of international relationship. The increase in the number of international agreements on trade, finance, investment and other economic matters coupled with the existence of different multilateral and

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<sup>76</sup> Julio Fuandez “International Economic law and Development Before and after Neo-liberalism” (University of Warwick) 2014.

<sup>77</sup> Ibid.

<sup>78</sup> Tadeusz Gruchalla-Wesierski “A Framework for Understanding Soft Law” McGill Law Journal, Vol 30, 1984

<sup>79</sup> Prior the second World War, most international Economic rules were either not binding or highly contested.

bilateral economic group suffice to prove this fact.<sup>80</sup> International economic law today seeks to regulate all aspects of international economic relations between states. It derives from different sources including national laws, bilateral and multilateral agreements and encompasses a wide spectrum of subjects including trade in goods and services, financial law, economic integration, development law, business regulation and intellectual property.<sup>81</sup>

The emergence of International Economic law can also be traced to the emergency of major economic organisations. Without gainsaying, the discourse on the evolution of international economic law would be incomplete without a reference to post-war settlement which led to the establishment of these major institutions which today play a cogent role in international economic law today. These include the United Nations, the World Bank and the International Monetary Fund (the Bretton Woods institutions) and the General Agreement on Tariffs and Trade (GATT) and so on. These systems regulate the context of international economic law today. It is pertinent to examine some of these organizations.

### **2.3. Major International Economic Organisation**

Simply put, International economic organisations comprise all organisations globally which exist to facilitate cooperation, coordination and synergy in the domain of global economic relation. These organizations constitute the foundational stone upon which international economic policies, challenges and concerns are addressed.<sup>82</sup> They work together in ensuring stability in international economic relationships mostly through trade, fiscal, monetary and financial

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<sup>80</sup> Hossain, M. B., & Rahi, S. T. (2018). International Economic Law and Policy: A Comprehensive and Critical Analysis of the Historical Development. *Beijing Law Review*, 9, 524-546.

<sup>81</sup> Jean M. Wenger "International Economic Law" Electronic Resource Guide, American Society of International Law. <Available at [https://www.asil.org/sites/default/files/ERG\\_IECONL.pdf](https://www.asil.org/sites/default/files/ERG_IECONL.pdf)>. Last accessed on September 20, 2023.

<sup>82</sup> Stephen A. Silard "International Economic Institutions: The Challenge of Coordination" *American University International Law Review* Volume 4, Issue 1 Article 11 2011.

integration. This cooperation can be in form of Free Trade Area, Custom Union, Common Market or total Economic Integration.<sup>83</sup>

These organisations emerged during a period of war and global economic hardship. This emergency represents the global realization that the interdependent world economy would thrive only on the strength of national prosperity and international cooperation. Both of which are inseparable. Economic organisations contribute significantly to the congregate economic growth and influence distribution of resources among economies.<sup>84</sup>

Literature generally agrees that there are three major international economic organisation, that is;

- a. The International Monetary Fund;
- b. The World Bank Group; and
- c. The World Trade Organization.<sup>85</sup>

The above organisations were established during the Bretton Woods's conference in July 1944 and are generally called "Bretton Wood institution."<sup>86</sup> It is apposite to explore the above listed economic organisation and their relevance to International Economic law. Other economic organisations not listed above shall also be briefly considered.

### **2.3.1. The International Monetary Fund (IMF)**

The International Monetary Fund was founded as specialised agency of United Nation in December 1945. IMF emerged primarily to build a framework for international economic

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<sup>83</sup> Ebele Stella Nwokoye "International Economic Institutions" Joint University Examination Board, Nnamdi Azikiwe University, 2018.

<sup>84</sup> Daron Acemoglu Et Al "Institutions as A Fundamental Cause of Long-Run Growth" Handbook of Economic Growth, Volume IA. Edited by Philippe Aghion and Steven N. Durlauf, 2005.

<sup>85</sup> Ibid.

<sup>86</sup> Michael D. Bordo "The Bretton Woods International Monetary System: A Historical Overview" University of Chicago Press, 1993. Available at < <http://www.nber.org/chapters/c6867>> last accessed September 25, 2023.

cooperation. it operates as a cooperative organisation with 190 member countries around the world.<sup>87</sup> IMF was established after the World War II, during Bretton Woods Conference of 1945.<sup>88</sup> At that time, it had 44 member countries out of which 29 members signed the IMF Articles of Agreement. IMF focuses on matters such as trade, fiscal policies, sovereign debt, financial technology, sustainable development goals, among other. It performs international regulatory, financial and consultative functions.

The purposes of IMF are captured under Article 1 of the Agreement as thus:

- (i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- (ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
- (iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- (iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
- (v) To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their

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<sup>87</sup> See generally, International Monetary Fund at <https://www.imf.org/topics> . (last accessed October 6, 2023).

<sup>88</sup> Ibid.

balance of payments without resorting to measures destructive of national or international prosperity.

- (vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.
- (vii) IMF performs international regulatory, financial and consultative functions.

The IMF has a 3-tier decision-making structure comprising of

- i. The Board of Governors;
- ii. An Executive Board; and
- iii. A managing Director.

The Board of Governors constitute the highest decision-making body of the IMF. It is made up of one governor and one alternative governor from each member state.<sup>89</sup> In most cases, the minister finance or any other equivalent position is appointed as the governor by the member states. The Board of Governors is conferred with a wide range of power; however, these powers are mostly delegated to the Executive Board to exercise.<sup>90</sup> Notwithstanding, the exercise of certain power is still retained by the Board of Governors.<sup>91</sup> For example, the exercise of power to approve Special Drafting Right (SDR), compulsory withdrawal of members, amendment of Articles and By-laws and admittance of new members are exercisable only by the Board of Governors. The Board of

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<sup>89</sup> International Monetary Fund “Governance Structure” Available at <https://www.imf.org/external/about/govstruct.htm>. (last accessed October 6, 2023).

<sup>90</sup> See generally the Articles of the International Monetary Fund 2010 as amended

<sup>91</sup> Article XXV.

Governor also appoint the board of directors and have the absolute power on matters of interpretation of the IMF Articles of Agreement.<sup>92</sup>

The Board of Governor makes decisions in an annual general meeting. During this time, it meets with the World Bank Group to discuss matters affecting the IMF and the World Bank and arising matters on international finance and economies and outsource steps to be taken.

During the Covid-19 pandemic for instance, IMF took significant steps in providing financial assistance to unprecedented number of countries facing covid-19 related financial crisis, especially the least developed countries. For instance, IMF increased access limits for emergency financing and relaxed the organization's lending facilities temporarily through the end of 2021.<sup>93</sup> Also, debt relief was provided to twenty-nine of the poorest members of IMF through the Catastrophe Containment and Relief Trust. Initiatives were also taken for debt relief for a full two-year period through April 2022. This was to cover the debt relief from October 2021 to April 2022 and to ensure that adequate grant resources are in place to address the needs of members qualified for the purport.<sup>94</sup>

It is not worthy that the Board of Governors has two ministerial committees that delivers recommendation to the board. That is; the International Monetary and Financial Committee (IMFC) and the Development Committee. The IMFC gives recommendation on matters affecting global economy while the Development Committee gives recommendation on development in emerging countries.

The Executive Board on the other hand is the body responsible for overseeing the day-to-day activities of the IMF. It is made up of five members from countries with the highest quotas and

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<sup>92</sup> Article III.

<sup>93</sup> See IMF Annual Report 2021.

<sup>94</sup> Ibid.

nineteen executive Directors who are elected by membership.<sup>95</sup> The IMF Article confers power on the Board of Governors to increase or decrease the number of directors in the Executive board.

### **2.3.2. The World Bank Group**

The World Bank Group is one of the world's largest sources of funding and knowledge for developing countries. It is a unique global partnership made up of five institutions that work collaboratively for sustainable solutions, aimed towards reducing poverty and building the common prosperity in developing countries<sup>96</sup> The bank was originally named “the International Bank for Reconstruction and Development (IBRD)”. It began operations in 1946 with a membership of 38 states, including the United States, Britain, and France.<sup>97</sup>

At inception, the purpose of the bank was to provide loans to the shattered economies of Europe. The Bank turned its attention to Africa, Asia, and Latin America 1950s and 1960s, as Europe began to recover from economic depression following the Second World War. The bank began to offer loans, guarantees, technical assistance, investment advice, and political risk management to middle-income countries seeking to modernize and develop.<sup>98</sup>

The World Bank Group has four specialized institutions which assist the bank in achieving its objectives, that is;

- i. International Development Association (IDA)
- ii. International Finance Corporation (IFC)
- iii. Multilateral Investment Guarantee Agency (MIGA)

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<sup>95</sup> Article XII.

<sup>96</sup> See generally World Bank Group “Responding To The Covid-19 Pandemic And Rebuilding Better.” Available at < [www.worldbank.org/changinglives](http://www.worldbank.org/changinglives)> last accessed on September 25, 2023.

<sup>97</sup> See “International Economic Relation” National Open University of Nigeria Lecture Handbook 2015.

<sup>98</sup> Ibid.

iv. International Centre for Settlement of Investment Disputes (ICSID)

The IDA was established in 1960 to offer support for the poorest countries of the world. Its primary aims include the reduction of poverty, issuance of loans and offer of grants for programs that boost the world's economic growth. The ID has been identified as the largest source of assistance to the poorest countries of the world.<sup>99</sup> In issuing loan, IDA operate a zero or low-interest loan mechanism. Recipient who are in distress mostly receive assistance in form of grant and not loan.

The IFC as an institution of IMF offers plays a critical role in mobilising fund to companies and financial institutions around the world for them to widen their capacity and to foster their access into the capital market system. The IFC also offer advisory services to government and business and contribute to raising equity for them.<sup>100</sup>

MIGA was created in 1988 as a member of World bank. It offers political risk assurance/guarantee to a wide range of project in the developing member state. MIGA requires a project to be sound and meet social and environmental needs to commit itself to financing them.<sup>101</sup> Article of the Convention establishing the Multilateral Investment Guarantee Agency<sup>102</sup> summaries the function of MIGA as thus:

- i. To issue guarantees, including coinsurance and reinsurance, against non-commercial risks in respect of investments in a member country which flow from other member countries;

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<sup>99</sup> IDA "Investing in Growth, Resilience and Opportunity" September 2019.

<sup>100</sup> IFC 2020.

<sup>101</sup> MIGA, 2020. Available at < <https://inquiries.worldbank.org/knowledgebase/articles/931722-miga>> (last accessed October 6, 2023).

<sup>102</sup> 1895

- ii. To Carry out appropriate complementary activities to promote the flow of investments to and among developing member countries; and
- iii. To exercise such other incidental powers as shall be necessary or desirable in the furtherance of its objective.

The ICSID was established in 1966 as an international arbitration center for the settlement of investment disputes among member states. The institution adopts a wide range of Alternative Dispute Resolution (ADR) in fulfilling its role. The latest rule of ICSI came to force in July 2022.

ICSID has settled more than 600 cases since its establishment<sup>103</sup>

The impact of the World Bank was quite visible during the Covid-10 pandemic. The organization was recognized for mounting the largest crisis response in its history to help over 100 low- and middle-income countries fight the health, economic, and social impacts of COVID-19.<sup>104</sup> Also massive support was to developing countries to access vaccines directly from manufacturers and under the COVAX initiative.

The Bank is supporting developing countries' access to vaccines, both through COVAX and directly from manufacturers. A \$20 billion financing envelope over two years is helping countries purchase vaccines and set up systems for deployment. As of August 2021, we have committed \$4.6 billion for 54 countries. After the pandemic, the bank has continued to give support to countries in recovering from the social and economic impact of the global crisis.<sup>105</sup>

### **2.3.3. The World Trade Organization**

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<sup>103</sup> See Pence Law Library Guide "International Commercial Arbitration: International Centre for Settlement of Investment Disputes". Available at < <https://wcl.american.libguides.com/c.php?g=599758&p=4229077>> (last accessed October 6, 2023).

<sup>104</sup> Ibid.

<sup>105</sup> World Bank Group "Saving Lives, Scaling-Up Impact and Getting Back on Track" World Bank Group COVID - 19 Crisis Response Approach Paper 2020.

The World Trade Organisation (WTO) is one of the youngest international organizations. It is also the largest economic organisation around the world covering about 98% of the total world's trade.<sup>106</sup> WTO was established in January 1995 to succeed the General Agreement on Tariffs and Trade (GATT), which was earlier established in 1947.<sup>107</sup> GATT arose in 1947 out of the ruins of the Second World War, just as did the other Bretton Woods institutions. It was the product of unprecedented international cooperation by an international community that was deeply scarred by the damage and destruction that endless warfare had brought about.

GATT has profound impact in creating a new era of international cooperation.<sup>108</sup> However, it was aborted in an effort to create the International Trade Organisation, pressures of numerous other national and regional conflicts and the Cold War. GATT eventually metamorphosed into the WTO in 1995.<sup>109</sup>

The WTO deals in a wide range of activities regulated by legal agreements that are usually regarded as being lengthy and complex. Its interest includes food sanitation, intellectual property, world of work, agriculture, textiles and clothing, banking, industrial standards and much more. In all its agreement, some basic principles are regarded as fundamental and they constitute the foundation of the multilateral trading under the WTO system. Some of these principles include Most-Favored-Nation (MFN)<sup>110</sup>, National Treatment, Trade Liberalization and economic growth<sup>111</sup>

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<sup>106</sup> See generally WTO. Available at <https://www.wto.org/>. (last accessed October 6, 2023).

<sup>107</sup> Ibid.

<sup>108</sup> Craig VanGrasstek "The History and the Future of The World Trade Organization" WTO Publications 2013.

<sup>109</sup> Ibid.

<sup>110</sup> This principle prevents WTO countries from discriminating between their trading partners, by granting someone a special favor (such as a lower customs duty rate for one of their products). Any country doing this must do the same for all other WTO members.

<sup>111</sup> World Trade Organization "Understanding the WTO" World Trade Organization Information and External Relations Division, 2015.

During Covid-19, the WTO contributed significantly in monitoring and facilitating trade in essential goods. It also established an internal, cross-cutting working group, directed to help ensure comprehensive monitoring of COVID-19-related trade measures touching on WTO work.<sup>112</sup>

It is noteworthy that aside the above discussed international financial organization, other prominent organization for economic purposes include the African Union (AU), Asian Development Bank (ADB), Bank for International Settlement (BIS), United nation Conference on Trade and Development and so on. These all play prominent roles in shaping the international economic relations.

## **2.4. Other International Economic Organisations**

### **2.4.1. European Union (EU)**

The EU is distinctive economic and political partnership of twenty-seven members states located primarily in Europe<sup>113</sup> The emergence of EU is traceable to a movement which began in the wake of the second World War with the aim of strengthening economic and political cooperation throughout Europe. EU was initially established as the European Coal and Steel Community, which was established in 1950 by six European countries; France, Netherlands, Belgium, Luxembourg, Germany, and Italy. In 1957, it became became the European Economic Community in 1957 under the Treaty of Rome. As a single European Act was enacted in 1986 to create a common market for European countries, the EC metamorphosed into the European Union. The replacement of the EC with EU took effect by the Maastricht Treaty of 1993.<sup>114</sup>

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<sup>112</sup> WTO Annual Report 2021.

<sup>113</sup> Kristin Archick “The European Union: Questions and Answers” Congressional Research Service (CRS) Report RS21372 February 6, 2023.

<sup>114</sup> See generally The Treaty on European Union.

Since the beginning of the integration process of the EU in 1950s, the organisation has played integral role in the economic stability and prosperity of the European continent.<sup>115</sup> Some major achievement of the organisation included the establishment of a single market for free movement of goods, services and people within the continent, unified trade policy and most importantly the use of common currency. This currency has been adopted by twenty countries in Europe.

The role of the EU in international trade and investment can not be overemphasised, particularly in the promotion of an open and rule-based international trade and investment order<sup>116</sup>

#### **2.4.2. Organisation for Economic Co-operation and Development (OECD)**

The OECD was established in 1961 to facilitate world trade and economic development. it has its roots traceable to the Organisation for European Economic Cooperation (OEEC) established in 1948 after the Second World War. The OEEC was established for reconstruction of European through the administration of American and Canadian aid.

Article 1 of the Convention on the OECD<sup>117</sup> underscores the objectives of the organisation as thus;

- a. to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- b. to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and

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<sup>115</sup> Ibid.

<sup>116</sup> Steve Woolcock “The Role of the European Union in the International Trade and Investment Order” Jean Monnet Centre of Excellence for International Trade and Globalisation, Discussion Paper No. 2019-02 May 2019.

<sup>117</sup> The Convention on the OECD 1060.

- c. to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

In today's interdependent world, the functions of OECD are becoming increasingly important. The organisation provides a forum for governments to work collaboratively and to share experiences with the ultimate goal of addressing global problems.

#### **2.4.3. World Economic Forum**

The World economic forum is an international organisation for public-private cooperation<sup>118</sup> t was established in 1971 as a not-for-profit foundation with headquarters in Geneva. While the organisation is independent and impartial, it operates to drive global entrepreneurship with highest standard of governance.<sup>119</sup>

#### **2.4.4. United Nations Conference on Trade and Development UNCTAD**

The UNCTAD is a leading UN body dealing with trade and development.<sup>120</sup> Although, the UNCTAD reports to UN General Assembly and the Economic and Social Council, it however has its own membership, leader and budget. UNCTAD works with member States, international organizations, academics, non-governmental organizations, media, civil society and youth. The first United Nations Conference on Trade and Development was held in 1964 by the UN General Assembly held the first. The conference has since then been institutionalised and holds every four years.

### **2.5. Regional Economic Organisations within Africa**

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<sup>118</sup> See generally "The World Economic Forum". Available at <https://www.weforum.org/about/world-economic-forum/> last accessed December, 6 2023.

<sup>119</sup> Ibid.

<sup>120</sup> UNCTAD 2023.

The integration landscape within Africa is characterized by the presence of several regional economic communities, among which eight hold a pivotal role as fundamental elements of the African Union. These key entities include the Arab Maghreb Union (AMU), Community of Sahel–Saharan States (CEN-SAD), the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African State (ECCAS), Economic Community of West Africa (ECOWAS), IGAD, and Southern African Development Community (SADC) and comprise the core, serving as crucial frameworks driving the regional integration agenda forward. This responsibility demands member States to base their decisions on integration upon the principles of good faith and the adherence to treaty obligations, which in turn facilitates the effective execution of integration policies.

It is apposite to examine them at this juncture.

#### **2.5.1. The Arab Maghreb Union (AMU)**

The AMU was formed in 1989 by five Maghreb countries in Africa as an economic and political organization. The countries including, Tunisia, Morocco, Libya, Algeria and Mauritania have a definite historical, cultural and language tie, with headquarters in Rabat, Morocco. AMU represents 19% of Africa's area and 40% of the Arab world.

The treaty establishing the AMU emphasises four core objectives of the organization. These include;

- a. On the international level: to achieve concord between the Member States and promote close diplomatic cooperation based on dialogue;
- b. On the defence level: to safeguard the independence of each of the Member States;

- c. On the economic level: to realize industrial, agricultural, commercial, and social development of Member States through the commitment of the necessary means, particularly the launching of common projects and the elaboration of global and sector-based programmes;
- d. On the cultural level: to establish cooperation aimed at promoting education at different levels, preserving the spiritual and moral values inspired by the magnanimous teachings of Islam, and safeguarding the Arab national identity through the capitalization on appropriate means such as the exchange of teachers and students, the creation of academic and cultural institutions, as well as the establishment of Maghreb institutes.”

The AMU is governed by the Presidential Council which acts as the supreme authority of the union.

Article 16 of the AMU treaty empowers the member States to freely conclude bilateral agreements, among themselves or with other States or groupings, as long as such bilateral agreements do not violate the provisions stipulated in the AMU treaty.

While AMU exist as an economic organisation in Africa, its Economic outlook has been significantly outward. This is evident in the organisation’s choice of trading partner, the most significant of which is the European Union.

### **2.5.2. Community of Sahel–Saharan States (CEN–SAD)**

The CEN-SAD came into existence in 1998 when the establishing treaty was signed by six founding members including Burkina Faso, Chad, Mali, Niger, Libya and Sudan. CEN-SAD today comprises 29 African countries bordering the Sahara and the Sahel, also known as "State

of the periphery of the Sahel-Saharan Zone" By the 2013 revised treaty of CEN-SAD, the organisation has two main foci; regional security and sustainable development. Accordingly, its objective are as follows;

- a) the preservation and consolidation of peace, security and stability in the CEN-SAD zone
- b) Promotion of political dialogue and the fight against cross-border crime and its related scourges such as trafficking in drugs, arms and human beings, money-laundering and terrorism;
- c) combating desertification, drought and climate change through the preservation of natural resources and research in the field of renewable energies;
- d) economic, commercial, scientific and socio-cultural cooperation;
- e) infrastructure development;
- f) the promotion of the free movement of persons, goods and services.

### **2.5.3. The Common Market for Eastern and Southern Africa (COMESA)**

COMESA is identified as the largest regional economic organisation in Africa, comprising 21 member states and a population of about 390 million. The Organisation was established originally as the Preferential Trade Area for Eastern and Southern Africa (PTA) in 1981. The intention was to leverage on a larger market size to achieve greater social and economic cooperation among members states. In 1994, the PTA metamorphosed into the COMESA and has been duly recognized by the African Union.

Article 3 of the Treat Establishing the Common Market for Eastern and Southern Africa provides for the following as the objectives of the organization;

- (a) to attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures;
- (b) to promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its Member States;
- (c) to co-operate in the creation of an enabling environment for foreign, cross border and domestic investment including the joint promotion of research and adaptation of science and technology for development;
- (d) to co-operate in the promotion of peace, security and stability among the Member States in order to enhance economic development in the region; (e) to co-operate in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and
- (f) to contribute towards the establishment, progress and the realisation of the objectives of the African Economic Community

The COMESA has progressively achieved its goal of trade liberalisation through the continuing removal of both tariff and non-tariff barrier to trade. In October 200, COMESA established a Fre Trade Area for the reduction of intra-COMESA tariffs. by the end of 2017, Sixteen (16) members of the organization were already participating in the FTA. COMESA also operate through certain agencies for the realisation of its objectives. Some crucial agencies of the organization are;

- a. COMESA Business Council (CBC)
- b. Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA)
- c. Trade and Development Bank (formerly PTA Bank)
- d. COMESA Regional Investment Agency
- e. COMESA Clearing House

Among others, the COMESA Business Council and the Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA) are special agencies of COMESA. The Business Council is particularly designed to focus on private sector representation which is carried out through facilitation of business interests from apex and sectorial business association membership to all levels of policy formulation and decision making in the region, and private sector development in growth sectors that contribute to the overall competitiveness of businesses in regional and global markets. ACTESA on the other hand is focused on addressing matters of food production and marketing in order to increase market access, remove food trade barriers and such other relevant matters.

#### **2.5.4. East African Community (EAC)**

The EAC was established in November 1999 when the establishing treaty was signed by the three original partner states; Kenya, the United Republic of Tanzania, and Uganda. The treaty began operation in July 2000. The primary objective of the organization is “to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political,

economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs” for the mutual benefit of the members states.

In order to achieve the objective of the organisation, Article 5(3) creates positive obligation on for the member states. Members shall ensure;

- a. the attainment of sustainable growth and development of the Partner States by the promotion of a more balanced and harmonious development of the Partner States;
- b. the strengthening and consolidation of co-operation in agreed fields that would lead to equitable economic development within the Partner States and which would in turn, raise the standard of living and improve the quality of life of their populations;
- c. the promotion of sustainable utilisation of the natural resources of the Partner States and the taking of measures that would effectively protect the natural environment of the Partner States;
- d. the strengthening and consolidation of the long standing political, economic, social, cultural and traditional ties and associations between the peoples of the Partner States so as to promote a people-centered mutual development of these ties and associations;
- e. the mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological development;

- f. the promotion of peace, security, and stability within, and good neighbourliness among, the Partner States;
- g. The enhancement and strengthening of partnerships with the private sector and civil society in order to achieve sustainable socio-economic and political development; and
- h. The undertaking of such other activities calculated to further the objectives 14 of the Community, as the Partner States may from time to time decide to undertake in common.

#### **2.5.5. Economic Community of West Africa (ECOWAS)**

ECOWAS came into existence on May 28, 1975, when fifteen west African countries met in Lagos, Nigeria and signed the establishing treaty. ECOWAS originally was established to foster greater and inclusive economic development in the west African region. Although, its objective today has been further enlarged to accommodate peace and security objectives. The organisation has also adopted several security protocols for this purpose.

Article 3 of the establishing treaty of ECOWAS highlights the objectives of the organisation as thus:

The aims of the Community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations-among Member States and contribute to the progress and development of the African Continent.

In order to achieve this lofty objective, the treaty further create obligations for the community to implement. Among others, the obligation includes;

- a) the harmonization and co-ordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters;
- b) the harmonization and co-ordination of policies for the protection of the environment; c) the promotion of the establishment of joint production enterprises;
- d) the establishment of a common market through; i. the liberalisation of trade by the abolition, among Member States, of customs duties levied on imports and exports, and the abolition, among Member States, of non-tariff barriers in order to establish a free trade area at the Community level; ii. The adoption of a common external tariff and a common trade policy vis-à-vis third countries; iii. the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment;
- e) the establishment of an economic union through the adoption of common policies in the economic, financial, social and cultural sectors, and the creation of a monetary union.

As a major step towards realizing its economic objectives, in 1990, ECOWAS established a free trade area and in 2015, it adopted a common external tariff

### **2.5.6. Southern African Development Community (SADC)**

SADC is a regional economic community comprising of 16 African states. The organisation seeks to promote sustainable and equitable economic growth and socio-economic development. In achieving this organisation seeks to leverage on deeper cooperation and integration, good governance and durable peace and security, among other factors.

The Southern African Development Co-ordination Conference, SADCC, existed as the forerunner of SADC. It was established by governments of the nine Southern African countries in April 1980. The SADCC was transformed into Southern African Development Community (SADC) on 17 August, 1992.

Article 5 of the Treaty of Southern African Development Community (SADC) highlights the core objectives of the organisation. These are;

- a. Promote sustainable and equitable economic growth and socio-development that ensures poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of southern Africa and support the socially disadvantaged through regional integration;
- b. Promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective;
- c. Consolidate, defend and maintain democracy, peace, security and stability;
- d. Promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member states;

- e. Achieve complementarity between national and regional strategies and programmes;
- f. Promote and maximise produce employment and utilisation of resources of the region;
- g. Achieve sustainable utilisation of natural resources and effective protection of the environment;
- h. Strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the region;
- i. Combat HIV/AIDS or other deadly and communicable diseases;
- j. Ensure that poverty eradication is addresses in all SADC activities and programmes; and
- k. Mainstream gender in the process of community building.

#### **2.5.7. Economic Community of Central African States (ECCAS)**

In 1985, the Economic Community of Central African States (ECCAS) was established by ten founding states,<sup>121</sup> namely, Rwanda, Burundi, Cameroon, Gabon, Chad, Democratic Republic of

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<sup>121</sup> Nurettin Can and Abubakar Aliyu Maigari “Economic Regionalism in Africa: A Study of ECCAS (Economic Community of Central African States) International Conference on Management, Economics and Humanities, July 2019.

the Congo, Central African Republic, Republic of the Congo, Equatorial Guinea and Sao Tome. In 1990, Angola also joined ECCAS.

The objective of the organisation is captured under Article 4 of the Treaty Establishing the Economic Community of Central African State (ECCAS) as thus;

It shall be the aim of the Community to promote and strengthen harmonious cooperation and balanced and self-sustained development in all fields of economic and social activity, particularly in the fields of industry, transport and communications, energy agriculture, natural resources, trade, customs, monetary and financial matters, human resources, tourism, education, further training, culture, science and technology and the movement of persons, in order to achieve collective self-reliance, raise the standard of living of its peoples, increase and maintain economic stability, foster close and peaceful relations between Member States and contribute to the progress and development of the African continent

While ECCAS began purely as an economic organisation, the challenges of conflicts and crisis in the region has compelled ECCAS to amend its objective to incorporate the development of capacities for maintaining peace, security and stability as an essential condition for economic and social development.<sup>122</sup> These key areas are now priority to ECCAS.

#### **2.5.8. Intergovernmental Authority on Development (IGAD)**

The establishment of IGAD was born out of the visions to develop to enjoy safe environment and to live peaceably while alleviating poverty and promoting sustainable goals.<sup>123</sup> IGAD came into

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<sup>122</sup> Angela Meyer “Preventing conflict in Central Africa ECCAS caught between ambitions, challenges and reality” Institute for Securities Study, Issue 3, August 2015, Central Africa Report.

<sup>123</sup> Handbook Of the Intergovernmental Authority on Development (IGAD), IGAD 2020.

being in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD), which was earlier founded in 1986. IGAD was established to address the problem of natural disasters such as recurrent and severe droughts in the region. The severity of the problem necessitated concerted national efforts in addition to the support of the international community.

The Agreement Establishing the Inter-Governmental Authority On Development (IGAD)<sup>124</sup> established four authority bodies for IGAD. That is;

- a) An Assembly of Heads of State and Government: this is the highest organ of IGAD. It is responsible for decision making and controlling the functioning of the organisation.
- b) A Council of Ministers: the Council makes recommendation to the Assembly on matter of policy.
- c) A Committee of Ambassadors: the Committee advises the Executive Secretary on the promotion of his efforts in realizing the work plan approved by the Council of Ministers;
- b) Guide the Executive Secretary on the interpretation of policies and guidelines which may require further elaboration;
- d) A Secretariat: the secretariat implements the decision of the Assembly of Heads of State and Government.

## **2.6. Principles Of International Economic Law**

The principles of International economic law can be categorized into two. We have the traditional principles and modern evolving principles of international economic law.<sup>125</sup>

Traditional Principles of International Economic Law

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<sup>124</sup> 1996.

<sup>125</sup> S.P Subedi "Evolution and principles of international economic law" University of London Press 2007.

These include:

- a. pacta sunt servanda;
- b. freedom;
- c. sovereign equality;
- d. reciprocity;
- e. economic sovereignty;

Some other modern principles are

- a) the duty to co-operate;
- b) permanent sovereignty over natural resources;
- c) preferential treatment for developing countries in general and the least-developed countries in particular;

It is pertinent to discuss these principles.

### **2.6.1. Traditional Principles of International Economic Law**

#### **a. Pacta Sunt Servanda**

This is a crucial principle in the development of Public International and it is particularly rooted in International Investment Law. It is one of the oldest and most important principles of international law and its importance cannot be overestimated in international economic law. Simply put, pacta sunt servanda means that agreement must be kept. It is derived from the longer latin maxim *pacta convent quae neque contra leges neque dolo mal inita sunt oemnimodo observanda sunt* which connotes that “Agreements which are neither contrary to the laws nor

entered into fraudulently should be observed in every manner”<sup>126</sup> The principle was first expressly incorporated in the Vienna Convention on the Law of Treatise<sup>127</sup> although it has been in existence long before that time.<sup>128</sup> It existed initially only as an uncodified principle and was contained in different multilateral declarations<sup>129</sup> The principle emerged primarily to prevent unilateral termination of investment contracts and unfair expropriation by states<sup>130</sup> during the period of the World Wars. The period witnessed an unprecedented increase in nationalist seizure of properties and rescission of investment agreement around the world. Some the significant expropriation includes the Russian nationalizations of foreign property in the early 1920s and followed b Mexican expropriation of foreign-oil interests in 1938. Pacta Sunt Servanda therefore emerged as a protection strategy for investment treaties under international law.

Prior to the Vienna Convention, it was common for states to avoid their international obligation while hiding under their national law. The Convention however laid emphasis on the importance of keeping international agreement. The principle of pacta sunt servanda was described as a self-evident truth and has come through ages. Moreover, comparative law and the history of legal systems shows that the principle has obtained universal acceptance. it has been found to be a legal necessity.<sup>131</sup>

There is a plethora of international cases in which international arbitration tribunals have expressly emphasized and recognized the principle of pacta sunt servanda.

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<sup>126</sup> <https://openjurist.org/law-dictionary/pacta-conventa-quaec-neque-contra-leges-neque-dolo-malo-inita-sunt-omni-modo-observanda-sunt> Last accessed on September 20, 2023.

<sup>127</sup> The Vienna Convention on the Law of Treatise is an international agreement which governs treaties between states. It a Convention of the United Nations adopted on May 23, 1969 and entred into force on January 27, 1980.

<sup>128</sup> It was contained both in the Covenant of the League of Nations and later in the United Nation Charter.

<sup>129</sup> Shaishir Divatar “Application of Pacta Sunt Servander in International Investment” available at [https://www.researchgate.net/publication/331860540\\_Application\\_of\\_Pacta\\_Sunt\\_Servanda\\_in\\_International\\_Investment\\_Law/citation/download](https://www.researchgate.net/publication/331860540_Application_of_Pacta_Sunt_Servanda_in_International_Investment_Law/citation/download) . Last accessed on September 20, 2023.

<sup>130</sup> Ibid.

<sup>131</sup> See the Official Records of the United Nations Conference on the Law of Treaties, First Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole).

In the United States versus Great Britain<sup>132</sup> the Permanent Court of Arbitration in the Hague observed that every state has to execute the obligations incurred by treaty bona-fide, and is urged thereto by the ordinary sanctions of international law in regard to observance of treaty obligations.

In the case of Van Bokkelen, between the United States and Haiti, it was stated that Treaties of every kind, when made by the competent authority are as obligatory upon nations as private contracts and are binding upon individuals and should be kept with the most scrupulous good faith.

Similarly, in the Newfoundland controversy between the US and Great Britain<sup>133</sup>, the Permanent Court of Arbitration in The Hague noted that “every State has to execute the obligations incurred by treaty bona fide, and is urged thereto by the ordinary sanctions of international law in regard to observance of treaty obligations.”

#### **b. Freedom**

One of the essential principles in international relations is the principle of freedom. This principle holds that all people have the right to live in peace and security, free from fear and aggression. It also holds that all people have the right to choose their government and to participate freely in the political process. This principle is essential for promoting peace and stability in the world. Without it, countries would be more likely to go to war with each other,

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<sup>132</sup> Alabama claims of the United States of America against Great Britain Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871.

<sup>133</sup> Award of September 7, 1910.

and there would be less chance for democracy and human rights to flourish. Therefore, the principle of freedom is a vital part of any effort to create a more peaceful and just world.

The principle of freedom has been a guiding force in international affairs for centuries. The belief that all people are entitled to certain rights and liberties has led to countless movements for reform, both within countries and between them. While the principle of freedom has often been used to justify warfare, it has also been a powerful force for peace. In 1948, the United Nations adopted the Universal Declaration of Human Rights, which affirmed the right of everyone to life, liberty, and security. This document remains an important symbol of the international community's commitment to freedom for all.

The principle of freedom in international affairs is the belief that all countries should be free to chart their course without interference from other nations. This principle is enshrined in the United Nations Charter and is one of the cornerstone values of the international community. In recent years, this principle has come under pressure from several forces, including terrorism, the proliferation of weapons of mass destruction, and economic recession. However, it remains an essential guiding principle for the international community.

Nicaragua V United States<sup>134</sup>, this case bothers on intervention by the United States in Nicaragua. The Republic of Nicaragua filed in the International Court of Justice against the United States with respect to a dispute and accusing United States of sponsoring military and paramilitary activities in and against Nicaragua, violating Nicaraguan airspace and laying mines in its harbour, thereby violating international law. The United States justified its action as self-defence against the aggression of Nicaragua and also as part of the Cold War. The Court rules in favour of Nicaragua on several counts and also ordered reparations to be made by the United States. It is

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<sup>134</sup> Nicaragua V United States, 1986 I.C.J. 14.

however sad that the United States withdrew from the jurisdiction of the Court and also failed to make reparation.

The case of South China Sea Arbitration<sup>135</sup> is another landmark case in international law. The case was initiated by the Philippines against China before the permanent Court of Arbitration under the United Nations Law of the Sea (UNCLOS). The arbitration sought to determine the rights of the respective parties and in 2006, the tribunal ruled in favour of the Philippines. Although, in this case also, China refused to comply with the ruling of the tribunal.

In Democratic Republic of the Congo (DRC) V. Uganda<sup>136</sup>, DRC brought an action before the international Court of Justice against Uganda for violating international law through aggression and intervention in the internal affairs of DRC during the Congo War.<sup>137</sup> Although Uganda defended its action as self-defence, the Court rules in favour of DRC emphasising that Uganda has violated the sovereignty of DRC and the international law principle of non-intervention. The Court ordered Uganda to cease from its actions in DRC and to pay reparation to DRC.

### **c. Sovereign Equality**

Sovereign Equality of States is a fundamental principle of international. Its fundamental nature can also be seen in its incorporation into the Charter of United Nations. Article 2.1 of the UN charter states that “The Organization is based on the principle of the sovereign equality of all its members” It is worthy of note that the existence of this principle precedes the UN Charter. The

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<sup>135</sup> South China Sea Arbitration.

<sup>136</sup> See Jaemin Lee “Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)” American Journal of International Law, Volume 117, Issue 1, January 202 , pp. 113 – 121.

<sup>137</sup> The Congo war a conflict involving the DRC and many other African States and armed groups. It spanned between 1998 and 2003.

Moscow Conference of 1943<sup>138</sup> has earlier recognized the principle sovereign equality and the Conference itself served as a precursor to the UN Charter. The conference also led to the Declaration of Four Nations (United State of America, the United Kingdom, the Soviet Union and China) on General Security on October, 30, 1943. Under the Declaration on General Security, the principle of sovereign equality has four cardinal areas<sup>139</sup>, which are:

- A. That States are juridically equal;
- B. That each State enjoys the right inherent in full sovereignty;
- C. That the personality of the State is respected as well as the territorial integrity; and
- D. That the State should, under international order, comply faithfully with its international duties and obligation.

The significance of Sovereign equality is seen in that it seeks to equalize states, despite the unequal capacities, especially with respect to size and prosperity.<sup>140</sup> Developed and developing states have a right to exist on equal footing as far as international relation is concerned.

Inclusive in the principle is the rights to recognize and be recognized by other sovereign states, to send and receive embassies, to make treaties with other states, to join international organizations like the United Nations (U.N.) as full members.<sup>141</sup>

Also to this principle is the acquisition of statehood. This is because the privilege of sovereign equality is only available for independent states. As a generally accepted principle, the

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<sup>138</sup> This is the Third Moscow Conference which took place between the major Allies of the World War II. It also led to the Moscow Declaration.

<sup>139</sup> Alex Ansong “The Concept of Sovereign Equality Under International Law” GIMPA Law Review, Volume 1, Number 2, 2016.

<sup>140</sup> L.A Viola, Duncan Snida and Michael Zürn “Sovereign (In)equality in the Evolution of the International” Oxford University Press, 221-236 2015.

<sup>141</sup> T.H Lee “International Law, International Relations Theory, And Preemptive War: The Vitality of Sovereign Equality Today” available at <http://www.law.duke.edu/journals/lcp>.( Last accessed on September 20, 2023).

acquisition of statehood depends on the satisfaction of the criteria listed in article 1 of the Montevideo Convention on the Rights and Duties of States (1933). These criteria are:

- i. Permanent population;
- ii. Defined territory;
- iii. Government; and
- iv. Capacity to enter to relation with other states.

The principle of sovereign equality of states is a foundational principle of international law which has been established in landmark cases. It is noteworthy that legal decisions on this aspect may not be as prevalent as in times past. Some landmark cases are discussed below.

In the case of Jurisdictional Immunities of the State (Germany v. Italy)<sup>142</sup>, the international Court of Justice was faced with a conflict between Germany and Italy bothering on the principle of state immunity and the violation of humanitarian law during the Second World War. The Court held that the domestic court in Italy which entertained civil claims before it for act committed by Nazi during the war violated the sovereign immunity of Germany. The court reemphasised that each state is immune from the jurisdiction of other states.

Similarly, the case of North Sea Continental Shelf case<sup>143</sup> remains a significant case emphasising the equitable delimitation of continental shelves between states, the principle of mutual respect and peaceful resolution of disputes.

#### **d. Reciprocity**

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<sup>142</sup> Sangeeta Shah “Jurisdictional Immunities of the State: Germany v Italy” Human Rights Law Review, Volume 12, Issue 3, September 2012.

<sup>143</sup> I.C.J. Reports 1969, p.3 “Analysing the North Sea Continental Shelf cases (Federal Republic of Germany V. Denmark; Federal Republic of Germany v. Netherlands”

Generally, reciprocity involves responding to a reaction with the same or similar reaction. It has been defined as the mutual concession of advantage or privileges for purposes of commercial or diplomatic relations.<sup>144</sup> It is the return of like behavior.<sup>145</sup>

Reciprocity is also often invoked as an appropriate standard of behavior which can produce cooperation among sovereign states. In an era of economic globalization, which has increased access to global economy, the role of reciprocity cannot be overemphasized. To begin with, this principle is a central norm of the General Agreement on Tariffs and Trade (GATT). Reciprocity has been associated with liberal trade policies since the passage of the Trade Agreements Act of 1934 and from a long period of time, trade liberalization has been promoted on the principle of reciprocity.<sup>146</sup>

From the start, since passage of the Trade Agreements Act of 1934, reciprocity was used with respect to privileges and immunities of mission and consular staffs. It however became a fundamental principle in international trade during 18<sup>th</sup> century<sup>147</sup> in 1815, the United State enacted the Reciprocity Act. This Act provides for elimination of discriminatory tariff by U.S under the principle of reciprocity. This trend was gradually adopted by the Europeans countries. In 1823, Great Britain also enacted the Reciprocity of Duties Act. The principle is also central to the all-inclusive General Agreement on Tariffs and Trade (GATT).

#### **e. Economic Sovereignty**

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<sup>144</sup> Black's Law Dictionary, 11<sup>th</sup> Edition, West Publishing Co. 1990 p1515.

<sup>145</sup> B.I Stiebel "The Principle of Reciprocity and Foreign Direct Investment in the EU" Lisbon Law Review 2019 RFDUL/LLR, LXI (2019.2), 247-264.

<sup>146</sup> Akiki Yanai "Reciprocity in Trade Liberalization" Working Paper series, IDE APEC Study Center, Economic Cooperation Studies Center, Institute of Developing Economies, Jetro 00/01-No 2.

<sup>147</sup> Ibid.

Economic sovereignty entails the autonomy of a state to make fiscal and monetary policy, which is usually directed towards the desire to achieve economic goals and outcome.<sup>148</sup> A country can only be said to be economically sovereign when its economic activities are significantly driven by internal forces as opposed to external forces such as another country. Economic sovereignty enables a country to direct its policies without the undue influence of a third party. The idea of political independence cannot be complete without economic sovereignty.

## **2.6.2. Modern Principles of International Economic Law**

### **a. The Duty to Co-Operate**

The principle of cooperation is increasingly becoming important in the international community. Today, it has also been recognized as a legal duty. The International Covenant for Economic, Social and Cultural Rights (ICESCR) is often referred to as the source of the legal duty of cooperation in international law. Article 2(1), of the ICESCR provides;

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

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<sup>148</sup> Olena M. Moiseienko and Oleh L. Yaremenko “Economic Sovereignty and How to Get It under Current Development of Society and Regulatory System” Journal of Environmental Treatment Technique, 2019, Special Issue on Environment, Management and Economy, Pages: 898-903.

This principle has been established in plethora of decided international cases, including the case of Arctic Sunrise Arbitration<sup>149</sup>, the Pulp Mills on the River Uruguay (Argentina v. Uruguay)<sup>150</sup> and so on. In the former case, the arbitral tribunal underscores the necessity of upholding international law and the principle of cooperation in maritime matters. The case involved a dispute between Netherlands and Russia over the vessel – Arctic Sunrise and its crew which were detained by the Russian authorities. The dispute began when the Arctic sunrise staged a protect at the Russian offshore and the Russian authority responded by detaining the vessel and the crew. The arbitral tribunal ruled that Russia violated the various provisions of the United Nations Convention on the law of the Sea (UNCLOS). The tribunal also emphasised the duty of states to cooperate and respect one another’s right.

In the latter case was initiated before the International Court of Justice. In the case, Argentina argued that Uruguay violated several provisions of the Statute of the River by constructing two pulp mills on the Uruguay River, being part of the border between Argentina and Uruguay. Argentina also submitted that the pulps would affect the river’s environment and consequently affect Argentina’s population resident in the downstream. The Court acknowledged the importance of protecting the environment ruled in favour of Argentina. The Court also emphasised that both countries had a duty to cooperate and share information on matters related to the river, particularly when their respective environments are concerned.

It is noteworthy that during the covid-19 pandemic, the relevance of the principle of cooperation was more apparent. The General Assembly of the United Nations unanimously adopted a resolution calling for ‘intensified international cooperation to contain, mitigate and defeat the

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<sup>149</sup> See generally, Alex G. Oude Elferink “The Russian Federation and the Arctic Sunrise case: Hot Pursuit and other Issues Under the LOSC” International Law Studies, Vol 92, Issue 1, 2016.

<sup>150</sup> ICJ, April, 2020

pandemic. Similarly, the G20 had also pledged to fully cooperate to ‘deploy a robust, coherent, coordinated, and rapid financial package’ in support of at-risk communities facing the “health, economic, and social shocks of Covid-19”.

#### **b. Permanent Sovereignty Over Natural Resource**

This principle emerged during the post World War II era.<sup>151</sup> The principle has been consolidated in different legal instrument<sup>152</sup> as well as in the judgement of the International Court of Justice<sup>153</sup> As the principle presupposes, permanent sovereignty over natural resources encompasses the right of each state to freely deal with its natural resources. The UN Declaration on Permanent Sovereignty over Natural Resources, Resolution 1803 (XVII) exist as a landmark instrument on this principle. Paragraph 1 of the declaration attributes the right to permanent sovereignty to both peoples and nations and provides that this right “must be exercised in the interest of their national development and of the well-being of the people of the State concerned”. Paragraph 2 provides that the “exploration, development and disposition” of such natural resources, “as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities” The principle can be summed up in 3 significant aspects.<sup>154</sup>

##### **a. The Sovereign Right to Freely Dispose, Use and Exploit Natural Resources;**

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<sup>151</sup> See generally, Kumkum shah “Analysis of Doctrine of Permanent Sovereignty over Natural Resources” National Law University Jodhpur, available at: <https://ssrn.com/abstract=3326636>. Last accessed on September 20, 2023.

<sup>152</sup>See International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Article 1 which affirms the right of all people to freely dispose of their natural wealth and natural resources for their own development.

<sup>153</sup> See the case concerning East Timor (Portugal v. Australia) 1991, where the dispute concerns the violation of permanent sovereignty over natural resources.

<sup>154</sup> Ibid.

- b. The freedom of sovereign state to choose its own economic, environmental and developmental policies;
- c. The Right to Freely Regulate, Expropriate and Nationalize Foreign Investments.

*Democratic Republic of Congo (D.R.C.) v. Uganda*<sup>155</sup> constitute a significant decision on permanent sovereignty over natural resources. The cases involved the exploration of natural resources during the Second Congo War. DRC accused Uganda of unlawful exploitation of natural resources within DRC's territory during the conflict. The international Court of Justice ruled in favour of DRC and held Uganda liable for unlawful exploitation of natural resources within DRC's territory without the consent of DRC's government. The court emphasised the breached of territorial integrity and sovereignty of DRC. The case emphasised the principle that states have the inherent right to control and manage their natural resources within their territories. In the case concerning the Gabčíkovo Nagymaros Project<sup>156</sup>, Hungary brought a case before the international Court of Justice with respect to project on the construction of a dam along Danube River. Hungary alleged that the dam construction caused environment damage and therefore refused to participate in the project, but Slovakia continued the project unilaterally. The Court found that both parties violated international law on the shared use of international watercourses, and urged both parties to find a mutual solution to the environmental concerns. It must be noted that both parties have shared control over the river involved.

**c. Preferential Treatment for Developing Countries in General and The Least-Developed Countries**

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<sup>155</sup> Ibid.

<sup>156</sup> 1997 I.C.J 7, I.L.M. 162 (1998).

This principle is significantly captured within the General Agreement on Tariff and Trade (GATT) and the World Trade Organization systems. The principle involves the special advantages or benefit given to certain developing nations in the global context. The essence of this is to support their economic growth and general well-being. This can come in form of trade preference, technology transfer, debt relief, development aid and so on mostly from the developed countries to the developing or least developed countries.<sup>157</sup>

The concept of preferential treatment for developing countries has been an integral part of international trade and economic relations. Recognizing the economic disparities between developed and developing nations, various mechanisms and trade agreements have been established to provide special considerations and advantages to the latter. The rationale behind offering preferential treatment to developing countries lies in addressing historical and structural inequalities in the global economic system. Developed countries, having achieved higher levels of industrialization and economic prosperity, acknowledge the need to assist developing nations in their pursuit of economic growth, poverty reduction, and sustainable development.

#### **General Principles of Preferential Treatment:**

a. **Tariff Preferences:** Developing countries often benefit from tariff preferences, where they are granted lower or zero tariffs on certain goods when exporting to developed markets. This helps stimulate exports, enhance market access, and foster economic development in the beneficiary countries.

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<sup>157</sup> See OECD (2004) “Most-Favoured-Nation Treatment in International Investment Law” OECD Working Papers on International Investment 2004/02 OECD Publishing. <http://dx.doi.org/10.1787/518757021651>. Last accessed on September 20, 2023.

b. **Special and Differential Treatment:** Special and differential treatment provisions are embedded in international trade agreements, recognizing the varying capacities and developmental stages of countries. This may involve extended implementation periods for certain obligations, technical assistance, and flexibility in complying with trade rules.

c. **Trade Facilitation Measures:** Developing countries receive support in improving their trade infrastructure, simplifying customs procedures, and enhancing logistics to facilitate smoother trade flows. These measures aim to reduce transaction costs and enhance the competitiveness of developing nations in the global market.

Preferential treatment for developing countries, especially LDCs, is a crucial mechanism for addressing global economic disparities and fostering inclusive growth. The principles of tariff preferences, special and differential treatment, and trade facilitation measures contribute to creating a more equitable international trade system. While challenges and criticisms persist, the overall impact of preferential treatment on promoting economic development, poverty reduction, and sustainable practices in developing countries cannot be understated. Striking a balance between addressing these challenges and refining preferential mechanisms will be essential for ensuring the continued effectiveness and fairness of these arrangements in the evolving landscape of international trade.

## 2.7. Sources Of International Economic Law

International economic law is a vast area of law that derives from many sources. It is an encompassing field and cut across subjects including trade in goods, trade in services, development law, business regulation and corporate governance, financial law, economic

integration and intellectual property and so on<sup>158</sup>. Broadly speaking, international economic law can be segmented into two main streams, that is; international trade law and international financial law. The sources of international law are however accepted to be the same with the sources of general international law, as codified in Article 38 of the Statute of the International Court of Justice (ICJ), which provides the most authoritative listing of international law sources.

These sources include

- a. Treaties;
- b. International customs;
- c. General principles of law recognized by civilized nations;
- d. Judicial decisions of international courts and tribunals and the teachings of the most highly qualified international lawyers as subsidiary means for determining the rules of law

### **2.7.1. Treaties**

In the context of modern international law, treaties are the most frequent means of creating international obligation<sup>159</sup> and also regarded as the most important source of international law. It is a more deliberate method of creating international regulation, thereby giving specific laws. Simply put, treaties are express agreements undertaken by states among themselves.<sup>160</sup> It can be compared to a legislation in the context of national law. The obligatory nature of treatise derives from the international law principle of “Pacta Sunt servanda”,<sup>161</sup> meaning “agreements are binding”.

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<sup>158</sup> Jean M. Wenger “International Economic Law” E-Resource Guide, American Society of International Law 2015.

<sup>159</sup> See A.D McNair “The Law of Treaties, Oxford, 1961, Pellet, Article 38.

<sup>160</sup> Malcolm N. Shaw “International Law” Cambridge University Press, United Kingdom, 7<sup>th</sup> edition 2014.

<sup>161</sup> Ibid.

Treaties are known by a variety of names such as conventions, Pacts, Charters, Declarations, Covenants and so on. Some popular international treaties include the UN Charter, African Charter on Human and Peoples' Rights, RIO Declaration, Vienna Convention on Diplomatic Relations of 1961. Treaties can be bilateral, multilateral or universal. A universal treaty is such that binds almost all States. For example, the 1945 UN Charter or the 1973 Convention on International Trade in Endangered Species of Fauna and Flora (CITES) is a universal treaty binding about 160 states.

It is worthy of note that only state parties who have appended their signature and ratified a treaty are bound by it. This is a general of international which was illustrated in the case of North Sea Continental Shelf case.<sup>162</sup>

Treaties are foundational instruments in the realm of international law, providing a framework for the regulation of relations between states. In the context of international economic law, treaties play a pivotal role in shaping the legal landscape governing economic interactions among nations. This discussion explores the nature, formation, application, and challenges associated with treaties as a source of international law, with a particular focus on their significance in the field of international economic law.

i. Nature and Characteristics of Treaties:

A treaty is a formal and binding agreement between two or more sovereign states or international organizations.<sup>163</sup> Treaties can be bilateral, involving two parties, or multilateral, involving multiple parties. They may cover a broad range of subjects, including peace, security, human

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<sup>162</sup> ICJ Report, 1969, pp. 3, 25,

<sup>163</sup> Treaty Handbook, United Nations Publication, 2018.

rights, environmental protection, and, significantly, economic cooperation.<sup>164</sup> Treaties are characterized by their consensual nature, legal obligations, and the intention of the parties to create legal rights and duties.

iii. Formation of Treaties:

The process of treaty formation is governed by the principles outlined in the Vienna Convention on the Law of Treaties (VCLT),<sup>165</sup> a key instrument that codifies and standardizes the rules regarding treaties. According to the VCLT, the negotiation, adoption, and authentication of a treaty involve several stages, including the expression of consent by the parties, the drafting of the treaty text, and the formalization of the agreement through the exchange of instruments of ratification or other agreed-upon methods.

iv. Application of Treaties in International Law and Binding Force

Treaties have a binding force on the parties involved, requiring them to adhere to the agreed-upon terms and fulfill their obligations. This binding nature distinguishes treaties from other forms of international agreements and underscores their significance in shaping the conduct of states in various areas, including international economic relations.

v. Treaties in International Economic Law:

Trade and Investment Treaties: Bilateral and multilateral treaties play a central role in international economic law, particularly in the regulation of trade and investment. Trade agreements, such as the General Agreement on Tariffs and Trade (GATT) and its successor, the

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<sup>164</sup> Ibid.

<sup>165</sup> Vienna Convention on Law of Treaties, United Nations, Treaty Series, Vol 1155, p. 331.

World Trade Organization (WTO) agreements, establish rules for the conduct of international trade, addressing issues like tariff levels, subsidies, and dispute resolution.<sup>166</sup>

Bilateral Investment Treaties (BITs): BITs are agreements between two countries that establish the terms and conditions for foreign investment. These treaties often include provisions related to the protection of investments, dispute resolution mechanisms, and the treatment of investors, shaping the legal framework for cross-border investments.<sup>167</sup>

Regional Economic Agreements: Regional economic agreements, such as the European Union (EU) treaties, NAFTA (North American Free Trade Agreement), and others, exemplify the role of treaties in fostering economic cooperation within specific regions. These agreements create integrated economic spaces with common rules, standards, and dispute resolution mechanisms.

Multilateral Financial Agreements: Treaties also govern international financial institutions and their relationships with member states. Agreements establishing institutions like the International Monetary Fund (IMF) and the World Bank set out the terms for financial assistance, conditionality, and other aspects of economic cooperation.

### **2.7.2. International Custom**

Customs can be generally regarded as the rules of conduct, prescribing acceptable and non-acceptable behaviors.<sup>168</sup> Custom develops from the practices of the people and in most cases, or at least at the initial stages, custom is highly unwritten. The term ‘custom’ is often interchanged with usage under international law. However, they are different in characteristics. For a particular

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<sup>166</sup> See International Labour office and International Organisation for Migration “Bilateral Labour Migration Agreements in African Union Members States: taking stock and the way forward” available at <[https://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_721949/lang--en/index.htm](https://www.ilo.org/global/topics/labour-migration/publications/WCMS_721949/lang--en/index.htm)> (last accessed December 10, 2023).

<sup>167</sup> Ibid.

<sup>168</sup> See Malcolm Shaw, *ibid.*

practice to qualify as international custom, the duration, generality of practice, uniformity, consistency and psychological element of such custom must be verified.

In *West Rand Central Gold Mining Co. v. R.*<sup>169</sup> the Court laid down that it must be proved by satisfactory evidence that the alleged rule 'is of such a nature, and has been so widely and generally accepted, that it can hardly be supposed that any civilized State would repudiate it'.

Without doubt, custom is a primitive source of international, this also accounts for how evolving jurisprudence tend to disagree over the value of custom to modern international law.<sup>170</sup>

### **2.7.3. General Principles of Law**

General principles of law are principles which emerged in special cases or circumstance where there were no previous statutory or judicial authority. A court may be faced with a peculiar case on which no existing law relates, the court in such instances would be guided by equity, justice and public policy.

Such principles when recognized by civilized states can also qualify for application under international law.<sup>171</sup> The provision of article 38 on general principle of law can be used to fill a void in any case of "non liquet". Some general principles of law include the principle of Res Judicata, principle of estoppel, the right of Passage, equity and justice and so on. In the Temple case, the ICJ General principles of law are accepted as fundamental norms applicable in various legal contexts. These principles serve as a reservoir of legal norms that can be drawn upon when specific rules are absent or unclear. In the realm of international economic law, where the

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<sup>169</sup> 1905, 2 King Bench 319.

<sup>170</sup> See D'Amato "Concept of Custom".

<sup>171</sup> John Bell "Sources of Law" Cambridge Law Journal, 77(1), March 2018, pp. 40–71.

complexities of global transactions often outpace the creation of specific treaties, general principles play a significant role in bridging gaps and ensuring a coherent legal framework.

Sources of General Principles include:

- i. **Domestic Legal Systems:** General principles of law often find their roots in domestic legal systems. As states develop their legal systems, certain principles emerge as fundamental and widely accepted. These principles may include notions of justice, equity, good faith, and fairness, which transcend national boundaries and become part of the international legal fabric.
- ii. **International Customary Law:** Customary international law, formed by consistent and general state practice, contributes to the development of general principles of law. When states consistently adhere to certain practices in their economic relations, these practices can evolve into general principles that guide the behavior of states in similar situations.
- iii. **Judicial Decisions:** Decisions from international and domestic courts contribute significantly to the identification and development of general principles of law. Courts often rely on established legal principles to resolve cases, and these decisions, over time, contribute to the formation of principles that can be applied more broadly in the international economic context.

Application of General Principles in International Economic Law:

- i. **Subsidiary Role in Treaty Interpretation:** General principles of law play a subsidiary role in interpreting international economic treaties. When the language of a treaty is ambiguous or silent on a particular issue, general principles can be invoked to fill the

- gaps and ensure a coherent interpretation that aligns with the principles of justice, equity, and fairness.<sup>172</sup>
- ii. Customary International Economic Law: As mentioned earlier, general principles can evolve from customary international economic practices. States engaging in consistent economic behavior may establish certain principles that become accepted norms in the absence of explicit treaty provisions. These principles then guide the conduct of states in similar economic situations.<sup>173</sup>
  - iii. Resolution of Disputes: In the absence of specific treaty provisions, disputes in international economic law may be resolved by applying general principles. Tribunals and courts may draw upon fundamental principles such as good faith, estoppel, and reasonableness to render decisions that align with accepted norms and standards.
  - iv. Emerging Areas of International Economic Law: General principles are particularly relevant in emerging areas of international economic law where specific treaty provisions may be lacking. Issues such as digital trade, climate change mitigation strategies, and sustainable development often involve novel challenges that can be addressed by relying on established general principles.<sup>174</sup>

#### **2.7.4. Judicial Decision and Opinion of Scholars**

Judicial decision plays a cogent role as a source of international law. Interestingly, the application of judicial decision as a source of international law is in contrast with the generally known principle of judicial precedent. Article 59 of the Statute of the ICJ provides expressly that

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<sup>172</sup> Ibid.

<sup>173</sup> Mohammed Balayat and Saida Talukde Rahi “International Economic Law and Policy: A Comprehensive and Critical Analysis of the Historical Development” Beijing Law Review, Vol.9 No.4, September 2018.

<sup>174</sup> Herdegen Matthias “Principles of International Economic Law” OPU Catalogue”, Oxford University Press, 2013.

a decision of the Court is not binding on anyone except the parties to the case in which that decision is given and even then, only in respect of that particular case. However, it is common for the ICJ to refer to its own past decisions and most international tribunals make use of past cases as a guide to the content of international law. Hence, judicial decision in the context of international law is often regarded as “subsidiary” source of international. This nevertheless does not render it as lacking of importance. Article 38(d) also provides for the opinion of legal scholars as a source of international law. Indeed, writers such as Gentili, Pufendorf, Vattel have made significant contribution to the development of international law.

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### **Chapter Three**

#### **The Impact of Changes in International Economic Policies Caused by Covid-19 Pandemic**

### 3.1. Trade Policies During Covid-19

Since the declaration by the Director General of the World Health Organization of outbreak of Covid-19 as a Public Health Emergency of International Concern (PHEIC), major changes have occurred in the sphere of international economic policies.<sup>175</sup> The coronavirus disease 2019 (Covid-19) described as the pathogenic severe acute respiratory syndrome-2 (SARS-CoV-2) virus, started in Wuhan city in China during late 2019<sup>176</sup> and spread exponentially across the globe. By July 2023, a total of 767,972,961 confirmed cases of Covid-19 has been reported by the World Health Organization including 6,950,655 reported cases<sup>177</sup> The pandemic was indeed one of the greatest challenges of the United Nations. It was described as a global health and economic crisis.<sup>178</sup>

Although the spread of the pandemic was profound across the continents, there was however a varied impact in its severity among countries. Accordingly, the responses also varied across the globe. The Asia continent was the epicenter, particularly in China, where the outbreak began.<sup>179</sup> It is understood that globalization and urbanization contributed significantly to the exponential spread of the pandemic.<sup>180</sup> The first European case, for example, was reported on January 30, 2020 and it was associated with travel.<sup>181</sup> By the end of 2020, literally all continents have

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<sup>175</sup> WHO “Looking Back at a year that changed the World: WHO’s response to COVID-19” available at <[https://www.who.int/doc/defaultsource/coronavirus/who\\_sprp\\_copyr\\_2020\\_24022021.pdf?sfvr...](https://www.who.int/doc/defaultsource/coronavirus/who_sprp_copyr_2020_24022021.pdf?sfvr...)> (last accessed October 6, 2023).

<sup>176</sup> WHO “Origin of SARS-CoV-2” WHO/2019-nCoV/FAQ/Virus\_origin/2020.1, available at <[https://apps.who.int/iris/bitstream/handle/10665/332197/WHO-2019-nCoV-FAQ-Virus\\_origin-2020.1-eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/332197/WHO-2019-nCoV-FAQ-Virus_origin-2020.1-eng.pdf)>

<sup>177</sup> See <https://covid19.who.int/> (last accessed October 6, 2023).

<sup>178</sup> United Nations Conference on Trade and Development “Impact of Covid-19 Pandemic on Trade and Development: lessons learned” available at <http://creativecommons.org/licenses/by/3.0/igo/> (last accessed October 6, 2023).

<sup>179</sup> *ibid*

<sup>180</sup><sup>180</sup> Bickley, S.J., Chan, H.F., Skali, A. *et al.* “How does globalization affect COVID-19 responses?. *Global Health* **17**, 57 (2021). Available at <https://doi.org/10.1186/s12992-021-00677-5> (last accessed October 6, 2023).

<sup>181</sup> Vicente, P., Suleman, A. COVID-19 in Europe: from outbreak to vaccination. *BMC Public Health* **22**, 2245 (2022).

reported cases of the pandemic and countries began to enforce both trade and non-trade measures in an attempt to curb the spread of the pandemic.<sup>182</sup>

Aside the direct and indirect health impact of the pandemic, the economic impact was quite devastating. Even in Africa where the health impact was relatively mild, the economic setback was quite intense. From the beginning of the pandemic, countries began to adopt different protectionist measures which had massive impact on international trade. This includes physical lock down and border closures, restriction of import and export of goods and so on. The existing framework of international economic relations was greatly challenged with the rapid use of protectionist policies.

This lock down initiative occurred in two faces, that is; domestic and international.<sup>183</sup> Domestically, countries restricted the movement and gathering of their respective subjects. This includes the close down of schools, public and private institutions and other public places. There was also regulation on the maximum number of persons expected to be in a public space at the same time. Social distancing and use of protectives were also enforced.

Internationally, countries shut down their national borders, thereby monitoring restricting and the movement of people and goods while the pandemic lasted. This without gainsaying affected the trade in and access to essential goods, including food and covid-related protective products.<sup>184</sup>

According to the UNCTAD, the global economic downturn during the pandemic was comparable to the global financial crisis of 2008/2009 and was worse than the 2015 global recession.<sup>185</sup>

Literature also reveals that the covid-inspired economic downturn results largely as a result of

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<sup>182</sup> Ibid.

<sup>183</sup> Helen Onyeaka et al “COVID-19 pandemic: A review of the global lockdown and its far-reaching effects” , Science Progress, Vol. 104(2), 2021

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

the massive decline in international trade. The disruptions in terms of declined global demand, cross-border restrictions, port closures and so on, all resulted in the economic setback experienced during covid-19.<sup>186</sup> The global economy reportedly reduced by an annual rate of -3.2% and global trade fell by 5.3% in 2020.<sup>187</sup>

In the wake of the Covid-19 pandemic, trade policies have emerged as a pivotal instrument of governance, wielding significant influence over the global response to the health crisis.<sup>188</sup> While some policies sought to bolster importation of essential goods, a marked divergence was observed when it came to the exportation of crucial drugs and food items. Unfortunately, these restrictions had a disproportionately adverse impact on developing countries, exacerbating the economic setbacks during the pandemic.

According to the Global Trade Alert, more than 220 restrictive measures have been adopted around the world. Banning and limiting the export of certain products became a viable policy for some Covid-19 -related reasons.<sup>189</sup> With China being the epicenter, the Chinese government actions in early 2020, included prioritizing domestic use and making large state-backed purchases on the international. There were selective PPE for export, with destinations which are suspiciously political.<sup>190</sup>

International trade was profoundly impacted during the pandemic.<sup>191</sup> The cross-border restriction culminated in a massive decline in global demand. Global trade in service also reduced sharply due largely to logistics restriction. The travel sector was the most affected sector of trade in

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<sup>186</sup> Ibid.

<sup>187</sup> Congressional Research Service “Global Economic effects of Covid-19” available at <https://crsreports.congress.gov/R46270> (last accessed October 6, 2023).

<sup>188</sup> Brendan Vickers, Salamat Ali and Collin Zhuawu “Trade in COVID-19-Related Medical Goods: Issues and Challenges for Commonwealth Countries” A Special Focus on COVID-19 and the Commonwealth Issue 159, 2020

<sup>189</sup> Congressional Research Service “Export Restrictions in Response to the COVID-19 Pandemic” April 2-21.

<sup>190</sup> Ibid.

<sup>191</sup> UNCTAD 2021.

service, with more than fifty per cent decline.<sup>192</sup> Tourism was literally on halt during the pandemic.<sup>193</sup> The impact of the pandemic was also profound on international investment, and this was felt across all regions and industries. UNCTAD reported a sharp decline in Foreign Direct Investment (FDI), and there was a global fall in value.

Also attributable to the pandemic was a significant disruption in both demand and supply of commodities, resulting a spike in prices of different commodities.<sup>194</sup> This particularly culminated in food insecurity, especially in low-and-middle income countries.<sup>195</sup> The Ukraine war further aggravated this problem. The slowdown in economic activity became a hindrance to accessing raw materials for manufacturing countries, thereby disrupting the global supply chain and market. A lot of manufacturing countries were unable to access intermediate goods. This was due large to restriction on transportation and increased closure.

Another major effect of the pandemic was also seen in the pharmaceutical industry. This is because the pharmaceutical industry forms a major part of the global economy<sup>196</sup> and is also responsible for the available and accessibility of quality health care. The pharmaceutical industry was affected both in terms of logistics management and manufacturing processes. For instance, India and China play key roles in this industry. A significant measure of key intermediate raw materials and APIs used by Indian manufacturing countries are imported from China<sup>197</sup> The restriction on transportation therefore constituted a challenge during the pandemic. as it is often said, “No Man is an Island”. No country was found to be self-sufficient during the pandemic.

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<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> UNCTAD 202.

<sup>195</sup> Ibid.

<sup>196</sup> Shubhabrata Basu and Rimu Chaudhuri “Effect of C Covid-19 pandemic on Pharmaceutical Industry in terms of Inventory and Logistics Management” University of New Mexico UNM Digital Repository Himalayan Research Papers Archive, 30, 2022.

<sup>197</sup> China is identified as a world’s leading exporter of API.

It is noteworthy that most of the protectionist measures taken during the pandemic deviate from the established principles of international economic relation, particularly under the WTO. The WTO's multilateral trading principles particularly frowns at trade restriction. Interestingly, trade restrictions were quite rampant during the pandemic, OECD reports that 2020 was marked by some of the greatest reduction in trade and output volumes since the World War II<sup>198</sup> It is pertinent therefore to consider the existing framework for international trade under the WTO and the changes that occurred during the pandemic. Attention shall be on the impact on African countries.

### **3.2. Legal Framework and Fundamental Principles of Trade Under WTO**

The WTO is the largest economic organization around the world covering about 98% of the total world's trade.<sup>199</sup> It is the major regulatory body for international trade. WTO serves as the only international organization that deals with the global rules of trade with the ultimate goal of ensuring smoothness, predictability and freedom in global trade<sup>200</sup> The legal framework for trade under WTO comprises the various Agreements negotiated and ratified by member states over the years. At WTO, decisions are based on consensus and when friction occurs, the WTO's dispute settlement measures are utilized.

The WTO runs on a great number of Agreements, all of which are impossible to capture in a single thesis. However, underlying these Agreements are the basic and fundamental principles of the WTO. These principles are at the center of the world's multilateral trading system. These principles are as follow:

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<sup>198</sup> OECD Policy Response to Covid-19 Pandemic: Big Shift and Uncertainty” March 2022.

<sup>199</sup> See generally WTO. Available at <https://www.wto.org/>.(last accessed October 6, 2023).

<sup>200</sup> See “WTO in Brief”. Available at [www.wto.org](http://www.wto.org). (last accessed October 6, 2023).

- a. Principle of Non-Discrimination
- b. Principle of Predictability and Transparency
- c. Principle of Liberalization
- d. Trade and development

### **3.2.1. Principle of Non-Discrimination**

The WTO principle of non-discrimination is captured in two cardinal points of “Most-Favored-Nation” MFN and “National Treatment”. These principles are primarily provided for under the General Agreement on Tariffs and Trade (GATT),<sup>201</sup> the General Agreement on Trade in Service (GATS),<sup>202</sup> and the Agreement on Trade-Related Aspect of Intellectual Property (TRIPS).<sup>203</sup>

Under the MFN rule, a WTO member is prohibited from discriminating against their trading partners. For example, discrimination can be in form of reducing tariffs or custom for some particular trading partners which is not available for other trading partners. Article 1 of GATT provides;

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or

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<sup>201</sup> Article 1.

<sup>202</sup> Article 2.

<sup>203</sup> Article 4.

destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

This principle has been relied upon in decided many disputes before the WTO panel. In *Emilio Agustin Maffezini V. The Kingdom of Spain*,<sup>204</sup> Mr. Emilio Agustin, an Argentina national was an investor in Spain. Legal issues arose on the investment and he invoked the provision of MFN which was also adopted in the Argentina-Spain Bilateral Investment Treaty (BIT). Spain was found liable of breach of the BIT. Also, in the case of *United States-Import Prohibition of Certain Shrimps and Shrimps Product*<sup>205</sup>, United States for the held to violation of Article I, XI and XIII of the GATT agreement,

In *European Communities-Measures Affecting the Approval and Marketing of Biotech Products (Biotech case)* 2008,<sup>206</sup> the United States requested consultation with EC on measures taken by EC and its members which affected the importation of agricultural and food from the United States. The WTO appellate body observed that the EC violated the MFN principle by the imposition of approval requirement which was discriminatory against some WTO members.

On the other hand, the National Treatment principle requires that WTO members treat imported and locally produced goods as equal.<sup>207</sup> This rule also extend to foreign and local services, copyright, patent and so on. It requires that the foreigners be treated equally with the nationals of every WTO member state. Article III of GATT, Article XVII of GATS and Article III of TRIPS are instructive on this principle.

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<sup>204</sup> 2000, ICSID Case No ARB/99/7.

<sup>205</sup> US-Shrimps, AB-1998-4- Report of the Appellate Body.

<sup>206</sup> DS292.

<sup>207</sup> See Understanding the WTO, World Trade Organization Information and Media Relations Division, 2005.

Article III (2) of GATT provides thus;

The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

In the case of United States-Section 211 Omnibus Appropriations Act <sup>208</sup> the European Communities requested consultation with the United States over Section 211 of the US Omnibus Appropriation Act of 1998. It was alleged that the section did not allow the registration or renewal of a trademark in the United States, if it was abandoned by a trademark owner whose business and assets have been confiscated under Cuban Law. This US law was held to be in violation of the US' obligation under the TRIPS Agreement.

Also, in Japan-Taxes on Alcoholic Beverages,<sup>209</sup> the European Communities claimed that the Japanese liquor tax system discriminated against some spirits exported to Japan. The appellate Bod affirmed that the Japanese tax law was inconsistent with Article III of GATT.

### **3.2.2. The Principle of Predictability and Transparency**

Undoubtedly, predictability and transparency are essential for well-functioning global markets to be able to provide a resilient supply of essential goods. The crux of this principle is to facilitate trade between WTO members. Transparent procedures enable traders to fully understand the

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<sup>208</sup> Appellate Body Report, 2002.

<sup>209</sup> WT/DS8/17/add.1 2010.

conditions for and constraints on imports, exports and transit operations, and to gain an accurate picture of possible costs.<sup>210</sup> Predictability in the application of regulations and procedures is also important because uncertainty regarding possible time delays in procedures is interpreted as a concealed cost for business, and may be a major obstacle to smooth transactions.<sup>211</sup>

Notification of measures is an essential way through which WTO achieves transparency. Members have obligation to publish and inform the organization of some measures taken in some instance. Notification obligations compliment transparency provisions by requiring countries to share information on trade measures with their trading partners through the WTO. Notification obligations are found throughout the WTO agreements. The WTO agreements have three kinds of notification obligations:

- a. Ad hoc notifications required when a member takes a certain action;
- b. One-time-only notification obligations, most of which are required to provide information on the situations existing at the time of a member's entry into the WTO; and
- c. Regular, periodic notifications that may be annual, semi-annual, biennial, or triennial.

During Covid-19, the WTO Director-General encouraged members to provide the Secretariat with information on any measure or support program which has been taken in the context of the current COVID-19 crisis, recalling that a similar approach had been taken in response to the

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<sup>210</sup> World Custom Organization "Transparency and Predictability Guidelines 2016".

<sup>211</sup> Ibid.

measures taken to control the H1N1 health emergency in 2009-10. The purpose was to increase transparency surrounding these measures.<sup>212</sup>

### **3.2.3. Principle of Liberalization**

Trade liberalization is central to the WTO objectives.<sup>213</sup> Simply put, it is the removal and/or reduction of all forms of restrictions and barriers to cross-border trade. Such barrier can be in form of tariff, surcharges, licensing rules and other technical barriers. The WTO has progressively launched negotiations aimed towards the goal of liberalization.

Statistically, liberalization has been significantly linked to the massive global economic growth in the post-World War II period. In an attempt to recover from the economic damage of the wars, countries began to the process of synergy in economic relation and this has proved to be potent. Tariff has progressively dropped industrial countries and economic growth has been faster.<sup>214</sup>

### **3.2.4. Trade and Development**

More than three-quarters of the WTO members are developing and least developed countries.<sup>215</sup> The organization being mindful of this, has made special provision to facilitate development in these countries. This includes measures to increase trading opportunities, offering of aid and support for infrastructural growth necessary for greater inclusion. This duty is shouldered by the WTO Committee on Trade and Development (CTD).<sup>216</sup>

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<sup>212</sup> WTO “Transparency: Why it Matters in Times of Crisis.” Available at <[https://www.wto.org/english/tratop\\_e/covid19\\_e/covid19\\_e.htm](https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm)>. (last accessed October 6, 2023).

<sup>213</sup> Marc Bachetta and Marion Jansen “Adjusting to Trade Liberalization: The Role of Policy Institution and WTO Disciplines” WTO Publications, Geneva, 2003.

<sup>214</sup> Anthony P. Thirlwall “Trade, Trade Liberalization and Economic Growth: Theory and Evidence” ADB Working Paper, No, 63, 2000.

<sup>215</sup> WTO Annual Report, 2021.

<sup>216</sup> See generally, the Doha Ministerial Conference, November, 2001.

The CTD operates as a focal point for the coordination of all work on trade and development issues in the WTO and deals with a variety of issues, including all developmental issues, technical cooperation and training, and notifications under the Enabling Clause, which allows developed countries to give more favorable treatment to developing countries. The CTD also handles notifications of generalized System of Preferences programmes (in which developed countries lower their trade barriers preferentially for products from developing countries) and preferential arrangements among developing countries such as MERCOSUR (the Southern Common Market in Latin America), the Common Market for Eastern and Southern Africa (COMESA), and the ASEAN Free Trade Area (AFTA).<sup>217</sup>

### **3.3. Shift In Trade Policies During Covid-19**

The COVID-19 pandemic has triggered profound changes across various sectors of society, and the field of international economic law is no exception.<sup>218</sup> The global nature of the crisis has exposed vulnerabilities in existing frameworks, necessitating rapid adjustments to address the economic fallout and ensure the resilience of international economic relations.<sup>219</sup> It is apposite to explore the key changes in the landscape of international economic law brought about by the COVID-19 pandemic, including shifts in trade dynamics, investment patterns, regulatory responses, and the role of international institutions.

#### **3.3.1. Disruption to Global Supply Chains**

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<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> IMF World Economic Outlook, October 2021.

One of the immediate and noticeable impacts of the pandemic on international economic law has been the disruption of global supply chains.<sup>220</sup> Lockdowns, restrictions on movement, and closures of manufacturing facilities in various countries have led to disruptions in the production and distribution of goods and services. This has prompted a re-evaluation of the vulnerability of highly interconnected supply chains and a reassessment of the principles governing international trade.

### **3.3.2. Trade Restrictions and Export Controls**

In response to the pandemic, many countries implemented trade restrictions and export controls on essential goods, including medical supplies and pharmaceuticals. This raised questions about the compatibility of such measures with existing trade agreements, particularly those governed by the World Trade Organization (WTO). The tension between the need for public health measures and the principles of free trade became a focal point in international economic law discussions.

### **3.3.3. Shifts in Investment Patterns**

The pandemic has led to shifts in global investment patterns. Some sectors, such as healthcare, technology, and e-commerce, experienced increased investment, while others, particularly those heavily impacted by lockdowns, faced a decline.<sup>221</sup> Countries have been exploring ways to attract and protect investments, leading to a re-examination of bilateral investment treaties (BITs) and the role of investment arbitration in resolving disputes arising from government measures in response to the pandemic.

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<sup>220</sup> David M. Herold and Lukasz Marzantowicz “Supply Chain Responses To Global Disruptions And Its Ripple Effects: An Institutional Complexity Perspective” *Operations Management Research*, volume 16, pp. 2213-2224, July 2023.

<sup>221</sup> Farheen Siddiqui, A. R. “Impact of The Covid-19 On the Spending Pattern and Investment Behaviour of Retail Investors” *Indian Journal Of Finance And Banking*, 2022, 31-40.

### **3.3.4. Economic Stimulus Measures**

Governments around the world implemented massive economic stimulus measures to counter the economic downturn caused by the pandemic. These measures include fiscal policies, subsidies, and financial support to businesses. The legal implications of such measures, including their potential impact on international trade and investment agreements, have become subjects of scrutiny within the framework of international economic law.

### **3.3.5. Debt Relief and Financial Assistance**

The economic fallout from the pandemic has led to increased financial distress for many countries. International institutions, such as the International Monetary Fund (IMF) and the World Bank, have played a central role in providing financial assistance and debt relief to affected nations. The terms and conditions attached to such assistance raise questions about the balance between economic recovery measures and the conditions set by international financial institutions.

The impact of the World Bank was quite visible during the Covid-10 pandemic. The organization was recognized for mounting the largest crisis response in its history to help over 100 low- and middle-income countries fight the health, economic, and social impacts of COVID-19.<sup>222</sup> Also massive support was to developing countries to access vaccines directly from manufacturers and under the COVAX initiative.

The Bank is supporting developing countries' access to vaccines, both through COVAX and directly from manufacturers. A \$20 billion financing envelope over two years is helping countries purchase vaccines and set up systems for deployment. As of August 2021, we have

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<sup>222</sup> Ibid.

committed \$4.6 billion for 54 countries. After the pandemic, the bank has continued to give support to countries in recovering from the social and economic impact of the global crisis.<sup>223</sup>

### **3.3.6. Digital Transformation and E-commerce**

The pandemic accelerated the ongoing trend towards digital transformation and increased reliance on e-commerce.<sup>224</sup> As digital trade gained prominence, issues related to data privacy, cybersecurity, and cross-border data flows became more significant. International economic law has had to adapt to address the legal challenges arising from the growing importance of the digital economy.

With physical stores closed or operating under restrictions, businesses were compelled to expedite their digital transformation efforts. E-commerce platforms became a lifeline for retailers, allowing them to reach customers despite the limitations imposed by the pandemic. Traditional brick-and-mortar businesses had to quickly pivot to online channels to survive. Similarly, the fear of contracting the virus, coupled with the convenience of online shopping, led to a significant shift in consumer behavior. People who had never shopped online before turned to e-commerce for essentials, non-essentials, and everything in between. The ease of browsing, ordering, and doorstep delivery became increasingly attractive, fostering a new level of comfort with online transactions.

On a positive note, E-commerce giants and online marketplaces experienced unprecedented growth during the pandemic. Platforms like Amazon, Alibaba, and others saw a surge in demand for various products, ranging from household goods to electronics and beyond. These platforms

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<sup>223</sup> World Bank Group “Saving Lives, Scaling-Up Impact and Getting Back on Track” World Bank Group COVID - 19 Crisis Response Approach Paper 2020.

<sup>224</sup> See United Nations Centre for Trade Facilitation and Electronic “Business Post-pandemic COVID-19 Economic Recovery: Harnessing E-commerce for the UNECE Transition Economies” ECE/TRADE/468, 2022.

leveraged their infrastructure and logistics capabilities to meet the increased demand, solidifying their dominance in the market.<sup>225</sup>

### **3.3.7. Multilateral Cooperation and the Role of International Institutions**

The pandemic underscored the importance of multilateral cooperation in addressing global challenges. International institutions, including the WTO, the World Health Organization (WHO), and others, faced renewed scrutiny and calls for reform. The need for a coordinated global response highlighted the interconnectedness of health, economic, and trade policies, emphasizing the role of international institutions in promoting a unified and effective approach.

### **3.3.8. Environmental and Sustainability Considerations**

The pandemic prompted a re-evaluation of the relationship between economic activities and environmental sustainability. Discussions around "building back better" and creating more resilient economies have led to increased attention on integrating environmental and sustainability considerations into international economic law frameworks.

In essence, the COVID-19 pandemic has reshaped the landscape of international economic law in profound ways. The disruptions to global supply chains, shifts in investment patterns, and the implementation of economic stimulus measures have prompted a re-evaluation of existing legal frameworks. As the international community continues to respond to the ongoing challenges, the role of international economic law will evolve to address emerging issues such as vaccine access, global inequality, and the integration of environmental considerations. The pandemic has

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<sup>225</sup> Gokila, Dr. V. Gokila, A Study on the Growth of E-Commerce during COVID-19 (April 17, 2021). Available at SSRN: <https://ssrn.com/abstract=3828398> or <http://dx.doi.org/10.2139/ssrn.3828398>. (last accessed December 10, 2023).

highlighted the interconnectedness of the global economy and the need for a collaborative and adaptive approach in shaping the future of international economic relations.

## **Chapter Four**

### **Types of Export Restrictions During Covid-19 and the Rationale**

#### **4.1. WTO Principles on Trade Restrictions.**

As discussed above, WTO disciplines prohibit the restriction of trade among its members, whether in form of import or export regulation. This principle is captured under the General Agreement on Tariffs and Trade (GATT).<sup>226</sup> Article XI:1 of GATT provides:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted

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<sup>226</sup> (GATT 1994).

or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

This principle has been upheld in plethora of cases and have been well established. An example is the case China \_Measures Related to the Exportation of Various Raw Materials 2013.<sup>227</sup> In that case, the United States demanded for consultations with China over about thirty-two (32) restrictions imposed on export of some raw materials from China. The United States argued that those measures were in violation of Article X, XI, XIII of GATT 1994 and other WTO Agreements.in 2009, the European Communities, Canada, Mexico and Turkey joined the consultation and a panel was established. Uon appeal to WTO appellate body, it was decided that China could not justify the restriction imposed and it was recommended that the restrictions be removed. On December 2013, China passed a law implementing the recommendation of the Appellate body.

Similar decision was upheld in the case of Australia-Measures Affecting Importation of Salmon<sup>228</sup>, a trade dispute arose between Australia and Canada and Canada made a complaint to the WTO. A panel was set up to decide the matter. The facts are that Australia imposed an import regulation which prohibited the import of certain type of salmon from Canada. Canada argued that the restriction imposed by Australia was incongruent with Agreement on the Application of Sanitary and Phyto-Sanitary measures (SPS Agreement) and Articles XI and XIII of GATT 1994. The panel decided in favor of Canada in 1998. An appeal was made by Australia to WTO appellate body and the previous decision was still upheld. In 2022, China also launched a trade dispute at WTO against the United States over an export measure under the GATT agreement.

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<sup>227</sup> China \_Raw Material 2013, WT/DS394/20.

<sup>228</sup> See “Australia-Canada relations” [www.canada.embassy.gov.au](http://www.canada.embassy.gov.au) (last accessed October 6, 2023).

The WTO frowns at trade restriction for compelling reasons including the promotion of free trade, prevention of protectionism, promotion of non-discrimination, predictability and stability of market and other development goals. This is broadly expressed in the preambles of WTO instruments. The GATT Agreement, for example, expresses this principle as needed for “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods”<sup>229</sup>

A wave of change however came with the Covid-19 pandemic as trade restriction became the new normal. Banning and limiting of export and/or import of certain products became rampant for some Covid-19-related reasons.<sup>230</sup> The Global Trade Alert reports more than 220 restrictive measures have been adopted around the world in the first year of the pandemic. These restrictions were not however generic. Rather, they affected basic medical goods, food and vaccines which were indispensable in addressing the pandemic. A major unintended but actual effect of this is that many countries, especially the low-and-middle-income countries were unable to respond adequately to the pandemic. Some of the export restrictions during the Pandemic shall be discussed.

## **4.2. Categories of Export Restrictions During Covid-19**

### **4.2.1. Export Restriction of Personal Protective Equipment.**

Personal protective Equipment, commonly referred to as PPE, refer to equipment generally used to minimize exposure and vulnerability of persons to hazards.<sup>231</sup> PPE may be required for different reasons including presence of hazards, the type of work being carried out, the risk

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<sup>229</sup> See Preamble to GATT 1994.

<sup>230</sup> Congressional Research Service “Export Restrictions in Response to the COVID-19 Pandemic” April, 2021.

<sup>231</sup> Occupation safety and Health Administration “Personal Protective Measure” OSHA 3151-02R 2023.

control measures, legal requirement, organizational or occupational regulation.<sup>232</sup> Examples of PPE include facemask, nose cover, gloves, foot protection, respirators, full body suits and so on.

PPE became crucial in protecting the populace and especially health workers who become more vulnerable during the Covid19 pandemic. As the demand for PPE rose sharply, a global shortage occurred and countries began to take measures to secure the availability of PPE in their respective jurisdiction.<sup>233</sup> Restriction on the export of PPE was adopted by many countries including the United States, European Union, India, China, Russia and so on<sup>234</sup> The primary purpose indeed was to secure the local supply of PPE in their respective jurisdictions. In China, however, the restriction on the export of PPE was founded more on the concern about the quality of the product. As such exporters were strictly required to register with the National Medical Products Administration (NMPA).<sup>235</sup>

#### **4.2.2. Export Restriction of Active Pharmaceutical Ingredient (APIs)**

Simply put, Active Pharmaceutical Ingredient (API) is any substance or combination of substances which are used in manufacturing Finished Pharmaceutical Product (FPP).<sup>236</sup> APIs are used to facilitate pharmacological activity or to determine diagnosis.<sup>237</sup> They also used to treat, cure or prevent disease.<sup>238</sup> APIs are the effective ingredient contained in medicines.<sup>239</sup>

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<sup>232</sup> World Health Organization “Personal protective equipment” Laboratory biosafety manual, fourth edition and associated monographs, 2020.

<sup>233</sup> Brewer Direct (BDI) “Export Controls and Export Bans over the Course of the Covid-19 Pandemic” April 2020. Available at < [https://www.wto.org/english/tratop\\_e/covid19\\_e/bdi\\_covid19\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/bdi_covid19_e.pdf)> (last accessed October 6, 2023).

<sup>234</sup> Ibid.

<sup>235</sup> NMPA is the Chinese authority responsible for ensuring standard in food, medicine, cosmetics and related products.

<sup>236</sup> Ratna Irawati, Apt., M.Kes. “Control Of Active Pharmaceutical Ingredients”. The 2nd Indonesia-Japan Symposium Jakarta, 21 May 2014. Available at < <https://www.pmda.go.jp/files/000217002.pdf>> (last accessed October 6, 2023).

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

As the world grapple with the Covid-19 pandemic, concern arose on the availability and supply of pharmaceutical raw materials (Active Pharmaceutical Ingredient). The role of global supply chain became crucial as no country can produce all its required APIs, yet APIs are core to the making of medicines and medical products. India and China are identified as one of the largest suppliers of pharmaceutical materials. On March 3, 2020, India imposed export restrictions on a number of vitamins and pharmaceutical raw materials.<sup>240</sup> Similarly, supply from China was largely affected. Literature reveals that Covid-19 resulted in high cost of drugs globally.<sup>241</sup>

In Africa, the reliance on export for pharmaceutical further exacerbated the health concerns. India for instance exported only 20% of all basic medicine to Africa during the pandemic.<sup>242</sup> Local industries were therefore forced to improve their capacities. However, Africa still had to be supported as its pharmaceutical industry was inadequately prepared for the pandemic.<sup>243</sup>

#### 4.2.3. Export Restriction of Covid-19 Vaccines

Vaccines are critical preventive and control measures in addressing infectious diseases.<sup>244</sup> Generally, vaccines are used for two purposes. That is, as a proactive measure to reduce the risk of being infected and as a treatment, after a person might have been infected by a disease.<sup>245</sup> Ordinarily, it takes a minimum of ten (10) years to develop and have a vaccine approved. An

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<sup>239</sup> Arpan Sahai And Santanu Mallik “Impact Of Active Pharmaceutical Ingredient (Api) Scarcity In Pharmaceutical Sectors Amidst Covid-19 Pandemic” International Journal of Pharmacy and Pharmaceutical Vol 12, Issue 12, 2020 Review.

<sup>240</sup> India Ministry of Commerce & Industry, Notification No. 50 / 2015-2020, New Delhi dated 3 March 2020, Amendment in Export Policy of APIs, (accessed December 10, 2023).

<sup>241</sup> Ibid.

<sup>242</sup> Pamela steel Associates “A Case for Local Pharmaceutical Manufacturing in Africa in Light of the COVID-19 Pandemic” 2022. Available at < [https://www.childhealthtaskforce.org/sites/default/files/2021-08/20200715\\_LocalPharmaManufacturingInAfrica.pdf](https://www.childhealthtaskforce.org/sites/default/files/2021-08/20200715_LocalPharmaManufacturingInAfrica.pdf)> (last accessed October 6, 2023).

<sup>243</sup> Ibid.

<sup>244</sup> WHO, 2020. See generally < [https://www.who.int/health-topics/vaccines-and-immunization?gclid=EAaIQobChMI3cHdjpKj7AJVmqiyCh1L0A\\_9EAAYAiAAEgKgEfD\\_BwE#tab=tab\\_1](https://www.who.int/health-topics/vaccines-and-immunization?gclid=EAaIQobChMI3cHdjpKj7AJVmqiyCh1L0A_9EAAYAiAAEgKgEfD_BwE#tab=tab_1)> (last accessed October 6, 2023).

<sup>245</sup> Ibid.

exemption however occurred during the pandemic, as vaccines were developed within a year for the treatment and prevention of Covid-19 infection, as an emergency use authorization.<sup>246</sup>

This without gainsaying is associated to the expediated efforts of government, organization and manufacturers in addressing the global health emergency.

On December 31, 2020, the WHO granted “Emergency Use Listing” EUL, to the first Covid-19 vaccine (Comirnaty) developed by the Pfizer-BioTech<sup>247</sup> Other vaccines were subsequently developed and approved for use globally.<sup>248</sup>

The optimism that came with the discovery of a viable vaccine for the dreaded pandemic soon vanished as producing countries began to impose export restriction on these vaccines. The EU for instance, passed Regulation 2021/111, which required an export authorization for COVID-19 vaccinations. Under this restriction, export authorization can be delivered only when “the volume of exports is not such that it poses a threat to the execution of the Union Advanced Purchased Agreements concluded with vaccines manufacturers”.<sup>249</sup> India and United States also imposed export restriction of Covid-19 vaccines.<sup>250</sup> Although few developed countries were exporting, it was still hard for the poor countries to access the vaccines.

#### 4.2.4. Export Restriction of food

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<sup>246</sup> WHO “Update on COVID-19 vaccine development” Corana Virus Update 45. Available at < <file:///C:/Users/Titilope/Desktop/LL.M%20PROJECT/vac2.pdf>> (last accessed October 6, 2023).

<sup>247</sup> WHO “WHO issues its first emergency use validation for a COVID-19 vaccine and emphasizes need for equitable global access” available at < <https://www.who.int/news/item/31-12-2020-who-issues-its-first-emergency-use-validation-for-a-covid-19-vaccine-and-emphasizes-need-for-equitable-global-access>> (last accessed October 6, 2023).

<sup>248</sup> Some other vaccines developed to fight the Covid-19 include Moderna Covid-19 Vaccine developed by Moderna Inc., Astrazeneca-oxford (Vaxzevria) developed collaboratively by astraZeneca and University of Oxford, Sinovac (CoronaVac) by Sinovac Biotech and so on.

<sup>249</sup> Imad Antoine Ibrahim “Overview of Export Restrictions on COVID-19 Vaccines and their Components” American Society of International Law, Volume: 25 Issue: 10, June 1, 2021.

<sup>250</sup> Ibid.

The pandemic hit hard on the global food market with devastating effect on import food dependent countries. With further complications by the continuing Russian-Ukraine war, the global food security came under pressure and major agricultural producing countries-imposed export restriction.<sup>251</sup> The Food Security Portal Food and Fertilizer Restriction Tracker documents several restrictions imposed by governments during the pandemic. Even after the pandemic has been significantly curbed, some countries continued to used restrictions on food export.<sup>252</sup> For example export of rice and rice groats is still prohibited in Russia until the end of 2023.

Article 12 of the Agricultural Agreement of the WTO regulates the issue of grain export. This WTO principle requires any member to fully consider the impact of such restrictions on the food security of importing members in accordance with Article 11, paragraph 2(a) of the General Agreement on Tariffs and Trade (GATT) 1994. Except where a developing country is not a net exporter of a specific food, the Agriculture Committee must be notified before imposing new export restrictions on food, and consult with affected members upon request. It is sad that countries rarely complied with this requirement during the pandemic.<sup>253</sup> In May 2023, WTO still announced that 21 Covid-19-related export restrictions remain in force.<sup>254</sup>

During the pandemic, major economies prohibiting one type of food or the other include China, India, Bangladesh. Even in 2023, some countries are still imposing restrictions on the export of food. India for example still imposed restriction on grains in September 2022 as the country sought to secure domestic supply<sup>255</sup> The impact of food export restriction includes inflation of price in the international market, breakdown of food supply, malnutrition, panic and so on. In

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<sup>251</sup> Falkendal, T., Otto, C., Schewe, J. *et al.* Grain export restrictions during COVID-19 risk food insecurity in many low- and middle-income countries. *Nat Food* 2, 11–14 (2021).

<sup>252</sup> The Food Security Portal Food and Fertilizer Restriction Tracker Portal, 2023.

<sup>253</sup> WTO, Export prohibition and Restriction: Information Note, April 2020.

<sup>254</sup> WTO Report Shows that many G20 export restrictions remains in force, July 2023.

<sup>255</sup> *Ibid.*

July 2021, the Food and Agricultural Organization of the United Nations reports that forty-five countries are in need of external food assistance, this includes thirty-four African countries.<sup>256</sup>

### **4.3. Rationale For Export Restriction During the Pandemic**

Policies advocates have adduced justification for the different forms of export restriction during the pandemic. Some commonly adduced rationales are as follows;

- a) Protection of Domestic Supply.
- b) Public Health Concern.
- c) Uncertainty and Hoarding.
- d) Building Domestic Capacity.

#### **4.3.1. Protection of Domestic Supply**

One of the most arguable rationales for export restriction during the pandemic was the need to safeguard domestic supply of essential goods and medicines. For instance, the International Food Policy Research Institute<sup>257</sup> reports that fifteen (15) food manufacturing countries have issued export restriction on food as of April 2020. Similarly, more than 80 countries issued banning exports of medical and personal protective goods in the early phases of the pandemic.<sup>258</sup> All on the ground of securing domestic supply. India for instance announced a shortage of certain essential

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<sup>256</sup> Liangliang Zhai, Shilin Yuan et al “The Economic Effects of Export restrictions Imposed by Major Grain Producers” *Agricultural Economics* \_ Czech, 68, 2022 (11-19).

<sup>257</sup> IFPRI “Covid-19 Food Trade Policy Tracker” march 2020. Available at <https://www.ifpri.org/project/covid-19-food-trade-policy-tracker>. (last accessed October 6, 2023).

<sup>258</sup> Ralf Peters and Divya Prabhakar, UNCTAD ‘Export Restriction Do Not Help Fight Covid-19.’ Available at <<https://unctad.org/news/export-restrictions-do-not-help-fight-covid-19>> (last accessed October 6, 2023).

medical supplies during the pandemic and there imposed a ban on the export of more than 20 APIs<sup>259</sup>

The US Federal Emergency Management Agency (FEMA)<sup>260</sup> also issued a temporary final rule On April 7, 2020, by which the export of certain personal protective equipment (PPE), such as certain respirators, surgical masks, medical gloves were banned, unless it was done with the explicit approval of FEMA. The rule in was extended On December 31, 2020, to include more goods. some analysts have argued that the actions in early 2020, was a result of prioritizing domestic supply, although unintended consequences were caused in importing countries.

#### **4.3.2. Public Health Concern.**

Public health concerns connote the need for countries to secure domestic supply of healthcare resources. The shortage of medical products at the early stage of the pandemic cause governments to panic. The Chinese Government as a major manufacturer decrease export of PPE.<sup>261</sup> The shortage of PPE instead resulted from a combination of factors includes the surge in demand, limited manufacturing capacity, disruption in supply chain and even competition among buyers.

#### **4.3.3. Uncertainty and Hoarding**

The pandemic came with a web of uncertainty in many regards. Global health was threatened, food security appeared obscure and global supply chain was greatly interrupted. During early 2020, India imposed restriction on critical medications as a result of the uncertainty and the

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<sup>259</sup> Official news report available at <https://www.fiercepharma.com/manufacturing/india-s-restrictions-api-exports-only-temporary-official-says-report>.

<sup>260</sup> See the Defense Production Act (DPA).

<sup>261</sup> Sanchita Basu Das and Rahul Sen “Trade Interdependencies in Covid-19-Related Essential Medical Goods Role of Trade Facilitation and Cooperation for the Asian Economies” ADB Economic Working Paper Series NO. 666 July 2022.

potential need of those supplies for domestic use. The United States also adopted restrictions to address the issue of hoarding of PPE in early 2020. The country even passed a law in this regard<sup>262</sup>

#### **4.3.4. Building Domestic Capacity**

Covid-19 vaccines manufacturing countries adopted export ban at different in order to build domestic production and supply their needs. For instance, the EU implemented export restrictions on vaccines produced within its borders in order to ensure that the manufacturers fulfil their contractual obligation to EU, particularly vaccines developed by AstraZeneca and Pfizer.

#### **4.4. Exceptions To WTO Principle on Prohibition of Trade Restriction**

While trade restriction is generally prohibited among WTO members, the GATT Agreement however makes provision for exceptions. Article XI:2 underscores instances where trade restrictions permitted. This includes;

- (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
- (b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
- (c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

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<sup>262</sup> See the Defense Production Act 2020.

- (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or
- (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or
- (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

The exception recognized by WTO has also been judicially upheld in plethora of cases.

In the case of Argentina-Measures affecting the Export of Bovine Hides and the Import of Finished leather<sup>263</sup>, the WTO panel upheld export and import measure as being justifiable under the exception within the framework of GATT. The facts are that consultation was requested by the European Communities on the export prohibition by Argentina on bovine hides. It was argued that this restrictions outrightly defiles GATT agreement. European communities also challenged the additional value added tax and advance turn-over tax to the ton of of 9 per cent and 3 per cent respectively. The Panel observed that the Argentina's restrictive Resolution was not inconsistent with its obligation under GATT.

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<sup>263</sup> WT/DS155/12 February 2002.

Similar decision was taken in United States\_Export Restraint case.<sup>264</sup> In that case, Canada requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("the DSU"), Article XXII of the General Agreement on Tariffs and Trade 1994 and Article 30 of the Agreement on Subsidies and Countervailing Measures ("the SCM Agreement"). This was based on a United States measure by which restraint on exports of a product are treated as a subsidy to other products. The Panel decided in favor of the United States as Canada failed to identify how the measures failed to comply with the obligation under GATT.

In Brazil-Taxation of Imported Goods (2011)<sup>265</sup>, the use of high taxes by Brazil on some imported automotive was found discriminatory under the WTO principles. However, it was upheld as justifiable under the GATT in order to promote local production and employment. During the pandemic, many countries including Canada, United States and EU members invoked the exception under GATT to justified their trade restriction.

#### **4.5. Impact of Covid-19 Related Export Restrictions on Human Right to Health**

The concept of right to health is an international phenomenon widely enshrined under multiple international instruments.<sup>266</sup> It is a fundamental right under international law first articulated under the Constitution of the World Health Organization (WHO) 1946. Without gainsaying, right

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<sup>264</sup> WT/DS194/R, June 2001.

<sup>265</sup> See CESifo Working paper No. 7886, Category 8 "Trade Policy Reopening Pandora's Box in Search of a WTO-Compatible Industrial Policy? The Brazil-Taxation Dispute.

<sup>266</sup> Joy Okundia "The Impact of Covid-19 on Human Rights and Individual Health: The Perspective of International Cooperation Limitations" October 2021. Available at <https://www.researchgate.net/publication/355476444> (last accessed October 6, 2023).

to health is not only internationally recognized, it is inherent to right to life.<sup>267</sup> The preamble of WHO constitution defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The preamble further declares thus:

the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

The International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) is a key instrument in right to health. It provides for “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.<sup>268</sup> Some other regional instrument includes Revised European Social Charter (RESOC) 1996<sup>269</sup>, African Charter on Human and Peoples’ Rights 1981,<sup>270</sup> African Charter on the Rights and Welfare of the Child (ACRWC) 1990,<sup>271</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)<sup>272</sup> and so on.

In the context of covid-19 pandemic, right to health was greatly challenged. It is worthy of note that right to health thrives on these cardinal factors; available, accessible, acceptability and quality of healthcare. The pandemic challenged all these factors. First, export restriction around the globe limited the available and accessibility of quality healthcare resources. Also, the possibility of low-quality products and drug trafficking made the masses panic.

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<sup>267</sup> Nifosi-Sutton Ingrid “Realizing the Right to Health during the COVID-19 Pandemic: An Antidote to the Pandemic and the Catalyst for Fulfilling a Long-Neglected Social Right?” *Yearbook of International Disaster Law Online*, 2022, 3(1), 126-153.

<sup>268</sup> See ICSECR Art. 12.

<sup>269</sup> See Article 11.

<sup>270</sup> See Article 16.

<sup>271</sup> See Article 14.

<sup>272</sup> See Article 14.

Among other, the India pharmaceutical industry played a cogent role during the pandemic, especially in the manufacturing of essential medical supplies. The indefinite export restriction adopted between February and April 2020 by India caused a major disruption in availability of essential supplies during the pandemic. This restriction extended to the export of personal protective equipment, mechanical ventilators, masks, other, test kits and disinfectants. To start with, India's pharmaceutical sector forms a major component of international pharmaceutical industry providing up to seventy per cent of the World Health Organization's (WHO) demand for essential vaccines<sup>273</sup> The impact of this restriction was quite far-reaching as many countries including US and EU are dependent on India. India also supplies affordable and low-cost generic drugs across the globe and operates a significant number of United States Food and Drug Administration (USFDA) and World Health Organization (WHO). India is commonly referred as the "pharmacy of the world".<sup>274</sup> Export restriction by India therefore constituted a great challenge to the globe in accessing necessary medicines.

As restrictions increased around the globe, many countries began to face difficulties in ensuring the right to health during the pandemic as manufacturing countries began to adopt export restrictions on Covid-19 vaccines. This was perhaps the peak.

The various restriction during the pandemic was a hard hit on Africa dur to interconnected reasons such as over dependence on export, financial constraint and limited access to global supply chain. Major effects of export restrictions were felt in the pharmaceutical industries. Both of which were indispensable in addressing the pandemic.

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<sup>273</sup> Richa Udayana "Examining Covid-19 impact on Indian pharma production"

<sup>274</sup> Ankita Sharma et al at "India: Pharmacy to the world" July 2020 available at <  
[https://www.hcipo.gov.in/newsImage/1614579249\\_5886\\_2\\_compressed.pdf](https://www.hcipo.gov.in/newsImage/1614579249_5886_2_compressed.pdf)>

Most African countries depend on export to meet their medical needs. Active Pharmaceutical Ingredient, Drugs, and other and medical supplies are often imported from non-African countries, notably India and China<sup>275</sup> Most of Africa trade partners in pharmaceutical used restriction at different times during the pandemic. In March 2020, the Indian Government announced the restriction of export of more than 20 pharmaceutical ingredient, medicines and vitamins.<sup>276</sup>

The direct implication of restriction by China and India was that international competition was higher and the supply of drugs and medical ingredient to Africa sharply reduced.<sup>277</sup> Many African countries experienced drug shortage during the pandemic thereby affecting their abilities to guarantee the right to health. Africa also experience shortage of PPE supply. In March 2020, the WHO supplied massive set of PPE to Africa and it was still not enough. WHO reports that more than 10,000 health workers in African countries had been infected with Covid due to fragile health care system.<sup>278</sup>

This has a chain of effect on health workers and patients. The PPE for instance is crucial in protecting health workers in the course of attending to the patients. The inadequate access to PPE, complicated by the pre-existing weak healthcare system in Africa raise the risk for health workers. WHO reports that many health care centers in Africa lacked the basic infrastructure in implementing preventive measures for their health workers.<sup>279</sup>

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(last accessed October 6, 2023).

<sup>276</sup> See The Guardian News “India limits medicine exports after supplies hit by coronavirus”. Available at < <https://www.theguardian.com/world/2020/mar/04/india-limits-medicine-exports-coronavirus-paracetamol-antibiotics>> (last accessed October 6, 2023).

<sup>277</sup> Pamela Steele et al “A Case for Local Pharmaceutical manufacturing in Africa in Light of the Covid-19 Pandemic” 2021, PSA Publishers, Oxford, UK.

<sup>278</sup> Ibid.

<sup>279</sup> WHO, 2020.

The issue of health was further aggravated as a result of food insecurity, keenly associated with malnutrition during the pandemic. While Africa has an impressive agricultural potential, it is puzzling that the continent remains a net importer of food<sup>280</sup> As uncertainty looms during the pandemic, some major agricultural producing nations began to implement export restrictions, especially in the first half of 2020.<sup>281</sup> The disruption in global supply also culminated in increase in prices of food. The pandemic indeed threatened the four pillars of food security, that is, access, availability, stability and utilization.<sup>282</sup> WHO reports that 73 million people in Africa suffered from malnutrition during the pandemic.<sup>283</sup> unhealthy diet has been said to account for more death than any other risk.<sup>284</sup>

#### **4.6. Export Restriction in European Union During Covid-19**

Before the pandemic, the EU-Africa economic relations were characterized by strength and vitality.<sup>285</sup> Notably, EU held the position of Africa's second largest trading partner, second only to China. With the flow of various goods between the continent, Africa heavily relied on import from EU, particular for goods like food, chemicals and pharmaceutical products.<sup>286</sup> the onset of the pandemic brought a significant shot in this economic relation.

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<sup>280</sup> Manitra A. Rakotoarisoa et al "Why Has Africa Become a Net Food Importer? Explaining Africa agricultural and food trade" Trade and Markets Division Food and Agriculture Organization of the United Nations Rome, 2011.

<sup>281</sup>Falkendal, T., Otto, C., Schewe, J. *et al.* Grain export restrictions during COVID-19 risk food insecurity in many low- and middle-income countries. *Nat Food* **2**, 11–14 (2021).

<sup>282</sup> Aleksandra Kowalska et al "Białowas Food export restrictions during the COVID-19 pandemic: Real and potential effects on food security" *International Journal of Management and Economics*, 58(4): 1–16, 2022.

<sup>283</sup> Ibid.

<sup>284</sup> Chuzuru Nishida "Healthy diets, the double burden of malnutrition and COVID-19" WHO (Nutrition in universal health coverage, 2019).

<sup>285</sup> European Parliament "Way Forward for EU-Africa Trade and Investment Relation" Workshop Requested by the INTA committee, 2020.

<sup>286</sup> The Council of The European Union "THE AFRICA-EU STRATEGIC PARTNERSHIP A Joint Africa-EU Strategy" Lisbon, 9 December 2007 16344/07 (Presse 291).

The EU like many other regions, responded to the pandemic by implementing restrictive measures and shoring up its domestic supply. A pivotal moment in this regard this was on 14 March 2020, when Regulation (EU) 2020/402 came to force, by which the exportation of PPE was made subject to the procurement of an export authorization. The regulation imposed strict conditions on the export of PPE. The rationale behind this regulation as captured in the preamble was rooted in the soaring demand for PPE within, driven by urgent need to protect health workers and the general population. Unfortunately, the production of PPE was only concentrated in few EU countries.

#### **4.7. Export Restriction in the United State During Covid-19**

The United State was not left out in the unprecedented challenges brought by COVID-19 casing the government to implement various measures to safeguard public health and ensure the availability of essential goods domestically. One notable response from the U.S. government was the implementation of export restrictions on certain critical products. This discussion explores the U.S. export restrictions during the COVID-19 pandemic, the motivations behind them, and the implications for global trade and international relations.

The U.S. export restrictions during the COVID-19 pandemic were a response to unprecedented challenges, reflecting the need to prioritize domestic interests in the face of a global crisis. While these measures were implemented with the goal of securing essential goods and protecting public health, they also raised important questions about the balance between national interests and global cooperation. The experience highlighted the interconnectedness of the global economy, emphasizing the importance of collaborative efforts, humanitarian considerations, and a

coordinated international response in addressing future crises. As the world navigates the post-pandemic era, lessons learned from these export restrictions will likely shape discussions on trade policies, global cooperation, and the resilience of international relations.

The primary motivations behind the U.S. export restrictions during the pandemic were rooted in the need to secure domestic supplies of critical goods, particularly medical equipment, pharmaceuticals, and personal protective equipment (PPE). The Defense Production Act (DPA) and the Export Administration Regulations (EAR) were invoked to control the export of these essential items, aiming to ensure their availability for healthcare workers and the broader U.S. population.

#### **4.8. Impact of Covid-19 Related Export Restrictions on Africa Countries**

Restrictive trade measures during the pandemic had a hard hit on Africa. Among others, key measures include temporary partial or complete closing of borders, lockdowns, export ban, closures of general social services. While the health impact was direct, the economic impact resulted from the responses and reactions of the different countries across the globe. Africa particularly experienced a major economic setback as a result of some of such responses.<sup>287</sup> Even when the pandemic has been significantly curtailed over the world<sup>288</sup>, Africa continues to grapple with the issues associated with the pandemic.<sup>289</sup>

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287 UNCTAD “Assessing the Impact of COVID-19 on Africa’s Economic Development” July 2020, UNCTAD/ALDC/MISC/2020/3.

288 On May 5, 2023, The WHO declared that Covid-19 is no longer a PHIC see generally UN News “WHO chief declares end to COVID-19 as a global health emergency” available at <<https://news.un.org/en/story/2023/05/1136367>>

289 UN “Economic growth in Africa decelerates before full recovery from pandemic-led contraction.” Press Release Under embargo until 25 January 2023, 12:00 noon EST.

Trade restriction soon became a major challenge in addressing the pandemic.<sup>290</sup> Even after vaccines have been approved for use, countries were faced with different challenges in accessing the vaccines. In 2020 alone, nearly 90 countries set in place specific export restriction.<sup>291</sup> While it is practically impossible to sum up the complete impact of this export ban, the most apparent effects on Africa are seen in the following:

- a. Inadequate or delayed access to Covid- 19 supplies
- b. Increased food insecurity
- c. Economic setback.

#### **A. Inadequate Or Delayed Access to Covid-19 Supplies**

The world was excited by the hope brought by the discovery of Covid-19 vaccines. Sadly, the excitement soon vanished as manufacturing countries began to adopt export restrictions, thereby limiting access. This restriction ranges from medical products such as PPE, APIs and even Covid-19 vaccines. Africa major trade partners include China, EU, United States, India and so on. Each of these countries used restriction on Covid-19 supplies during the pandemic. the natural effect of this was that Africa was constrained by those restrictions. A lot of Africa countries were left at the mercy of international assistance to access Covid-19 supplies.

First, vaccine production is concentrated in few developed countries.<sup>292</sup> Tension arose as manufacturing countries began to restrict export in order to secure the vaccination of their

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290 See generally OECD Policy Responses to Coronavirus (Covid19). International trade during the COVID-19 pandemic: Big shifts and uncertainty 10 March 2022. Available at <[https://www.wto.org/english/tratop\\_e/trips\\_e/techsymp\\_290621/bown\\_presentation.pdf](https://www.wto.org/english/tratop_e/trips_e/techsymp_290621/bown_presentation.pdf)> (last accessed October 6, 2023).

291 WTO “COVID-19: Measures Affecting Trade in Goods” Available at [https://www.wto.org/english/tratop\\_e/covid19\\_e/traderelatedgoodsmeasuree.htm](https://www.wto.org/english/tratop_e/covid19_e/traderelatedgoodsmeasuree.htm) (last updated Mar. 26, 2021).

292 OECD Policy Responses to Coronavirus (COVID-19) Using trade to fight COVID-19: Manufacturing and distributing vaccines, 11 February 2021. Available at <<https://www.oecd.org/coronavirus/policy-responses/using-trade-to-fight-covid-19-manufacturing-and-distributing-vaccines-dc0d37fc/>> (last accessed October 6, 2023).

citizens first.<sup>293</sup> On 29 January 2021, the EU passed Regulation 2021/111, requiring an export permit for covid-19 vaccines and other raw materials used in the production of the vaccines. Similarly, India also imposed restrictions on vaccine export as a result of the major COVID-19 outbreak that has negatively affected the country's supply. Restriction was also used by the US on the export of certain PPE.<sup>294</sup> The Global Trade Alert also reveals that more than 220 actions banning or limiting the export of certain products have been used countries for COVID-19-related reasons<sup>295</sup>

African countries faced significant challenges in accessing the vaccines and other medical supplies. By the end of April 2021, 3 quarters of the 1 billion COVID-19 vaccine doses administered globally had been given in 10 nations only<sup>296</sup> Literature reveals that approximately 1.2 billion Africans have not received a single dose of vaccine and, with the current rate of vaccination, much of Africa may not be vaccinated until 2023.<sup>297</sup>

#### **b. Increased food insecurity**

The issue of food insecurity in Africa during Covid-19 resulted from an interplay of multiple factors, and export restriction was a major factor. While Africa has an impressive agricultural potential, it is puzzling that the continent remains a net importer of food.<sup>298</sup> As uncertainty looms during the pandemic, some major agricultural producing nations began to implement export

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<sup>293</sup>Ngurah Parikesit Widiatedja "Export Restrictions on COVID-19 Vaccines: What Developing Countries Can Do Under the WTO Law?" Indonesian Journal of International Law Volume 19 Number 2, 2022.

<sup>294</sup> Ibid.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid.

<sup>297</sup> Muhammed Ali Pate "Public Health: Ensuring Equal Access And Sufficiency" available at [https://www.brookings.edu/wp-content/uploads/2022/01/foresightafrica2022\\_chapter2.pdf](https://www.brookings.edu/wp-content/uploads/2022/01/foresightafrica2022_chapter2.pdf) (last accessed October 6, 2023).

<sup>298</sup> Manitra A. Rakotoarisoa et al "WHY HAS AFRICA BECOME A NET FOOD IMPORTER? Explaining Africa agricultural and food trade" Trade and Markets Division Food and Agriculture Organization of the United Nations Rome, 2011.

restrictions, especially in the first half of 2020.<sup>299</sup> The disruption in global supply also culminated in increase in prices of food. The pandemic indeed threatened the four pillars of food security, that is, access, availability, stability and utilization.<sup>300</sup>

### **c. Economic setback.**

Without gainsaying, economic setback was a major effect of Covid-19 in Africa<sup>301</sup> Comparatively, the health impact of the pandemic was lower in Africa than in most developed countries.<sup>302</sup> The continent was also the last to record cases of Covid-19. The economic effect was, however, quite devastating.<sup>303</sup> Early prediction revealed that COVID-19 will drag African economies into a fall of about 1.4% in GDP. The smaller economies were even predicted to be up to 7.8%. The contraction is primarily associated with export adjustments.<sup>304</sup>

In global supply, African economies are mainly integrated into supply chain as buyers.<sup>305</sup> In many cases, African companies import intermediate goods which are further processed and transformed into final goods. Also, final products are by African retailers and wholesalers.<sup>306</sup> The pharmaceutical industry is an example of where Africa is a major importer, with over 90 per cent dependence on import. Unless intra-African trade is strengthened, the recovery of African economy after the pandemic may continue to depend on the economy of its non-African trading partners.

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<sup>299</sup>Falkendal, T., Otto, C., Schewe, J. *et al.* Grain export restrictions during COVID-19 risk food insecurity in many low- and middle-income countries. *Nat Food* 2, 11–14 (2021). Available at <https://doi.org/10.1038/s43016-020-00211-7> (last accessed October 6, 2023).

<sup>300</sup> Aleksandra Kowalska et al “Białowas Food export restrictions during the COVID-19 pandemic: Real and potential effects on food security” *International Journal of Management and Economics* 2022; 58(4): 1–16

<sup>301</sup> UNCTAD 2020.

<sup>302</sup> *Ibid.*

<sup>303</sup> Karishma Banga et al “Africa trade and Covid-19 The supply chain dimension” African Trade Policy Center, Working paper 586, August 2020.

<sup>304</sup> *Ibid.*

<sup>305</sup> *Ibid.*

<sup>306</sup> *Ibid.*

It is worthy of note that while the health impact of the pandemic can be said to be mild in Africa, relatively to the experience of the developed countries, the economic impact is however devastating. According to the African Development Bank in 2022 African Economic Outlook, African trade suffered a pandemic-induced contraction in 2020. Economic growth was projected to decelerate to 4.1% in 2022, and remain stuck even in 2023. The Russia-Ukraine has further complicated the impact of the pandemic, as both countries are major grain suppliers to Africa. The pandemic experience has illuminated the need for greater cooperation among the international community, not only for the sake of the poorer countries, but rather for the sake of global good and progress.

## **Chapter Five**

### **The Role of International Cooperation and Good Governance in International Economic Policies – Experiences from Covax.**

#### **5.1. COVAX Initiative During Covid-19 Pandemic**

The exponential spread of Covid-19 pandemic emphasizes the critical need for international cooperation and good governance in addressing global concerns. As the contemporary international relations depict increased interdependence of nations and economies, countries are often appealed to think globally and act locally.<sup>307</sup> This is how sustainable development can be achieved. In the time of increased challenges facing the world, international cooperation cannot be overemphasized.

As it is often said that “no man is an island”, Covid-19 indeed exemplified this in that no country had the absolute and perfect response to the pandemic. Keenly associated with responses

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<sup>307</sup> Virginai Rowthorn ““Think Globally, Act Locally: Just Do IT” University of Maryland School of Law and University of Maryland Center for Global Education Initiatives, 2020.

therefore was a peculiar necessity for cooperation within the international community.<sup>308</sup> No continent was left untouched, and the safety of all was greatly challenged as the pandemic spread rapidly across all continents. Where cooperation was maximized, the results were apparent, otherwise, the gap was evident.

Directly opposite to cooperation is competition.<sup>309</sup> In competition, countries make decision that assert their rights and ability, without taking into consideration the right and interest of others. This usually takes the form of trade diplomacy, environmental policies and so on. Competition was indeed massive at the beginning of the pandemic, as each country grappled for survival. In this context, countries took critical steps in securing domestic supplies of essential medicines and food, even hoarding and panic-buying of goods. Upon the approval of certain vaccines for global use by the WHO, many self-funding developed countries contracted for so much vaccines that the availability to other countries was limited. The number of vaccines they had ordered was not only massive, it was far greater than needed. This situation was described by the Director-General of WHO as a “catastrophic moral failure.”<sup>310</sup>

The competitive trend in the first year of the pandemic gradually waned as the pandemic deepened, thereby necessitating cooperation, rather than competition.<sup>311</sup> Positively, the pandemic became a catalyst of change. OECD reports that countries began to ease critical protectionist measures used mostly in 2020 and trade began to rebound strongly again in 2021.<sup>312</sup> During the

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<sup>308</sup> See generally “Bill Gates says no country ‘gets an A’ for its Covid pandemic response—including the U.S” CNBC, September 2012. Available at < <https://www.cnn.com/2023/01/25/bill-gates-no-country-had-perfect-covid-pandemic-response.html>>. (last accessed October 6, 2023).

<sup>309</sup> OECD “Competition co-operation and Enforcement Inventory of International Co-Operation MOUs Between Competition Agencies” 2021. Available at < [www.oecd.org/competition/inventory-competition-agency-mous.htm](http://www.oecd.org/competition/inventory-competition-agency-mous.htm)> (last accessed October 6, 2023).

<sup>310</sup> See WHO Director General’s opening remark at 148<sup>th</sup> session of the Executive Board, 2021.

<sup>311</sup> World Economic Forum “Principles for Strengthening Global Cooperation” January 2021.

<sup>312</sup> OECD Policy Responses to Coronavirus (COVID-19) “International trade during the COVID-19 pandemic: Big shifts and uncertainty” March 2022.

pandemic, international cooperation became crucial in different regard, starting from trade to health services, international aid and support and so on.<sup>313</sup> Many self-funding countries also committed themselves to donating vaccines.<sup>314</sup>

It is noteworthy that the principle of international cooperation transcends aid and support among governments and institutions of different countries, which is undeniably common. International cooperation has a wider scope. It is the consistent and unwavering effort of all key players in achieving a desired goal in the international community. In the context of Covid-19, international cooperation manifest in the concerted efforts of government, international institutions and even private bodies in curbing the spread of the pandemic.

This most organic result of cooperation during the pandemic was the formation of “COVAX” initiative in June, 2020.<sup>315</sup> This initiative is central to several interconnected considerations in hope of curtailing and recovering from the virus that transcend borders.

The term ‘COVAX’ means “Covid-19 Vaccines Global Access”<sup>316</sup>; it is a global partnership aimed at ensuring equitable access to Covid-19 vaccines worldwide. The partnering members for this initiative includes the WHO, Global Alliance of Vaccine, The Vaccine Alliance, the Coalition

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<sup>313</sup> See IOM 2020 “COVID-19 and the transformation of migration and mobility globally.”

<sup>314</sup> Antoine De Bengy “COVAX, a vaccine donation and politics of global Vaccine Inequity” Globalization and Health 18, Article 26, 2022.

<sup>315</sup> CEPI “COVAX: The Vaccines Pillar Of The Access To Covid-19 Tools Accelerator Structure And Principle” November 2022. Available at < [https://cepi.net/wp-content/uploads/2020/11/COVAX-Structure-and-Principles\\_FINAL\\_Nov-2022.pdf](https://cepi.net/wp-content/uploads/2020/11/COVAX-Structure-and-Principles_FINAL_Nov-2022.pdf)> (last accessed October 10, 2023).

<sup>316</sup> See generally, WHO “The COVAX facility Global procurement for COVID-19 Vaccines”available at < [https://www.who.int/docs/default-source/coronaviruse/act-accelerator/covax/covax-facility-background.pdf?sfvrsn=810d3c22\\_2](https://www.who.int/docs/default-source/coronaviruse/act-accelerator/covax/covax-facility-background.pdf?sfvrsn=810d3c22_2)> (last accessed October 10, 2023).

for Epidemic Preparedness Innovations (CEPI) and other international organization and governments.<sup>317</sup>

The ultimate purpose of the COVAX facility is to serve as a global mechanism, that facilitates the procurement and equitable distribution of Covid-19 Vaccines to countries around the world, and especially those that were unable to deal directly with manufacturers<sup>318</sup> facility to guarantee rapid, fair and equitable access to COVID-19 vaccines worldwide. COVAX facility is targeted to deliver 2 billion vaccine doses or more by the end of 2021 to all participating countries.<sup>319</sup>

According to the WHO, the COVAX facility captures eight major objectives:

- a) To encourage and support countries to achieve full vaccination, including recommended boosters
- b) To help AMC-92<sup>320</sup> countries to protect 100% of their highest- and high-risk populations. The size of this group will vary across geographies. The primary objective of vaccinating this population is to provide protection against morbidity and mortality.
- c) In addition, in the context of the global health security situation and building upon national goals, to support all AMC-92 countries to strive towards complete vaccination of adult and adolescent (12+) populations. The primary objective of vaccinating this population is to rapidly

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<sup>317</sup> EU Parliament “Understanding COVAX The EU's role in vaccinating the world against Covid-19” available at <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729319/EPRS\\_BRI\(2022\)729319\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729319/EPRS_BRI(2022)729319_EN.pdf)> (last accessed October 10, 2023).

<sup>318</sup> See generally COVAX Objectives 2022. Available at <[unicef.org/supply/documents/covax-objectives-2022](https://www.unicef.org/supply/documents/covax-objectives-2022)> (last accessed December 10, 2023).

<sup>319</sup> Ibid.

<sup>320</sup> AMC means (Advance market Commitment) for Covid-19 vaccines.

maximize population immunity, to safeguard against a constantly evolving virus, and help reopen economies.

- d) When specifically requested by countries, COVAX will consider providing vaccines for children aged 5-12. Countries will only be considered once they have achieved substantial progress in the high and highest priority groups (40% coverage will be used as a proxy) and confirm routine immunization programs will not be adversely impacted.
- e) COVAX will concentrate finance and delivery efforts on AMC-92 countries, with an urgent focus on the 34 countries most in need of concerted support.
- f) Recognizing that countries face many competing priorities in the public health agenda, we will work with them to integrate Covid-19 vaccinations with other primary health interventions, increasing access and maximizing overall health impact.
- g) In the face of the evolving pandemic, COVAX will continue its work to support R&D, regulatory, policy and manufacturing, including support for local manufacturing and tech transfer.
- h) COVAX urgently needs the financial support of donors to achieve its delivery goals. Given the uncertainty of the pandemic, COVAX also needs to ensure contingent financing is available to be rapidly deployed should the need arise to procure and deliver new vaccines.<sup>321</sup>

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<sup>321</sup> Ibid.

Since the establishment COVAX facility in April 2020, over 1.8 million dose of Covid-19 vaccines have been delivered to 146 countries with more than 90 per cent delivered to lower income countries.<sup>322</sup> By October 2022, 63% of the world's population had been vaccinated.<sup>323</sup> In Africa, total of 235 million people in the African had received full series of COVID-19 vaccination, representing 20.3% of the Region's population.<sup>324</sup> In fact, two countries in the African Region surpassed the target with 70% of their population fully vaccinated. The COVAX facility has indeed been successful.

The COVAX represent a major platform for international cooperation, especially in a time of emergency.<sup>325</sup> By facilitating trade in Covid-19 vaccine, vaccine finance and global supply, COVAX has been able to significantly addressing global problem through cooperation. The concerted global efforts in addressing the pandemic further underscores the criticality of international cooperation in an interconnected world and economies.

The International Covenant for Economic, Social and Cultural Rights (ICESCR) is often referred to as the source of the legal duty of cooperation in international law. Article 2(1), of the ICESCR, stipulates that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

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<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

<sup>324</sup> WHO “Covid-19 Vaccination in The Who African Region” Date Of Issue: 10 September 2022 Data As Reported By 4 September 2022 Issue No. 7.

<sup>325</sup> Florencia Luna and Felicitas Holzgers “Brief communication International cooperation in a non-ideal world: the example of COVAX” *Cad Iberoam Direito Sanit*; 10(3): 199–210, 2021.

Although COVAX made considerable impact in ensuring global access to Covid-19 vaccines, it was however hampered by certain challenges. For example, the Indian Government halted the export of vaccines in April 2021 as the pandemic worsened in the region.<sup>326</sup> This affected COVAX 's ability to procure vaccines from one of its largest suppliers, the Serum Institute. The Indian Government however exports in October 2021.

Another challenge was that the COVAX initiative did not prevent the self-sponsored countries from procuring vaccines. As such, many high-income countries were able to procure more doses compared to low-income ones. By March 2021, half of the total world's supply of Covid-19 vaccines had been negotiated for by the high-income countries, which account only 16 per cent of the global population.<sup>327</sup> This ultimately brought set back in the ability of COVAX in purchasing the quantity of vaccines needed to meet its goal.

The demand for the vaccine increased greatly and in March 2021, the WTO report showed that global manufacturing capacity for vaccines needed to triple from 5 to 15 billion in that year in order to ensure sufficient supplies<sup>328</sup> Debate then began on whether patent regulation should be relaxed in order to facilitate higher production.

Under certain provisions of the agreements on TRIPS, The Indian and South African governments presented a formal proposal for a patent waiver in October 2020.<sup>329</sup> The proposed waiver was to facilitate higher production by prevent the current patent holders of Covid-19 vaccines from blocking vaccine production elsewhere on the grounds of patents and allow countries to produce Covid-19 medical products locally or import or export them more easily.

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<sup>326</sup> Philip Loft "Covax and global access to Covid-19 vaccines" House of Common Library, January 2022.

<sup>327</sup> Ibid.

<sup>328</sup> See generally, Reuters, New WTO chief calls for tripling of vaccine production, 1 March 2021, accessed 8 December 2021.

<sup>329</sup> See Covid-19 Vaccines, Innovation, and Intellectual Property Rights GLO Discussion Paper, No. 1095.

More than one hundred of the 164 WTO member states declared themselves in favor of India and South African's proposal for a temporary waiver of patents on Covid-19 vaccines as part of the agreements on TRIPS. However, the EU and UK strongly opposed the proposal. It was their argument that the global intellectual property system played a "positive role" in generating effective vaccines and therapeutics. They contrarily supported voluntary licensing and technology transfer agreements for vaccines.<sup>330</sup>

## **5.2. The Principle of International Cooperation**

The international economic law principle of cooperation is increasingly becoming important in the international community. Today, it is recognized as a legal duty. The International Covenant for Economic, Social and Cultural Rights (ICESCR) is often referred to as the source of the legal duty of cooperation in international law. Article 2(1), of the ICESCR, stipulates thus:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

During the covid-19 pandemic, the relevance of the principle of cooperation was more apparent. The General Assembly of the United Nations unanimously adopted a resolution calling for 'intensified international cooperation to contain, mitigate and defeat the pandemic. Similarly, the G20 had also pledged to fully cooperate to 'deploy a robust, coherent, coordinated, and rapid

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330 Olga Gurgula "Celebrating Covid-19 Vaccine Production via Involuntary Technology Transfer" The South Centre Policy Brief, September 2021.

financial package’ in support of at-risk communities facing the ‘health, economic, and social shocks of Covid-19’.

The International Monetary Fund described 2020 as “A Year Like No Other”<sup>331</sup> This description was informed by the covid-19 related recession since the Great Depression<sup>332</sup> The interlink between global health and trade became apparent as the world dealt with health emergencies, accompanied by economic and financial crisis. Assistance and cooperation became indispensable during the pandemic.

International assistance is key to duty to cooperate. Many low-and-middle income countries relied heavily on international assistance in addressing the pandemic, African continent particularly. Literature reveals that 60 per cent of Africa’s population lives in poverty and its per capita income growth has averaged only 1.1 per cent a year since 1960.<sup>333</sup> Africa remains the most underdeveloped continent around the world, constituting 70 per cent of the world’s total Least Developed Countries.<sup>334</sup>

From 2020, international financial institutions began to organize financial support for developing countries. First, in a joint statement on March 2020, G20 leaders pledged to utilize policies in minimizing the diverse damaged occasioned by the pandemic.<sup>335</sup> They particularly pledge

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<sup>331</sup> IMF Annual Report 2020, A Year Like No Other. Available at < <https://www.imf.org/external/pubs/ft/ar/2020/eng/>> (last accessed October 10, 2023).

<sup>332</sup> The Great Depression was a severe worldwide depression which occurred in the 1930s. it had a profound impact on the global economy, with widespread financial setback, global unemployment and intense poverty.

<sup>333</sup> Mayowa Kuyoro et al “Reimagining economic growth in Africa Turning diversity into opportunity” McKinsey Global Institute, June 2023. Available at < <https://www.mckinsey.com/~media/mckinsey/mckinsey%20global%20institute/our%20research/reimagining%20economic%20growth%20in%20africa%20turning%20diversity%20into%20opportunity/reimagining-economic-growth-in-africa-v6.pdf>> (last accessed October 10, 2023).

<sup>334</sup> Bamidele A. et al “Least Developed Countries in Africa” The Palgrave Encyclopedia of Global Security Studies, 2020. Palgrave Macmillan, Cham. [https://doi.org/10.1007/978-3-319-74336-3\\_346-1](https://doi.org/10.1007/978-3-319-74336-3_346-1).

<sup>335</sup> Theo Mbise “Least Developed Countries and Financial Assistance” Trade for Development News, April 1, 2022.

national measures to be taken in contributing to the world's quick recovery from the effect of the pandemic.

The World Bank offered major support also during the pandemic. assistance was deployed to government and private institutions in order to the health emergencies. By April 2021, the World bank had committed up to \$4.6 billion to fifty-four countries of the world.<sup>336</sup>

### **5.3. The Principle of Good Governance**

Good governance matters the most in times of crisis as reaffirmed by Covid-19 experience.<sup>337</sup> In the context of the pandemic, the immediate responses of countries were critical to their ability to curb the pandemic and to recover from the its accompanying damages. As government implement different policies in the fight against covid-19, international organization emphasize the need to pay special attention to good governance.<sup>338</sup> This is quite important in Africa due to the pre-existing vulnerability of the region. Gladly, the African policy stakeholder acted promptly in continental synergy, although not without challenges.

Although the concept of good governance has no generally acceptable definition, the context and application are however clear as crystal. Good governance simply means the effective use of the power of the state and the strength of its political will<sup>339</sup> Good governance is expressed when the government is resolute and work progressively in safeguarding the rights and interests of the citizens, making quality decisions and implementing same with all commitment.

In the time of the pandemic, the ordinary cause of lives of citizens was interrupted. Many African countries for instance adopted total lock and other measures affecting the fundamental rights of

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<sup>336</sup> Ibid.

<sup>337</sup> OECD, 2020.

<sup>338</sup> IMF, 2022.

<sup>339</sup> Ibid.

the people. This means that citizens were limited in helping themselves and they were also required to comply with regulations. There is therefore a critical need for the government to under these needs of the citizens and to work toward providing relief or them.

The modern principle of good governance is hinged on some fundamental principles; these include;

- a. Accountability;
- b. Transparency;
- c. Responsiveness;
- d. Rule of law;

### **A. Accountability**

Accountability is a fundamental principle in economic relations of countries.<sup>340</sup> Accountability connotes the ability to give satisfactory account for one's action and inaction. It promotes trust in international relations. For instance, where a country receives financial aid within the international community, it would be expected to use same for the specific purpose for which the aid was given. Accountability in this regard therefore means to be answerable and responsible.

Governments occupy a position of trust and it is expected that they provide measurable results.<sup>341</sup>

In the context of government, accountability entails the actions taken by government in keeping

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<sup>340</sup> Staffan i. Lindberg "Accountability: The core Concept and its Subtypes" Africa Power and Politic Working paper, No. 1, April 2009.

<sup>341</sup> Khotami "The Concept of Accountability in Good Governance" Advances in social Sciences, Education and Humanities Research, Vol 163, 2017.

the citizens and institutional stakeholder informed of the process of making and implementing decision. Accountability creates the opportunity to evaluate the performance and conduct of government in particular situations. It promotes checks and balances in government.

During the pandemic, many African countries were challenged for not being accountable with resources realized through international aid and assistance. Evidence of corruption emerged about some government officials in Africa who diverted Covid-19 palliatives. In Nigeria for example, the Sahara Reporter captures the news of member of Lagos House of Assembly who used Covid-19 palliatives donated to Nigeria by the Coalition Against Covid-19 (COCAVID) as souvenir during her birthday<sup>342</sup> Similarly, news erupted on mass looting of warehouse where donated palliatives were being hoarded by Nigerian government officials.<sup>343</sup> The aggrieved citizens lamented bitter about the non-accountability of the government.

Covid-19 aid and assistance were also deployed to Africa in form of direct fund, which were donated for the purchase of PPE and for general health relief. It is also sad that mismanagement of fund was also seen in some African countries. While mismanagement of fund is not news in many governments administration, the context of mismanagement during the pandemic was damaging to Africa's general outlook and ability to manage social contracts.<sup>344</sup> The Covid-19 Transparency and Accountability Project (CTAP)<sup>345</sup> was set up to operate as a watchdog on the management of Covid-19 resources in Africa.

## **B. Transparency**

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<sup>342</sup> Sahara Reporter News, available at < <https://saharareporters.com/2020/10/30/nigerians-expose-how-lagos-assembly-member-alli-macaulay-used-covid-19-palliatives>>. (last accessed October 10, 2023).

<sup>343</sup> Nigerians justify massive looting of Covid-19 Supplies. News available at < [https://www.voanews.com/a/covid-19-pandemic\\_nigerians-justify-massive-looting-covid-19-supplies/6197611.html](https://www.voanews.com/a/covid-19-pandemic_nigerians-justify-massive-looting-covid-19-supplies/6197611.html)>. (last accessed October 10, 2023).

<sup>344</sup> Symkn F. Nayupe "Covid-19 and Fund Mismanagement in Malawi: A major Challenge to its Pandemic Containment" Health Science Reports, Vol 5, Issue 3, 2022.

<sup>345</sup> This is a partnership of seven African countries: Nigeria, Kenya, Cameroon, Ghana, Malawi, Liberia and Sierra Leone.

A government is transparent when decisions and enforcement of decision are carried out in manner that is congruent with laid down rules and procedures. It necessitates the accessibility to information by the people likely to be affected by such decisions.

Transparency also requires government to issue adequate information whenever they choose to give report. In the context of the pandemic, issues arose on transparency of data reporting on Covid-19 cases in different African countries. Although a wide range of reporting systems were adopted by different countries, it was important for government to ensure accurate and comprehensive data reporting. The WHO Regional Office for Africa revealed that no country met all the IHR data reporting of Covid-19 cases. Even worse, Africa was said to have limited capacity or no capacity at all for data reporting.<sup>346</sup> The relevance of this is that inadequate data reporting may affect the quality of policy response, which may be fatal where the steps calculated prove inadequate to address an emergency.<sup>347</sup>

### **C. Responsiveness**

Responsiveness connotes the ability of government to take necessary decisions within reasonable time.<sup>348</sup> It is by being responsive that the government is able to serve the best interest of the people by addressing societal challenges effectively and satisfactorily. A responsive government listens to the needs, concerns and preference of its citizens and take these into considerations in the course of decision-making. This can be done surveys, meetings and other feedback mechanisms. This enables the government to serve better. Responsiveness also demands governments to take proactive measures against possible challenges.

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<sup>346</sup> Seth D. Judson et al “Covid-19 Data Reporting Systems in Africa reveal insights for Future Pandemic” *Epidemiol Infect*, 2023.

<sup>347</sup> Ariann Rotulo et al “Mind the Gap “Data Availability, accessibility, transparency and Credibility during Covid-19 Pandemci; An International Comparative Appraisal” *PlosGlob Public Health*, 2023.

<sup>348</sup> UN 2020.

Without gainsaying, the African Union response to the pandemic was swift. Effort was coordinated also among the continent's Regional Economic Communities in order to mitigate the effect of the pandemic. Although the first case of Covid-19 recorded in Africa was in February 2020, the Africa Center for Disease Control had set up its emergency Operation center since January 2020. The AU also summoned a meeting of Health Ministers of member states in February 2020 in order to consolidate the effort in curbing the spread of Covid-19. African Corona Virus Fund was also established in 2022.

Without gainsaying, the prediction on Covid-19 in Africa was defiled. Africa was one of the least affected regions during the pandemic.

#### **D. Rule Of Law**

The principle of rule of law is foundational to good governance.<sup>349</sup> It connotes the supremacy of law over everyone, including the government itself.<sup>350</sup> Rule of law presupposes the existence of certain defined rules and regulations, with definite procedures for enforcement, thereby promoting accountability, reliability and predictability of the exercise of power in a given state.<sup>351</sup> Rule of law is crucial to attainable good governance.

Additionally, rule of law requires that people be governed by acceptable legal norms, as opposed to arbitrary decisions of rulers. This is, no doubt, necessary for and protecting the rights of the citizens. Unless government is committed to abiding by law, breach of human right is bound to

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<sup>349</sup> Alok Kumar Yadav "Rule of law" International Journal of Law and Legal Jurisprudence Studies, Volume 4 Issue 3, 2019.

<sup>350</sup> Governance at a Glance, OECD 2013.

<sup>351</sup> Ibid.

occur. It is therefore a common practice in democratic governments to enshrine the fundamental rights of citizens in the constitution or any other cogent legal instrument.<sup>352</sup>

Due process is another important factor in rule of law. Simply put, due process means that actions and decision of governments, private individuals and other bodies go through prescribed procedure. This gives rooms for fairness and predictability. The American scholar, Don Fuller underscores the critical factors in rule of law as follows:

- a. Laws must exist and those laws should be obeyed by all, including government officials.
- b. Laws must be published
- c. Laws must be prospective
- d. Laws should be written with reasonable clarity to avoid unfair enforcement.
- e. Law must avoid contradictions.
- f. Law must not command the impossible.
- g. Law must stay constant through time to allow the formalization of rules

During the pandemic, governments were faced with making decision to address the pandemic in a legally acceptable manner. Measures taken significantly affected human rights, such as right to movement, right to associate, right to basic amenities and so on. Africa was challenged in maintaining a balance between policies addressing the global emergency and the protection of fundamental rights of the people. The situation led to the development by African Union and other Human rights organization in Africa, of guideline and recommendations in response to the pandemic for the protection of human rights.<sup>353</sup> The

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<sup>352</sup> See the Constitution of the Federal Republic of Nigeria, Chapter IV for example.

<sup>353</sup> Kingsley Ighobor “Prioritizing Human Rights in Africa” Africa Renewa, March 2023.

recommendations introduced a delicate balance in safeguarding public health and upholding the human rights.

#### **5.4. Challenges Of International Organizations During the Pandemic**

Covid-19 started as a global health crisis but soon transformed into a global economic crisis affecting all continents. During this period, the importance of cooperation in addressing global policy was reinforced. While the measurable success cannot be denied, international organizations were tasked with array of challenges which tested their capacity and adaptability. The existing frictions in international relations caused hampered the progress of international coordination during the pandemic. The major challenges of international organizations during the pandemic are discussed below.

##### **A. Geopolitical tension**

The pandemic intensified the existing competition and rivalry between China and the United States, both of which are world powers. Prior to the pandemic, competition had increased greatly between the two countries in the areas of technology, global supply chains, infrastructure connectivity, trade and finance. The existing geopolitical tension between the duo became a great challenged during the pandemic, hampering and undermining international cooperation.

First, the Chinese government was severely criticized for lack of transparency at the early stages of the pandemic. this was mainly in terms of unreported cases and delay in issuing of information. The United States expressed concerns about the accuracy of Chinese data

Also, both China and United States blamed each other on the origin of the pandemic. The Trump administration in United State commonly referred to covid-19 as Chinese Virus or Wuhan Virus

which was unacceptable to China, who considered this as a form of stigmatization which was rooted in politics. The United States and China continued to struggle with each other rather than cooperate in response to the pandemic, like they did during Ebola breakout. Both countries also accused each other of cyberattacks.<sup>354</sup>

Similarly, both countries played diplomacy in their vaccine assistance.<sup>355</sup> For China, diplomacy took the form of vaccine offering to countries in Africa, Latin America, and Asia. This was commonly criticized for being a way to coerce the recipient countries into doing business with China. For United States, diplomacy was in form of vaccine campaign, especially through COVAX.

## **B. Disparity in Vaccine Distribution**

International organizations like WHO, UNICEF were faced with the challenge of unequal access to vaccines during the pandemic, which made it difficult to balance the mission of global health equity.<sup>356</sup> The reasons for this varies across regions. First, manufacturing of vaccine is concentrated in few high-income countries. The low-income countries faced unique challenges when the manufacturing countries began to take restrictive measures in order to build national capacity. Moreover, the wealthier countries have entered into agreement with manufacturers to secure vaccines upon production. The economic power of the rich countries was exercised even to the detriment of the rest of the world.<sup>357</sup>

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<sup>354</sup> New York Times “U.S accuses China of Hacking Microsoft” Available < <https://www.nytimes.com/2021/07/19/us/politics/microsoft-hacking-china-biden.html>>(last accessed October 10, 2023).

<sup>355</sup> Liangtao Liu “China’s Vaccine Diplomacy and Its Implications for Global Health Governance” Health Care 022 Jul; 10(7): 1276.

<sup>356</sup> Ibid.

<sup>357</sup> Al-Jazeera News “Rich nations ‘hoarding’ a billion doses of excess COVID vaccine” Feb 2012. Available at < <https://www.aljazeera.com/news/2021/2/19/covid-vaccine>> (last accessed October 10, 2023).

### **C. Inability of COVAX to Meet its Target**

CAVAX as a major partnership during the pandemic failed in its original target.<sup>358</sup> The facility primarily focused on making vaccines available and affordable with low-income countries, with the original goal of the alliance was to deliver 2 billion vaccine doses by the end of 2021. However, the target was reduced to 1.4 billion by the end of 2021.<sup>359</sup>

The reasons for this failure include limited vaccine production capacity, requirement of intellectual property, logistics problems, hoarding and export restrictions. For example, it was challenging to properly transport some types of vaccines to remote continents. Especially the Pfizer-BionTech vaccine because of the requirement of storage. Also, COVAX only sought to leverage on cooperation to procure vaccines, the alliance was not a producer. The effect of this is that the fact of export restriction and hoarding still limited the influence of the alliance.

### **5.5. Covid-19 And the African Continental Free Trade Area (AFCFTA)**

In 2012 at the AU Summit, the Heads of State and Government adopted a decision on the establishment of a Continental Free Trade Area (CFTA) and endorsed the Action Plan on Boosting Intra-Africa Trade. The CFTA known as “The African Continental Free Trade Area Agreement” AFCFTA, identifies seven areas of cooperation namely: trade policy; trade facilitation; productive capacity; trade related infrastructure; trade finance; trade information; and factor market integration. The AU recognized that the that the promotion of intra-African trade is a fundamental factor for sustainable economic development, employment generation and

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<sup>358</sup> Anjali Pushkaran et al “A critical analysis of COVAX alliance and corresponding global health governance and policy issues: a scoping review” . BMJ Glob Health 2023.

<sup>359</sup> Ibid.

effective integration of Africa into the global economy<sup>360</sup> The AFCFTA Agreement is a crucial part of Africa's Development framework tagged Agenda 2063

The Covid-19 pandemic started at a critical time of implementation of the AFCFTA. By the beginning of 2021, the long-awaited AFCFTA was to become a reality and Africa was just set to moved into a landmark year. Sadly, due to the unforeseen disruption caused by Covid-19, the implementation of the FTA was moved to January 2021. The AFCFTA is a strategy plan to integrate, diversify and industrialize African economies.<sup>361</sup> However, the pandemic seems to undermine these possibilities through the crippling effects that is causing a global economic crisis

According to World Bank,<sup>362</sup> the AfCFTA agreement will create the largest free trade area in the world, measured by the number of countries participating. It is estimated that it would connect 1.3 billion people across 55 countries with a combined GDP valued at \$3.4 trillion. It has the potential to lift 30 million people out of extreme poverty by 2035<sup>363</sup>. Indeed, the potential of the AFCFTA cannot be overemphasized.

The AfCFTA agreement has the following general objectives, 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 2063;

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<sup>360</sup> Decision On Boosting Intra-African Trade And Fast Tracking The Continental Free Trade Area Doc. Ex.Cl/700(Xx).

<sup>361</sup> Ibid.

<sup>362</sup> World Bank Group “The African Continental Free Trade Area: Economic and Distributional Effects”

<sup>363</sup> Supra.

- (b) create a liberalized market for goods and services through successive rounds of negotiations;
- (c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;
- (d) lay the foundation for the establishment of a Continental Customs Union at a later stage;
- (e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties;
- (f) enhance the competitiveness of the economies of State Parties within the continent and the global market;
- (g) promote industrial development through diversification and regional value chain development, agricultural development and food security; and
- (h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

AFCFTA negotiation exist in Three (3) phases. Phase I negotiation covers matters on tariff concessions, services commitments, and rules of origin. Phase II of the AfCFTA negotiations covers regulatory trade issues that take place “behind the border.”<sup>364</sup> It focuses on three topics: investment, competition policy, and intellectual property rights. Phase III covers on E-commerce.

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<sup>364</sup> Landry Signe and Collette Van Der Ven “Keys to Success for the AFCFTA Negotiations” African Growth Initiative (Policy Brief) May 2019.

It is apposite to discuss certain core provisions of the protocol accompanying of AFCFTA Agreement.

### **A. Trade In Goods**

The protocol on Trade in Goods was part of Phase 1 negotiations under AFCFTA. It is a significant one as far as the free trade is concerned. The principal objective of this Protocol is to create a liberalized market for trade in goods in accordance with Article 3 of the Agreement.<sup>365</sup>

The specific objective of this Protocol include to boost intra-African trade in goods through progressive elimination of tariffs; progressive elimination of non-tariff barriers; enhanced efficiency of customs procedures, trade facilitation and transit; enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures; development and promotion of regional and continental value chains; and enhanced socio-economic development, diversification and industrialization across Africa.

ACFTA drops tariffs by 90 percent and also incorporates policies to eliminate non-tariff barriers, such as custom delays, import ban, discriminatory rules of origin and so on. A significant effect of this is that African countries will have more access to cheaper goods and services among themselves. This without a doubt will boost intra-African trade and by implication, the African economy.

Among others, the rule of origin is also an important part of the protocol on trade in goods. This is because it is a promising and yet challenging principle to implement. AfCFTA Rules of Origin

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<sup>365</sup> Protocol on Trade in Goods, Article 1.

are a set of criteria and conditions used to determine whether or not goods that are traded between State Parties are qualify as originating goods.<sup>366</sup>

Under the protocol, goods qualify for preferential tariff treatment if they originate in State Parties. The implication of this is that Products that meet the requirements of the AfCFTA Rules of Origin shall qualify for preferential tariff treatment when they are traded within the AfCFTA.

a Product shall be accepted as originating from a State Party if it has<sup>367</sup>

(a) been wholly obtained in that State Party within the meaning of Article 5 of Annex 2; or

(b) undergone substantial transformation in that State Party within the meaning of Article 6 of Annex 2.

The main challenge on this protocol however is that many African states are currently participating in more than one regional trade blocks, each following different rules of origin criteria. It is therefore compelling that the different rules of origin be harmonized for the smooth running of the AFCFTA.

## **B. Trade In Service**

Under the protocol, trade in service means the supply of service<sup>368</sup>

- i. from the territory of one State Party into the territory of any other State Party;
- ii. in the territory of one State Party to the service consumer of any other State Party;
- iii. by a service supplier of one State Party, through commercial presence in the territory of any other State Party;

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<sup>366</sup> See The African Continental Free Trade Area Secretariat “Rules of Origin Manual” Volume 1.0, July 2022

<sup>367</sup> See Article 4 of Annex 2,

<sup>368</sup> See Protocol on Trade in Service Article 1

- iv. by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.

It is a core duty under the protocol for each State Party to accord to services and service suppliers of any other State Party treatment no less favorable than that accorded to its own like services and service suppliers.<sup>369</sup>

This protocol also contains extensive provision on mutual recognition in terms of its standards or criteria for the authorization, licensing or certification of services suppliers. subject to the requirements of paragraph 3 of this Article, a State Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in another State Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously.

The practical effect of this mutual recognition is that professional in one state can become equally recognized as professionals by another participating country under AFCFTA. This can be made easy through harmonization of laws or based on the agreement between parties.

The AFCFTA does not end with trade in goods and services. Further provisions exist on matters such as dispute resolution, intellectual property and e-commerce. The potential of the agreement is indeed all-encompassing.

#### **4.6. Impact of Covid-19 on the AFCFTA**

The AFCFTA is expected to facilitate trade in goods and services through free movement of persons in order to promote and expand economic integration in line with the African Union

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<sup>369</sup> Ibid Article 20.

Agenda 2063. However, the pandemic has restricted travels around the globe, having a direct impact on economic integration and intra Africa trade. Therefore, it is important for governments within the region to be prepared for the possible negative impact the virus will have on the implementation of the agreement and seek out ways to convert the pandemic to opportunities for stronger economic and political integration. Some of the negative impacts of the pandemic are highlighted below:

- a. The imposition of border closures and travel bans by pivotal and burgeoning African economies, including but not limited to Nigeria, South Africa, Ghana, Algeria, Morocco, Kenya, and Ethiopia, has significantly influenced intracontinental trade dynamics. The limitations on movement have led to a discernible impact on the export sector, particularly in essential commodities such as pharmaceuticals and agricultural products. The demand for these vital goods has experienced a decline due to the precautionary measures implemented by governments to mitigate the spread of the virus.
- b. The request for Africa's raw materials and commodities in Asia, Europe, and North America has witnessed a decline, concurrently impeding Africa's access to industrial components and finished goods from these regions. This scenario has injected additional ambiguity into a continent already contending with extensive geopolitical and economic instability. The pandemic's repercussions could potentially amplify the competitive divide among African economies, posing a heightened threat to the competitiveness of smaller economies that predominantly rely on monocultural industries and face challenges in attracting foreign direct investment.
- c. The pandemic has introduced disruptions to the regional value chain. The AFCFTA, designed to enhance industrial development and foster continental sustainability,

particularly in the agricultural sector, hinges on participating states elevating their industrial and manufacturing capabilities. This elevation, in turn, has the potential to bolster GDP by transitioning from processing imported raw materials within the AFCFTA to producing semi-finished or finished goods for export—either within the AFCFTA framework or beyond. However, the onset of COVID-19 has attenuated the prospects for a robust regional value chain. For many low-income African economies, industrial development during the pandemic appears to be a secondary consideration, largely influenced by revenue constraints.

Covid-19 shows that self-sustainability matters and is important mostly for food security, education healthcare and logistical services. An objective of the AFCFTA is to make the continent self-reliant in these sectors and signatories to the Agreement need to develop a framework and set realistic implementation plans to improve these key sectors irrespective of regional integration. Rather than close borders that can send a negative signal to the progress of the Agreement, governments can reduce human flows while keeping borders open to key goods and services required for national development and economic sustainability. In this case, border management agencies are tasked to ensure movement across borders met the business and economic criteria set by the Nigerian government. This will signal continued belief in the importance of economic activities and trade in provision of goods and services that people need to continue their daily lives. This will require quick and timely decision making supported by accurate and credible data available to policy makers. Such management information systems (MIS) should include economic, social, environmental, health, cultural, governance and technology data that are key requirements for effective competition within the CFTA.

## **Chapter Six**

### **Summary and Recommendation**

#### **6.1. Conclusion**

So far, the field of international economic law has been critically appraised in the context of its history, principles, sources and organisations. Preponderance of evidence shows that international economic law is fast becoming a cogent field of international law having massive impact on a wide range of transnational relations. With the Covid-19 pandemic, the interconnection of world economy is reaffirmed thereby reinforcing the need for greater economic cooperation among nations. There is therefore the need to strengthen this field of law.

Chapter three of this thesis examines the legal framework for the international trade under the WTO. The changes in the landscape of economic policies provoked by the pandemic are extensively discussed. Undoubtedly, the trend that came in the use of trade restriction,

particularly export restriction, proved more damaging to the world's economy and health than good. Africa particularly was greatly impacted, especially in terms of accessibility of medical supplies, food and other resources which were basic necessity during the pandemic. It was however clear that no country had a perfect solution to the pandemic. This naturally calls for cooperation rather than a competition and extreme protectionist measures.

Chapter four examines the concept of international cooperation and good governance and the active role they play during the pandemic. Statistics reveals that most of the restrictive measures initially adopted by states were withdrawn or eased within the first year of the pandemic. Also, international assistance was greatly mobilized for the sake of the poorer country. While the achievement is noteworthy, we also saw that achieving the health and economic goal was quite challenging for international organizations. The COVAX Alliance for example, had to bring down its goal as it was already appearing impossible to achieve. The chapter also examines the AFCFTA Agreement and its prospect in the times of emergencies.

In conclusion, the Covid-19 pandemic reaffirms the intricate relationship of the field of international economic law and global health. In response to the pandemic, trade policies became a pivotal tool. Trade restrictions were greatly deployed by countries in an attempt to ensure the safety of their citizens. Interestingly, unintended consequence emerged for the health and economy of many countries. The export bans, initially conceived to safeguard the interests of exporting nations, had a profound and disproportionate impact on the health and economy of the African continent.

Africa, grappling with its own challenges in tackling the pandemic, found itself heavily reliant on international assistance, particularly for critical medical supplies such as the COVID-19 vaccine. Despite the fortunate inflow of international support, Africa's underlying fragility in both its

healthcare and economic systems have persistently hindered its full integration into the global landscape. This predicament demands the immediate attention of African policymakers. While the battle against COVID-19 may have been won, Africa's vulnerability must not persist, especially in the face of uncertain times ahead. Proactive measures and strategic reforms are imperative to ensure that Africa's resilience and preparedness become the cornerstone of its future endeavors on the global stage

## **6.2. Recommendations.**

In light of the ongoing circumstances, I'd like to emphasize the following recommendations:

1. There is an urgent need for innovation in the General Agreement on Tariffs and Trade (GATT), which is the major WTO agreement on trade in goods. GATT did not explicitly address situations like global pandemics, where many countries simultaneously implement trade restrictions. Under the GATT, countries may impose trade restrictions to safeguard public health and ensure the availability of essential goods. However, these measures need to be subject to scrutiny and should not be used as an excuse for unjustified protectionism. It's worth noting that there is need for flexibility during a pandemic. In response to the COVID-19 crisis, the WTO issued a statement encouraging member countries to work together and ensure that any trade restrictions implemented for pandemic-related reasons are transparent, temporary, and proportionate. It is key therefore to balance restrictive measures with the principles of non-discrimination and

fair trade, which the WTO upholds. GATT should also be amended to provide specifically for global pandemic. This is necessary as a result of future uncertainties.

2. It is imperative for Africa to fully utilise the potential of intra-African trade, with the African Continental Free Trade Area (AFCFTA) serving as a pivotal platform to facilitate this goal. In the wake of the COVID-19 pandemic, the call for self-reliance and resilience has never been more urgent. Africa, with its unique challenges, has an opportunity to achieve self-sufficiency through intra-African trade. The AfCFTA Agreement indeed, serves as a critical enabler for this objective. By fostering regional integration, removing trade barriers, and promoting economic cooperation, AfCFTA can unlock the vast potential of intra-African trade. It is a game-changing initiative that seeks to boost intra-African trade and enhance the continent's economic self-reliance. The Agreement is the world's largest free trade area in terms of the number of participating countries. Africa's overreliance on external markets and global supply chains has made the continent vulnerable to disruptions, as evidenced during the COVID-19 pandemic. The sudden disruption of global supply chains, export restrictions, and rising shipping costs have exposed the risks of such dependence. AFCFTA can substantially reduce Africa's reliance on external markets.
3. It is imperative for international organisations to cooperate more in ensuring peace and security. Without gainsaying, the geopolitical rivalry between United States and China constituted a huge hindrance in fighting the pandemic. Unlike how the two countries acted in synergy during the fight against Ebola, they continually blamed and condemned each other during the Covid-19 pandemic and were therefore unable to synergize in the fight against the pandemic. During the Ebola crisis, the U.S. and China cooperated by

providing financial and medical assistance to affected African countries, demonstrating a shared commitment to global health security. However, the dynamics were starkly different when COVID-19 emerged. The blame game and accusations between the United States and China overshadowed their potential collaboration. The consequence of this rivalry was that the world was denied the full potential of their combined resources and expertise in combating the virus. The lack of cooperation between the United States and China had direct consequences for the global response to the pandemic. Delays in sharing crucial information and research hampered the development of vaccines and treatment options. Furthermore, the absence of a unified front allowed misinformation to spread, leading to public confusion and mistrust in the face of an unprecedented crisis. Similarly, the Russia-Ukraine war, which began in 2014, had already strained international relations and disrupted regional stability. However, the pandemic presented a new challenge, as it demanded global attention and resources. As the world grappled with the virus, the conflict in Eastern Ukraine continued, and international efforts to resolve it remained stalled. This lack of progress was a stark reminder that in the face of a global crisis like COVID-19, regional conflicts could exacerbate the situation and hinder the necessary response efforts.

4. Africa must place a deliberate and substantial focus on strengthening its healthcare system. The pre-existing fragility of the healthcare infrastructure has only heightened the continent's vulnerability during the pandemic. Africa's healthcare systems were already grappling with several challenges, and the pandemic has only accentuated the vulnerability of the continent. Strengthening Africa's healthcare infrastructure can happen through the following;

- a. Countries in Africa must collaborate regionally to strengthen healthcare systems collectively. This collaboration must also be consolidated in terms of trade in medical goods and services across the continent.
- b. African countries must be willing to finance medical research and development and to share resources and knowledge, best practices can enhance pandemic preparedness.
- c. Increased domestic funding and investment in healthcare infrastructure.

Covid-19 has presented an opportunity for significant improvements. By addressing pre-existing challenges, learning from the pandemic's impact, and receiving global support, Africa can build a more resilient healthcare system. Strengthening healthcare in Africa is not just a matter of regional importance; it is a global imperative for ensuring health security and preventing future pandemics

5. The unwavering commitment of African nations to international agreements holds significant sway over their successful implementation. Africa must exhibit a steadfast dedication to all existing agreements, particularly those that pertain to health, in order to drive positive change on the continent. The reality of the pandemic emphasizes the need for greater international in terms of healthcare expenditure. The pandemic revealed the safety of none is guaranteed unless the safety of the other is secured.

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Osun State University (UNIOSUN), Osogbo, Nigeria (2014-2020)

Iwo Grammar School (IGS), Iwo, Osun State, Nigeria (2008-2014)

C. Working Experience with Dates

QuickFix Investment Nigeria Company Limited May 2022 to April 2023

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University Compliance Certification

This is to certify that this project by Kemi Akinlade with matric number LCU/PG/03131 in the Department of Law, Faculty of Law, Lead City University is in full compliance with the approved university.

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Signature

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