

# World Trade Organisation and African Trade Development: Towards A Legal Framework for the Establishment of African Economic Trade Organisation (AETO)

Idibia, Daniel Obida

Jurisprudence & International Law Department, Faculty of Law, University of Lagos, Akoka, Nigeria

---

**Abstract:** This study investigate the factors that determine regional trade networks within Africa and argues for the need to promote regional legal frameworks for promoting economic development in the region. Studies have shown that at various times in the history of Africa, development strategies were modeled after foreign standards and have largely failed because they were initiatives of and patterned after Western interest and elements. The development plans were in form of aid from Overseas Development Association, (ODA), Foreign Direct Investment (FDI) and World Bank soft loans. However, all these proved largely to be either unsuitable or unrealistic. The study argues that building on those foreign ideas without taking into consideration the economic culture of Africa, which is the foundation for sustainable development are false steps which have never and will never liberate Africans from dependency to set the region on the path of economic recovery. The study suggests change as most sub-regional sectors of Africa are regrouping for better opportunities by way of economic gains and promotion of democracy. The study posits that the best way to secure the foundation for Africa's growth is to have her own trade organization that will carter for the needs of African trade because the end purpose of African Economic Trade Organization (AETO) is for Africa to pool her resources for global competitiveness by trading internationally to boost her balance of payments. The study proposes a legal action which de-emphasizes WTO and place more emphasis on localization and the establishment of AETO.

**Keywords:** GATT/WTO, Foreign Aid, LDCs, Economic development; law & Economics.

---

## 1. INTRODUCTION

Law and development are fused in modern economic planning especially because of economic rights, which constitute a question of law that addresses issues, solve problems of unequal bargaining power and also plays significant role where power based issues are employed in negotiations as opposed to a law-based platform. The idea of how law can be used for development for economic purposes as contained in GATT rules currently annexed to WTO is lacking in Africa. This is one of the core problems and the difficulties in evaluating the growth of trade on the continent. There is an urgent need for a home-grown legal framework of development on institutional trade organisation that is made in Africa for Africa because Africa has nothing to show in terms of her trade growth since her participation at WTO for the past one decade. Foreign financial assistance which could have developed African countries' economy have failed due to none incorporation of the homegrown ideologies of the natives of the region. In Africa, any development plan meant to aid Africa must as matter of necessity take into account their priorities and start development from there. This has not been the case in aid era because most of the foreign ideas of development have been lips servicing and a case of feeding Africa with purgative opium. Africa needs to start thinking on the idea of a legal framework of her own Trade Organization (AETO).

Developments in Africa have taken more talks than action in the last two decades. Most ideas proposed on how to develop Africa is akin to doing God's work by accident rather than by design<sup>1</sup> and these have, thus far, failed to promote development in terms of institution, human and economic growth in the continent. Given the foregoing, Easterly noted that 'the ideology of development should be packed up in crates and sent off to the Museum of Dead Ideologies.'<sup>2</sup> The importance of the above statement is that most of the suggested ideologies of development in Africa came from foreigners and they failed Africa one way or the other as they did not incorporate the needs and priorities of the area of development needs of the people they sought to develop. Development shares common ideologies with both the developed and developing nations. One of the key questions for the promotion of economic development is how effective has the membership of African countries at WTO aided her trade promotion. This position is arrived at because of the failure of GATT rules to make any major impact on the growth of the regions' trade at the World Trade Organization. The woeful result of trade stagnation has made it very necessary for Africa to search within her region for her own trade organization that will promote growth of trade of member countries.

Since true revolutions of development are centered on legal architecture to promote and solve problems of development of commercial agreements, Africa needs a sound legal document for her trade institution. The failures of development of some African regions have been due to the imposition of external agreements which do not suit the terrain of Africa's development economy. The ideas are clog with rigidity of rules and dictates of the West on the world's poor, thus accounting for the miserable failures of development that have been witnessed in the continent. Every society needs development whether in law or economic. The Least Developed Countries (LDCs) needs development to compete favorably in foreign earnings and balance payments through international trade and to raise the standard of living her people.<sup>3</sup>

The developed countries also need development in terms of new ideas, technologies and political maneuvering over their competing counterpart in production of goods and service in areas of trade domineering and raw materials which most sources are obtained from developing countries of Africa, Asia and the pacific. Initially, when the idea of free market was introduced by Europe and America, it was received with warm hearts by LDCs but when most produce such as Cotton and Agriculture from Africa were fettered with clauses in the various agreements with stiff tariffs, it made a caricature of its supposed 'good intention.'

### 1.1 Trade Liberalization and African Trade Development:

Ordinarily, there is nothing wrong with the idea of free trade or trade liberalisation. The conception of free trade idea was intended to enhance the markets of the produces from the continent of Africa. However; the argument is that it was presented in unworkable ways that would never lead to economic development through trade in Africa. One of the reasons why Africa will struggle in vain in WTO is that free market as presented by WTO, is with unelected outsiders imposing certain rigid principles of trade and tariffs on the unwilling people of developing countries who have limited choice in the matter because of power play and economic bargaining power. The share of the market allocated to Africa by Europe and America or developed countries as they are popularly referred to at the WTO level is too small. Africa does not have the force needed in technology in manufacturing capabilities to compete with the developed countries and hence, their competing priority for Africa should be to grow at her own pace on a regional basis for its trade stability and development. It is axiomatic that some countries in Africa believes that free manna would emanate from WTO to fast-track its trade opportunities. The history of laws of MFN rule and principle of non-discrimination over the years has proved the fertility a misadventure.

Africa must take deliberate steps to expound her trade interventions in economic trade and if there is any time to do this, it's now. Seeking redress for certain treatments of Africa in WTO such as inequality, political power show on agreements on Textile/Cotton and agriculture; which tariffs have remained unchanged after several years of negotiation between the developed and developing countries, the only way forward for African countries is to have an African trade organization.

<sup>1</sup> Foreign aid by its design and nature was never intended to develop the continent of Africa from its conception.

<sup>2</sup> W. Easterly, "The Ideology of Development", (2007), Available on <http://economistsview.typepad.com>. Accessed on 17-6-2016.

<sup>3</sup> F. G. Snyder, "Law and Development in the Light of Dependency Theory" (1980), Law & Society Review, Vol. 14, No. 3, Contemporary Issues in Law and Social, pp. 723-804. Wiley for Law and Society Association. This paper argued that modernisation adopted a notion of social change that emphasized differentiation and integration.

Some sort of supper regional arrangement that would coordinate the affairs of her trade at the global level. It has not been established both in practical terms and on paper that any of the 28 members of Africa countries who are members of WTO have indeed benefited from the trade bargain. Whalley<sup>4</sup> argues that one of benefits which most developing countries relies upon was the 'special rights to protect and preferential market access. This was characterized by wide range of delays with clumsy exemptions from developed countries in the name of technical assistance and some other provisions.

This study argues there is evidence of short-changing developing countries of Africa in terms of the rules of GATT which is sacrosanct.<sup>5</sup> It is therefore arguable that Africa would be far off better without its membership in WTO. Arguing this point further, the 1947 rules of GATT as they stand today are not beneficial to African trade development. The study suggest that African should review the sufficiency or otherwise of the existing commercial trade laws between African and advanced countries Africa and established its own trade organisation. The paper set out to propose, lie n5iexit a legal framework for the establishment of an African Economic Trade organization (AETO) which will serve as a parallel trade organization to counter the treatments received at WTO in terms of unequal trade bargain and tariff negotiation on common similarities of produce from regions.

WTO has failed the region of Africa in terms of promotion of trade. The rules of GATT as annexed to WTO had finally reduced the continent to perpetual dependency. Africa has also failed her people by her continuous membership of the organisation without an attendant contributory success of the continent's trade growth. The writer suggests a need for Africa to establish its own system of trade of international nature within the continent. The organisation would tackle the trade affairs of Africa like the World Trade Organisation did for Europe.<sup>6</sup>

WTO has sought legitimacy for itself and for the underlying institution of free trade. There are some questions regarding its organisational mandate and management of international trade negotiations. It is argued that Africa can equally sort for its trade institutions and decide on how it wants to deal with its trade adventure at WTO. The issue of equal representation at WTO had been canvassed by many African countries but they were all treated with levity. Furthermore, WTO is fraught with competing model of unrealistic dreams of free trade. Daemmrch found that the WTO dispute settlement process is helping to legitimize the institution of free trade through its public display of rational authority.<sup>7</sup> However, on the other hand, dispute panels have passes judgment most of the time on issues of econometrics and scientific uncertainty.<sup>8</sup> This practice have brought doubts for the broader legitimacy of the WTO as it has shifted from questions of representation that have long drawn attention to epistemic issues of a manifest typically in controversies over specific claims between member countries. This paper is of the view that now is the right time to make a case for the establishment of AETO when viewed from the background of the formation of WTO in 1947. Additionally, as argued by Stepek, there are always political interests vested in the status quo of any legal system, and overcoming those interests to pursue root and branch reform is extremely difficult.<sup>9</sup> Tellingly, globalization has made things simpler rather than complex but human beings managing the affairs of trade have made trade more difficult for the less developed countries. The place of law in WTO remains in limbo as the rule of GATT is rather on power-based rather than rule-based.<sup>10</sup>

<sup>4</sup> J. Whalley, "Special and Differential Treatment in the Millennium Round", (1999), Centre for the Study of Globalisation and Regionalisation (CSGR), University of Warwick, Coventry CV4 7AL, United-Kingdom. Available online at [www.csgr.org](http://www.csgr.org). Accessed on the 15/11/2016.

<sup>5</sup> The "DOHA" deadlock is a chronic example of how developed countries are unwilling to shift grounds to pave way for Africa and India to expand their trade. Furthermore, rather than apply rule-based to negotiation, Power-based against Rule-based negotiation are applied most of the time.

<sup>6</sup> A. Daemmrch, "Epistemic Contests and Legitimacy of the World Trade Organization: The Brazil — USA Cotton Dispute and Incremental Balancing of Global Interests" (2012) Vol. 4 (1) Trade, Law & Development 200.

<sup>7</sup> Supra note 6.

<sup>8</sup> Contra Boris Kozolchyk, who argues that Commercial legal institutions that are being used uniformly throughout the trading world earn their universality by incorporating best commercial practices. These are the practices that have proven their cost-effectiveness and fairness regardless of the marketplace in which they were first used.

<sup>9</sup> M. J. Stepek, "The Importance Of Commercial Law In The Legal Architecture Of Post-Conflict "New" States" (2008), 60 Me. L. Rev. 487, For further reading on what diversity of laws does to people of divergent race, see Stephen Macedo, "The Law of Peoples What Self-Governing Peoples Owe to One Another: Universalism, Diversity, and the Law of Peoples" (2003-2004), 72 Fordham L. Rev. 1721/. Available online at HeineOnline. Accessed on 12/1/2017.

<sup>10</sup> The argument is that certain project designed to create an enforceable commercial law may not necessarily be welcomed by the political leaders in any given state especially those with economic powers. Also, more importantly, there are always political interests vested in the status quo of any legal system, and overcoming those interests to pursue root and branch reform is

No doubt, the international regulation of GATT Rules is important in the promotion of trade but this study argues that its scale tilts to the side of its founding fathers who from inception, basically understood the rules and wield political powers to deliberate and shift grounds on political reason rather than rule based platform. It is therefore increasingly becoming more important that there are technical areas which developing countries of Africa need backup. A good example is the issue of agriculture where Europe and America had refused to shift grounds for the cut in tariffs to enable India and Africa move up their trade and have more share of the markets. All members from Europe and America were opposed the tariff cut proposed by India. Before now, the search to protect the rights of the Least Developed Countries was in the front burner but the competing priorities of the advanced countries have shifted greatly.

The search for these rights gave way to much unilateral liberalisation and the question of whether there is a significant progress of trade of developing countries under Special and “*Differential Treatment*” has become a lullaby of auditory hallucination. Africa needs a unified vehicle to ventilate her grievances at the world trade level. This is because one of the most common knowledge shared by mankind is commercial agreements on sales of goods and services between individuals and nations. Trade commonly unites people globally and also disunites nations globally depending on pursued interests and often times where a question of interest is involved; it may lead to an unending economic war between countries.

Presently, there is a dearth of a unified standard voice from Africa for addressing their concerns with the rules of GATT as they affect the trade interest of the region. One of such issues is the existence of disparity between developed and the developing nations in voting at the negotiation table during WTO rounds. The Most Favoured Nations rule of GATT has not favoured any country in Africa in terms of manufactured goods. Likewise, the Special Differential Treatment (S&D) pursuit has also failed Africa.<sup>11</sup> The fundamental idea that ‘no cap fits all’ was the reason behind the S&D. In GATT rule, S&D was codified as normative in 1979 in what is referred today as “*enabling clause*.” Basically it was supposed to provide for preferential treatment for developing countries on a non-reciprocity basis. Historically, trade context which emerges from the call for differentiation concerning exemptions and some form of assistance afforded to developing countries were meant to uplift the enlargement of the market share of Africa. This never happened as most negotiations which suppose to promote the S&D treatment ended up in a deadlock because of selfish and differing economic interest and lack of accommodation of African goods by Europe and America.

The effect of the above rule further shattered the hope of trade promotion and development in Africa which ought to commensurate the needs of Africa and other developing countries. The S&D rules sets out at the initial stage as demanded by some countries in African and India to give preferential treatment to Africa’s trade in the area of Cotton and Agriculture. Somehow, it latter turned out to become a bitter pill to be swallowed by the continent as its interpretation turned out to be different from the expatiations by Africa and India because of the heavy tariffs attached to it as a bargain. The reciprocity and transparency doctrine are all rules made in 1947 and even though globalisation has moved beyond those years, it has become extremely difficult to change some of the rules of GATT to accommodate new development ideas of developing countries. The lack of shifting of position by developed countries only promoted much of imbalance of trade between the West and developing countries. Besides this, certain agricultural produce from Africa are laced with laws in America which prohibits them from entering American shores.<sup>12</sup> The confirmation of the disagreement in the Uruguay Round records another weakling of WTO and the unwillingness of its founding fathers to reconsider the whole problem of economic growth of Africa through trade. For instance, exemptions which were considered suffer delays on implementation<sup>13</sup> such that it is only a matter on paper for academic debates as it did not yield any potent benefit. It is argued that while prospects for global agreements may not be very feasible in its entirety in the light of the growth of scientific uncertainty, the option for Africa in the wake of failure of aid to promote its economy is an establishment of a trade institution.

---

extremely difficult. Any legal reform requires compliance by a client country’s political leaders which in the case of GATT, its founders find favours in power-based politics rather than rule based.

<sup>11</sup> B. Hoekman, (2005). Operationalising the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment. In *Reforming the World Trading System (Reforming the World Trading System, Chapter 11)*. Journal of International Economic Law, 8(2), 405–424.

<sup>12</sup> For instance, the Animal Rights Act. Certain African delicacies from bush meat which ordinarily earn foreign exchange abroad are not allowed to be exported into America as they are classified to be against Animal Rights.

<sup>13</sup> H, Hakan and S. Pufendorf, Supra note 5, at page 3.

On the other hand, rules regulating trade ought to and should benefit the infant industries of Africa; the best option for Africa is to align itself to the formation of AETO to counter WTO which ideally, should be nicknamed “Euro-America International Trade Organization (EAITO).

It is now proper for Africa to have a regulatory framework for the establishment of a parallel trade organization within the region to serve as a vehicle where Africa may discuss its grievances of inequality treatment at WTO by the enforcement rule of ‘Most Favoured Nation’ (MFN) principle, the reciprocity doctrine, quantitative restrictions and unfair trade rules as they applies to the nations of Africa. The paper further support the current structure of other African regional organizations already in place, even though they are not in single entity, Africa can tap from some of the enabling legal framework in some of these sub-regional institution for the establishment of AETO.

Developing countries cannot survive economically through trade as MFN rules are not rule-based but power-based which never favours developing countries. The rule treats unequal, equally and treats unequally, equal. For instance, Africa cannot be compared with the West and the rest of Europe in terms of development in the spate of technology. The moral heart of normative law and economics is efficiency, especially, dynamic efficiency that takes incentive effects into account. In the economic theory, justificatory argument is inherently at the institutional or rule-level, not the individual.<sup>14</sup> Further to the above, it is now clear that the size of population of developing countries and the change in areas of need for development have increasingly become wider and can no longer be supported by the subservient treatment of the GATT as a role model. The option for Africa is trade, that is, Africa’s own trade institution. Ideally, international trade with African produce ought to raise the income and the living standards of the people in the region if the advanced countries are willing to buy African produce through importation. This is not made possible anymore because of the clogs in the rules of GATT. Now that trading of African products at the global market has become very difficult, there is need to devise another means of economic growth within the region. GATT rules are too stringent for African countries to compete and prosper from trade with the developed countries at WTO. These accounts for the reason why this study is renewing the advocate that rather than demanding for a fair deal for Africa at the GATT negotiating table, Africa need to have a legal framework for the formation of its own trade institution.<sup>15</sup> Indeed, it has been argued that to release the potentials of Africa, the need to create a legal architecture as a means to facilitate trade across the African borders is non-negotiable.

While there are some successes in some regional arrangements, they are not all encompassing as the whole of African region need to speak with one voice at the global trade level in their trade bargains. This may include major investments in transport infrastructure including roads, ports, internal container depots, inland water ways and railways that are needed but lacking in some of the countries in Africa.<sup>16</sup> A close view at the rules of GATT shows that the participation of Africa in WTO is just to mark register as the importance of creating export sectors to increase development through trade at WTO has lost its attraction. The continuance of poverty on such a massive scale in Africa and other developing countries and its stubborn resistance to the traditional solutions government expenditure, foreign aid, and private philanthropy indicate need for alternative ways to move masses of people up the income scale.<sup>17</sup>

It is on records that goods from Europe and the West attracts high tariffs that those goods going from Africa to the West and Europe. Such areas include Textile, Cotton and Clothing which are of higher tariffs than other manufactured goods

<sup>14</sup>R. Hardin, “The Morality of Law and Economics” (1992), Law and Philosophy, Vol. 11, No. 4 (1992), pp. 331-384. Springer. Available at jstor.org. Accessed: 11-2-2017. Hardin’s paper contends that the earlier Hart-Fuller debate concerned whether law is inherently moral. Whether there a minimal moral content to any legal system. Fuller thought the answer was obviously yes. For example, if law fails to serve the coordination function that he thought underlies all successful law, then it is likely to fail in application.

<sup>15</sup> Political dictators, social revolutionaries, technocrats, all these may make the laws by political fiat, with only the minimum possible participation by the lawyer in the making and execution of these laws. In societies that are based on the revolutionary upheaval of an established order and pursue radically new social and economic goals, the role of the lawyer tends to be depressed, his status lowly, his function limited.

<sup>16</sup> R. Barbara, “Trade Not Aid: Why Trade Facilitation Is Important For Africa.” ( 2011), Africa trade policy notes ; No. 27. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/676621468201835737/Why-trade-facilitation-is-important-for-Africa> See also D , Jacobs., “Democratizing global economic governance’, Paper presented at the Conference “Alternatives to Neoliberalism: New rules for global finance’, (2000), NGO-Coalition, Monterrey. See also Yeoh, P., “international trade agreements and global economic governance”(2016). Comp. Law. 37(8), 235-243

<sup>17</sup> M. Kubzansky B. Chidzero, A. Cooper (2011) “Promise and Progress: Market-based solutions to poverty in Africa.” Available on file:///C:/Users/ECS/Downloads/Documents/Africa-%20PromiseAndProgress-MIM\_2.pdf. Accessed on 24/7/2017.

produced by developed countries. It is argued that if developing countries must pay high taxes (tariffs) and which would increase the price of products as it is eventually reflected in the market, it means that the economy of the developed countries would continue consistently to grow while the developing nations' economies will eventually collapse in the end. The foregoing buttresses the fact that developed countries since 1947 subsidised their own industries through great compromises to keep their prices of domestically produce low. The ploy is to shut out competition between the poorer countries and the developed countries. This amongst many other reasons account for why this study seeks to investigate the advantages of African trade and membership at WTO<sup>18</sup>.

## 2. LITERATURE REVIEW

The study inter-alia examines gaps, problems of African economic development, trade laws in general and its legal and regulatory framework, in particular. This literature review is categorized into six components: (i) conceptualisation of African development; (ii) Africa and Foreign Aid Dependency, (iii) impacts of underdevelopment in Africa (iv) Colonial factors on Development of Africa (v) non-prioritisation of governance for sustainable development; (vi) corruption and weak legal institutions for development and lack of focus on sustainable in-house development, Ethnic politics factors, While the array of literatures reviewed provides sound background for the subject of discussion, it is important to state that none of them have proffered a legal outline for the establishment of a single trade institution for Africa.

### 2.1 Conceptualisation of African development:

Apart from the challenges that defining any particular concept from a single point of view entails, Schwarzenberger<sup>19</sup> says several early legal development theorists had written comprehensively about the nature of society and its legal implication towards economic development but most of the theories have often failed to yield result. Garcia and Ciko<sup>20</sup> states that theories of international economic law and international development are sometimes interlinked as they are interdependent.

Interaction economics require that we search into the preliminary theories of law and development in order to build our theoretical framework upon which the research into international development aid is to be premised. Shah<sup>21</sup> in her argument says that scholars have described economic development in terms of growth in developing countries or LDCs as unattainable due to inconsistency of laws regulating Overseas Development Assistance (ODA) which is a combination of law and politics. The inquiry into the nature and theories of international development is very fundamental, yet its exposition is not straight forward.

Accordingly, a number of authors have given their own definition of economic development and how Africa should develop.<sup>22</sup> Moyo<sup>23</sup> condemns foreign aid to Africa as she said the aid African countries are receiving is not making them grow economically as it is equally preventing their development. She argues that aid has made economic growth slower and left the continent an incredible debt and more prone to civil conflict and unrest which are consistent. Moreover, part of the aid money were not wholly released as at when due and the better part of aid money were spent on donor countries' interest area as against the needs of the recipient countries. Moyo suggests cutting off the flow of aid to African nations. She said since the donations to these African countries are done in millions of dollars, it has instead of developing Africa,

<sup>18</sup> The study does not concludes nor bases its research on the failures of the current regional arrangements within Africa but rather, it sought to propose a legal framework for the establishment of an African owned trade organisation which is made- in-Africa-for- Africa trade.

<sup>19</sup> G. Schwarzenberger "The Province and Standards of International Economic Law" (1948), *The International Law Quarterly*, Vol.2, No.3, pp.402 – 420. Cambridge University Press on behalf of the British Institute of International and Comparative Law. E. J. Wells.

<sup>20</sup> Frank J. Garcia, Linda Ciko, "Theories of Justice and International Economic Law" (2011), Boston College Law School.

<sup>21</sup> A. Shah. "Foreign Aid for Development Assistance" (2004)., Available at <http://www.globalissues.org/article/35/foreign-aid-development-assistance.Countries>, *Economic Journal*, 97(387), 616–641. Accessed on the 20/2/2016. See also Dambisa's argument in "Why Foreign Aid Is Hurting Africa" (2009). Accessed on the 7<sup>th</sup> day of October, 2016 at <https://www.bartleby.com/essay/Why-Foreign-Aid-Is-Hurting-Africa-PKJLWS2KTC>.

<sup>22</sup> R. Ishaya, *Why Africa must develop infrastructure – World Bank Report (2017)*. Available on <http://www.nan.ng/business/why-africa-must-develop-infrastructure-world-bank>. Accessed on 28/7/17.

<sup>23</sup> M. Dambisa, *Dead Aid: Why Aid Is Not Working and There Is Another Way for Africa*, (2009), New York: Farrar, Straus and Giroux.

succeeded only in putting Africa further into debt and individual secret banking accounts abroad. Moyo's starting point on African development is that aid is not working as she questions why so much aid done so little good in the continent has. She argues because of aid, there is no need to tax citizens of a country when they have access to easy money from aid. Birdsall perceives aid as causes of several problems to Africa<sup>24</sup>. She argues that in the 1990s, some developing countries took off in growth terms, apparently benefiting from and effectively exploiting the increasing integration of the global market. However, this is not the same in sub-Saharan Africa, Latin America and much of Central Asia. Some of these countries seemed stuck. Her paper is another voice on how aiding Africa and some other part of developing countries through development assistance from (ODA) through foreign aid cannot solve the problem of developing countries.

Easterly, on the other hand, sees "poverty in Africa as failure of adequate planning of an economic system. He posited that the idea of *Big Push* failed because they are clearly in favour and supports free market as it left out the planning aspect which parallel to traps.<sup>25</sup> He believes public actions are needed to escape from a poverty trap that kept poor countries from benefits of free market.<sup>26</sup> He pushed the argument further that these actions however, must be planned by someone at the centre, recognising that the factors underlying development goes beyond the given of financial aid; adequate planning, the needs of the recipient<sup>27</sup> and the differences in goals, and development ideologies are also indispensable to economic growth in Africa.<sup>28</sup> As Trubek and A. Santos<sup>29</sup> rightly puts it, the inclusion of law in development assistance practice influenced and was influenced by intellectual trends in the academy as economists began to think about the role law might play in development. Consequently, legal academics sought to relate legal theory to development practice.

Alesina opines that "development aid regulatory and policy issues have continued to arise on who gives aid, to whom and for what purpose"<sup>30</sup> Bourguignon, and Sundberg, "states that aid effectiveness and development in Africa have not proved compatibility as there is no economic growth in the region the aid is meant to assist when the black box is opened."<sup>31</sup> Collier posits that the causes of failure in development of the developing countries are a sub-set of traps that ensnare these countries, including civil war, sole dependence on the extraction and export of natural resources, and bad governance. He observed that most standard solutions have failed to work; aid is often ineffective; the addition of globalization can actually make matters worse, driving development to more stable nations. What is needful for the bottom billion according to him is a bold new plan supported by the Group of Eight industrialized nations. He pushes these points further by stating that if failed states are ever to be helped, the G8 will have to adopt preferential trade policies and enact new laws against corruption." Unfortunately, the preferential trade treatment was clogged by GATT rules which stagnates Africa's trade growth.

E. Lundsgaarde, C. Breunig and A. Prakash<sup>32</sup> views economic development as "represent[ing] bitterness unfriendliness of the poor countries over the rich nations who have been adamant as a driving force towards the development of the poor region of developing countries."<sup>33</sup> According to them, "foreign aid can be instrumental to growth which developed countries can employ to alleviate resource of the developing countries, reduce inequalities, and support policy reforms in the developing countries."<sup>34</sup> However, this would depend on the size of foreign aid budgets and these vary considerably over time across donor countries."<sup>35</sup> In all the above literatures and books, an input that runs through most of the definitions of law, development and foreign aid are that they indicates the inevitability of continues desire for human

<sup>24</sup> N. Birdsall "Seven Deadly Sins: Reflections on Donor Failings." (2005) Working Paper Number 50. Centre for Global Development.

<sup>25</sup> W. Easterly, "Reliving the 50s: the Big Push, Poverty Traps, and Takeoffs in Economic Development" (2005) NYU.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Id.

<sup>29</sup> D. M. Trubek and A. Santos "The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice" (2006), in *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press.

<sup>30</sup> A. Alesina and D. Dollar, "Who Gives Foreign Aid to Whom and Why?" (2000), *Journal of Economic Growth*, Vol. 5, No. 1 pp. 33-63. Springer.

<sup>31</sup> F. Bourguignon, and M. Sundberg, "Aid Effectiveness: Opening the Black Box" (2007, *American Economic Review* 97(2): 316 -321.

<sup>32</sup> Erik. Lundsgaarde, C. Breunig A. Prakash. "Trade versus Aid: Donor Generosity in an Era of Globalization", *Policy Sciences*, (2007), Vol. 40, No.2, pp. 157-179. Springer

<sup>33</sup> Ibid.

<sup>34</sup> P. Collier, & D. Dollar "Development effectiveness: What have we learnt?" (2004), *The Economic Journal*, Policy .

<sup>35</sup> Ibid.

development, poverty alleviation in human affairs especially in sub-Saharan Africa. They reveals the key features of dissatisfaction with the of law in economic institution, social and economic demands and stresses that they involve the cooperation's of both the developed and developing countries who perceive some kind of incompatibility between them to make development plans work in the African continent.

## 2.2 Impact of underdevelopment in Africa:

Fosu captures the general picture of development in Africa thus: "While its findings are consistent with the literature, the paper suggests that re-focusing economic policies on per capita real GDP growth may yield employment dividends, but well-targeted interventions would be needed to cater for the unemployed and to support vulnerable groups which may be adversely impacted by the very policies that drive growth, The paper contends that the recent evidence from an exhaustive Political economy study of growth shows that African economies suggest that policy syndromes have substantially contributed to the generally poor growth in sub-Saharan Africa during post-independence."<sup>36</sup> The struggle for development in Africa has existed for a decade without a clue for a solution. Fosu, has observed that: "Ironically, the first developing countries that were able to get out from under their debt burdens were those that had borrowed money from commercial markets, not from aid agencies hence the debates on aid rages on without a seeming end. There is a further argument that foreign aid has a two-way relationship between the donor and the recipient countries. The realities in recipient countries affect the actions of aid agencies."<sup>37</sup>

Easterly notes impact of development as follows: there are three important debates on development: the Blank Slate versus learning from history, the well-being of nations versus that of individuals and conscious design versus spontaneous solutions.<sup>38</sup> Stieglitz points to the fact that: "Pro-globalization policies have the potential of doing a lot of good, if undertaken properly. He believes that countries should embrace globalization on their own terms, taking into account their own history, culture, and traditions. He however posited if poorly designed but that where inappropriate approach is followed—pro-globalization policies are likely to be costly. He believes that they will increase instability, make countries more vulnerable to external shocks, reduce growth, and increase poverty. He believes that instead of using globalization carefully and fairly, liberalization policies have been implemented too fast, in the wrong order, and often using inadequate or plainly wrong economic analysis."<sup>39</sup>

Sachs posits that the major area for low level of development had been the Sub-Saharan Africa in recent years where 29 of 43 countries suffered from civil conflict, abject poverty and lack of basic water and electricity during the 1980s and 1990s and this is still continuing. In the median sub-Saharan African country, hundreds of thousands of people were displaced from their homes as a consequence of civil war during this period and today, majority still lives below 2 dollars per day. The long-term burden of lack of basic food leads to diseases and infant motility which far outweighs the number of deaths of the aged by natural causes.<sup>40</sup>

Subramania and Tamirisa in their paper stated that "reaping the benefit of development is predicated on embracing globalisation on the first place."<sup>41</sup> Regional and political factors contributed to the complexity of the situation while at the regional sector, ethnicity and lack of strong development law are some of the major causes of underdevelopment. The level of poverty and human development struggles has sometimes poses not only a threat to the unity and integrity of the state or the society, but they also threaten regional and institutional development.<sup>42</sup> B. Gbenga, seems to differ on the reasons why aid failed in Africa. He said, diversity of Africa ought to make the region strong and not serve as an obstacle to African economic development. He argued further that this aspect has not been the subject of any intensive

<sup>36</sup>A. K. Fosu, "Growth of African Economies: Productivity, Policy Syndromes and the Importance of Institutions" (2012), CSAE Working Paper WPS/2012-1.

<sup>37</sup>A. Fosu, "Growth, Inequality, and Poverty Reduction in Developing Counties: Recent Global Evidence", (2011), CSAE Working Paper WPS.

<sup>38</sup>W. Easterly. "The tyranny of experts: Economists, dictators, and the forgotten rights of the poor" (2014) Basic Books".

<sup>39</sup>J. Stiglitz "Globalization and Its Discontents" (2003.) W M Norton & Company.

<sup>40</sup>J. Sachs, "The End of Poverty: Economic Possibilities for Our Time" (2005) New York: Penguin Press.

<sup>41</sup>A. Subramania. N. Tamirisa. *Africa Trade Revisited (2001) IMF Working Paper. Africa and Policy Development and Review Department.*

<sup>42</sup>A. Akin-Olugbade, "The importance of law in the economic development process of African countries, and the ADB Group's support of efforts to harmonise legal systems in Africa" (2008) International Business Law Journal.



consideration or given attention by African states.<sup>43</sup> Tarp<sup>44</sup> is of the view that the seeming answer to why some countries are poor and others are rich is the disparities in living standards across countries in the world today. If one employs the usage of per capita income, it could mean that the average citizen of a wealthy country consumes about as much a few days as the average citizen of many poorer countries consumes in a year,<sup>45</sup> that the poor countries do not produce and this simply means that when one attempt to adjust the difference in purchasing power, the gap narrows between the two and it has always been for the past two or three centuries of aid assistance.

Dambisa Moyo and George Ayittey's argument on 'Dead Aid'<sup>46</sup> and 'Smart Aid',<sup>47</sup> argued from different perspectives on why aid is not working. While Moyo believes that aid should be scrapped and Africa takes a better alternative of the bonds market as a way out, Ayittey is of the view that the idea of foreign aid may strike illumination of hopes in Africa but posited that the present application of aid accounts for while aid has failed to yield positive development in Africa. Bella<sup>48</sup> is of the view that starting from the interest of each group, it is difficult to make an all-conclusive statement of what the interests of developed and developing countries are on trade liberalization in today's economic reality. He argues further that this may be responsible while the expansion of exports has been constrained by some existing import restrictions as well as the threat of the imposition of restrictions by some countries. Poverty and underdevelopment may result in most states of Africa through six main mechanisms as stated in Moyo, Sachs, Easterly, Whalley, Birdsall and Ayittey's work thus:

**2.3 Africa and Foreign Aid Dependency:** Foreign intervention<sup>49</sup> in form of technical and financial assistance from ODA countries or financial institutions have often left many developing countries in Limbo as most projects are left half-way uncompleted due to lack of timely funding by the donors technical assistance which takes most parts of the aid money for salaries and rents.<sup>50</sup> Most countries in Africa until recently, include foreign aid projection in their national budgets<sup>51</sup> thereby foreclosing the need to plan ahead internally and work hard to generate national income through taxes. Unfortunately, when the aid money arrives they are not properly governed with proper accountability. When external aid already built into their budgets does not arrive on schedule to meet up development targets, the result is failure of development.<sup>52</sup> In most cases, development aid goes directly to governments of poor countries, this exposes the ruling class to too much money and hence the greed of siphoning public funds which leads to weaknesses in a state's economic policies thereby increasing the state of poverty and underdevelopment due to erosion of government treasury.<sup>53</sup>

**2.3.1 Lack of focus on sustainable in-house development:** Faced with poverty and lack of employment, citizens in most African countries could do anything so long as they get to top in order to have a bite at the cherry of national cake and this further lead to clash of national interest on development policies as every ethnic group fights for their clans and careless what happens to others.<sup>54</sup>

<sup>43</sup> B. Gbenga, "Transnational Law, Unification and Harmonization of International Commercial Law in Africa." (1994), *Journal of African Law*, Vol. 38, No. 2 pp. 125-143, School of Oriental and African Studies. Available online at [www.jstor.org](http://www.jstor.org). Accessed on 11-02-2017. See also the argument of H. W. Arndt on Asia.

<sup>44</sup> F. Tarp. "Aid Effectiveness" (2009) ANU – WILDER Publication. For further readings, Available at [http://www.wider.unu.edu/publications/working-papers/discussion-papers/2009/en\\_GB/dp-05/](http://www.wider.unu.edu/publications/working-papers/discussion-papers/2009/en_GB/dp-05/). Accessed on 8/10/2015.

<sup>45</sup> *Supra*.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> B. Bela 'Trade Between Developed and Developing Countries: The Decade Ahead.' (1984), *OECD Economic Studies. Volume 3*, at pp. 7-25. This paper was prepared by the author during his consultancy for the OECD. The author is a Professor of Political Economy at the Johns Hopkins University and Consultant to the World Bank.

<sup>49</sup> *Supra* note 60 at page 21.

<sup>50</sup> W. Easterly, C. Williamson, "Rhetoric versus Reality; The Best and Worst of Aid Agency Practices," (2011) *World Development, Volume 39, Issue 11, Pages 1930–194*.

<sup>51</sup> J. Nicholson, 'Budget 2015: Foreign aid to Africa cut by 70pc; contributions to Indonesia nearly halved', (2015), Available at

<http://www.abc.net.au/news/2015-05-13/foreign-aid-cuts-under-new-budget-africa-indonesia/6465264>. Accessed on 17-8-2017.

<sup>52</sup> *Supra* note 10 at page 7.

<sup>53</sup> S, Macedo, 'The Law of Peoples What Self-Governing Peoples Owe to One Another: Universalism, Diversity, and the Law of Peoples', (2003-2004), 72 *Fordham L. Rev.* 1721/. Available online at HeineOnline. Accessed on 12/1/2017.

<sup>54</sup> Ayittey is of the view that Aid is not bad, it could actually lead to development in Africa but the giving of monetary can be supplanted technical and institutional aid as African is not a baby that should be spon

**2.3.2 Corruption and weak legal institutions in Africa:** Domestic approach and application of economic plans can either lead to enhanced economic growth or break down of economic growth.<sup>55</sup> In order to eradicate poverty and ensure sustainable development in the continent, governments, companies and civil societies cannot continue to be docile. They must collaborate to entrench transparency, participation in governance. Legal empowerment and freedom of press must be a watchword. On development and application, Oduwole observed that the major challenge faced in dealing with trade development and the application of GATT rule of Special and Difference Treatment is neither here nor there.<sup>56</sup> She argues that the idea of 'differential and more favourable treatment'(S&D) for developing countries prescribed in GATT was a "logical

consequence of an in-ward looking policies".<sup>57</sup> This is because many products which are significant to developing countries' trade were exempted from the list and the preferences were granted by developed nations on a voluntarily (and selective) basis. This can be withdrawn at any time which makes it to be economically' and politically limiting for African countries and thus, not suitable for the region.<sup>58</sup>

### 2.3.3 Ethnic/Tribal Perceptual Factors:

Effective community involvement in the resources sector may be achieved through system integration by creating level playing field for the harmonization of hierarchies and levels of decision-making mechanisms and related institutions<sup>59</sup> Using Nigeria as test case in Africa, the above is presently lacking. Today, one of the major national issues which have bedeviled Nigeria and remained largely unresolved is ethnic politics; which has led to economic and social crisis as a result of uprising demands which are largely ethnic in nature. The steady growth and consolidation of communal allegiances and socio-cultural identities is heavily undermined by African leaders. Ethnicity is responsible for the inability to fight corruption in Nigeria, political divide, distrust amongst citizens led to war in Congo Democratic and Somalia, and promotion of mediocrity and suppression of justice in Africa is one of the reasons given by the Ndigbo (Biafra) peoples' agitation for secession from Nigeria Nationhood. It is rather an indisputable fact that ethnicity has marred politics in Nigeria. With ample of data, it is evidently shown that ethnicity determines the choice of votes and voter's decisions in electioneering in Nigeria.<sup>60</sup> This is almost the same in most part of African countries.

Kalejaiye and Alliu<sup>61</sup> notes that other potent factor for underdevelopment in Nigeria is that various ethnic groups are in daily pursuit of competing material and value preferences, and their negative aftermath effect have characterised most of Nigeria's political, economic and social discrimination against minorities and without the perception of the consequences to themselves and others. The above argument is the same with most African countries as there are lack of present of solid institution building, educational standard, unemployment reduction, water supply and sanitation in most of the cities in Africa.<sup>62</sup> For example, in Nigeria, the reason behind this is the result of various ethnic politics and social conflicts played and caused by our past and present leader either in the name of religion or hiding under one agitation or another. Also the

<sup>55</sup> T. Alabi, A. R. Omoke W. Itodo, D. Sule, K. M. Hamisu, (2016). 'Despite Federal Government's Bailout, States Still Owe Salaries,' "Daily Trust Newspapers Publications Ltd.

<sup>56</sup> J. Oduwole, "WTO Special and Differential Treatment: Africa's Golden Fleece or Trojan Horse?" (2013), 3 (1) SADC Law Journal. See further analysis of A. C. Muller on "Special And Differential Treatment" Available Online at file:///C:/Users/ECS/AppData/Local/Temp/Special%20and%20%20Treatment%201.pdf.

<sup>57</sup> It was argued by Oduwole, J. in her paper titled "WTO Special and Differential Treatment: Africa's Golden Fleece or Trojan Horse?" that the effectiveness of Special and Differential Treatment for developing countries as a tool for their development over, the years has been limited. This is because many products where were of significant to developing countries were exempted from the list and the preferences were granted by developed nations on a voluntarily (and selective) basis. This can be withdrawn at any time which makes it to be economically' and politically limiting for African countries and thus, not suitable for the region..

<sup>58</sup> *Supra not 91 at page 26.*

<sup>59</sup> Y. Oke, 'Developing Counties and the global trends in Natural Resources Management', (2009), New York, at pp.19-20. See also, Robert Bartlett, "Ecological Rationality: Reason and Environmental Policy" (1986) 8 *Environmental Ethics*, at 230.

<sup>59</sup> P. Kalejaiye, N. Lliyu, 'Ethnic Politics And Social Conflicts: Factors In Nigeria's Underdevelopment', (2013), The Journal of International Social Research, Volume: 6 Issue: 27, Available at [www.sosyalarastirmalar.com](http://www.sosyalarastirmalar.com). Accessed on 2/8/2017.

<sup>60</sup> Nwachukwu Sunny Nnabuihe, Dr. Austin Aghemalo, Nwosu Ezekwesiri Okebugwu Ethnicity And Electoral Behaviour in Nigeria', (2014), European Scientific Journal at p. 1.

<sup>62</sup> *Supra note 105 at page 29*, where Kalejaiye et al, argues further that politics is ethnic oriented; ethnicism is more often than not the consciousness of Presidents, Heads of states, Ministers, and those on National assignments.

greedy politicians and self-centred individuals<sup>63</sup> also played a key role in misplaced priorities which leads to underdevelopment.

Scholars have emphasized the importance of political institutions for Africa's economic development. Ethnic politics is one major cause of the slow pace of development plans in Africa as everyone tries to fight for what he can get from the national level for his/her ethnic region or clan. No one think about the national interest. It is the position of this paper that whether or not there will be development implosion within a system depends largely on the internal workings of that system, especially the degree of fairness to all the entities in a given state. Most countries in Africa have refused to light up their dark rooms. Historically, the extractive sectors in Africa have been opaque,<sup>64</sup> making resource governance politically complex and almost technically impossible. This mixture, spiced with other factors, has brewed a system that has caused the continent millions through illicit financial flows.<sup>65</sup> According to Warden,<sup>66</sup> in 2015 alone, the money disappeared illegally out of Africa amounts to USD 203 billion which much more than money that came in as aid, loans and remittances USD 163 billion<sup>67</sup> according to a recent report by Global Justice Now and partners. To improve transparency and good governance and overcome the complexities in governance in Africa, there is need to sanitise the political terrain to sure strong the rule of law, freedom of expression and transparency in governance. Naturally, where there the presence of continued inequality in a state, a group or the other may feel oppressed and dissatisfaction may breed mayhem. Discriminatory political behaviour pervades in Africa, such as where there is a restriction of human rights which may lead to the illegitimacy of the government in the eyes of the non-state, Institutions and groups, thus spelling inconsistency and uncertainties of growth in the continent.<sup>68</sup>

#### 2.3.4 Lack of Strengthened Capacity and Misplaced Priorities:

M.B. Jarrett,<sup>69</sup> identifies lack of strengthened capacity as the bane of development in Africa because there is not enough political will to manage resources better and create necessary incentives.<sup>70</sup> Misplaced priorities of which project should come first is itself a problem in some countries in Africa. Basically, it either the right people are not in the right place or the wrong people are in the right positions such that they end up with no meaningful achievement in development strategy. In major industrialised countries, power sector is given priority because they understand what it means to their economy. Africa needs greater action, across the board<sup>71</sup>. That's why the latest report from the Africa Progress Panel, calls for a massive increase in investments – in on-grid, mini-grid and off-grid solutions – to solve Africa's energy crisis more quickly.<sup>72</sup>

Countless development initiatives failed in developing countries because the countries are pregnant with weak institutional capacity which is a major obstacle to development plans. There is therefore a need to from these misplaced priorities to better initiatives that focuses on institutions that will enhance their states' capacity to implement sound macroeconomic that would uplift the social sector, implement and oversee strategies to reduce poverty. Better utilisation of ODA and participation in international tax and trade regimes are a better option where it is aimed at projects for industrialisation of the continent.

Some discussions at the Monterrey already highlighted the above but the practical aspect of it is stillbirth. The continent must do away with poverty as a matter of urgency because poverty breeds alienation of recapitalising full human

<sup>63</sup> Supra, note 103 at page 29.

<sup>64</sup> E. Warden, "Africa rising? Why transparency matters in the governance of Africa's resources" (2017). Available on <https://eiti.org/blog/africa-rising-why-transparency-matters-in-governance-of-africas-resources>. Accessed on 31/8/2017.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> T. Carothers, S. Brechenmacher, Accountability, Transparency, Participation, and Inclusion: A New Development Consensus? (2014). Available on <http://carnegieendowment.org/2014/10/20/accountability-transparency-participation-and-inclusion-new-development-consensus-pub-56968>. Accessed on 31/7/2017.

<sup>69</sup> C. Graham, 'Strengthening Institutional Capacity in Poor Countries: Shoring Up Institutions, Reducing Global Poverty', (2002), Available at <https://www.brookings.edu/research/strengthening-institutional-capacity-in-poor-countries-shoring-up-institutions-reducing-global-poverty>. Accessed on 1/8/2017.

<sup>70</sup> M. B. Jarrett, 'Lights out: poor governance and Africa's energy crisis' (2017), <http://www.africaprogresspanel.org/lights-out-poor-governance-and-africas-energy-crisis>. Accessed on 1-8-2017.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

potentials. Economic systems, which discriminate against people on the basis of sex, race, ethnicity, or region, can also generate tension and implosion resulting to amass migration with the resultant effect of death at the Mediterranean Sea in a bid to escape to Europe in search of good life. For instance, in Nigeria, there are agitations from various segments of the country complaining of marginalisation and no presence of economic development in their areas.<sup>73</sup> The results of discriminatory economic policies are unequal opportunities and uneven access to the wealth and resources of the nation. Africa is rated as one of the continents where law is trampled upon in the wake of the ‘winner takes it all’ syndrome.

### 3. SEARCHLIGHT ON MAJOR SUB-REGIONAL COMMERCIAL ORGANISATIONS IN AFRICA

Africa as a continent has realised lately though, the non-yielding partnership of her marriage of trade development at the WTO level. This realisation ought to have been taken into consideration since the 90s when the region had always recorded a trade deficit, heavy debt burden, dependency on foreign ideas of development and placing reliance on imported goods and services rather than place reliance on its home-grown initiatives which incorporates its culture of development. Most dynamic African leaders have now come to realise that economic integration is a priceless tool hence creation of regional organizations for economic integration and cooperation has been initiated by some blocks of countries in Africa. Part of the argument canvassed for the establishment of most of the regional organisations in Africa and these includes Economic Community of West African States (ECOWAS) is rooted on regional economic and trade integration.

For instance, the establishment of OHADA has unified regional business laws to an extent unheard-of anywhere else in the region. Until recently, most African states suffered from out-dated legal systems, some dating from 1807, the time of Napoleon. Since its creation in 1993, OHADA has designed, enforced and applied through the courts a substantial body of uniform commercial laws.<sup>74</sup> The present dominance of the French language and of civil law within OHADA is expected to change over time as OHADA embraces other African countries. OHADA was conceived in a French-speaking area, African leaders have quickly come to understand that this priceless tool of economic integration should be extended to other countries in Africa.<sup>75</sup> Guinea-Bissau and Equatorial Guinea soon became members, and now, with the advent of the New Partnership for African Development, (NEPAD), OHADA’s extension to English-speaking African countries is inevitable. Apart from OHADA’s geographic expansion, there are still important challenges ahead. These include the financing of OHADA institutions. The life wire of any strong organisation is funding especially when the organisation is institutionally based comprising of many heads of government. Most member countries have always view OHADA as an important opportunity for integrating African economies into the global economy. Other areas of achievement in the pipeline are the preparation of the labour law, transport law, contracts law, competition law and law on cooperatives. The Common Court of Justice and Arbitration is located in Abidjan, Côte d’Ivoire. It should be noted that between November 2001, and 15 October 2002 when the Court started its activities, the Court had received 87 cases from ten countries, of which 32 has received judgment while 55 are pending.<sup>76</sup> This is very encouraging considering transport and communications difficulties in the region. Positive analysis of law is concerned with how agents behave in response to legal rules and how legal rules are shaped to either accommodates such behaviour or proscribed the behavior while prescriptive analysis concerns what rules should be adopted to advance specified objectives.<sup>77</sup> Bearing the above in mind, no doubt, there are a few legal instruments which have assigned themselves more ambitious objectives than the Organization for the Harmonization of Business Law in Africa.<sup>78</sup> The treaty’s preamble proclaims the aim of “making progress toward African unity and creating a climate of trust in the economic systems of the contracting states. This is with

<sup>73</sup> See the Nnamdi Kanu’s speech about the reason behind the agitation for secession from Federal Republic of Nigeria, see also the agitation of MOSOP and the People of the Niger – Delta region of Nigeria.

<sup>74</sup> N. Enonchong, “The Harmonization of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?” (2007), *Journal of African Law*, 51, 1 pp. 95 - 116. See also Article 2 of the Treaty.

<sup>75</sup> The statement was credited to Judge Kéba Mbaye, the former president of the international Court of Justice at one of the sessions of OHADA.

<sup>76</sup> During the same period, the Court received five requests for arbitration, for which two awards have been granted and three are still pending. On it is Regional Training Centre for Legal Officers in (Porto Novo, Benin Republic, in 2002, the Centre organized some 40 regional and national seminars on OHADA law for judges, notaries, lawyers, court experts, registrars, bailiffs and magistrates

<sup>77</sup> J. Christin, C. R. Sunstein, R. Thaler, “A Behavioral Approach to Law and Economics” (1998), *Stanford Law Review*, Vol. 50, No. pp. 1471 -1550. Available at [jstor.org](http://jstor.org). Accessed: 11-02-2017.

<sup>78</sup> R Beauchard, , J. Mahutodji , V., Kodo, “Can OHADA Increase Legal Certainty in Africa?” (2011), *Justice & Development*, working Paper. p. 5.

a view to creating a new centre for development in Africa.” This is a proposal that is yet to be achieved by OHADA but it is hopeful that it would be achieved in the next few years. OHODA is a good model of how the AETO can be established for the promotion of African trade and businesses. Africa has potentials and a large market attraction but due to politics of the advance countries, the prices at which African commodities are purchased are very low compared to those of the West. As good as the above sub-regional organizations, they do not constitute into a single trade institution with one voice that may stand to negotiate with power –based as against rules based at the WTO rounds of negotiation. This position would change when AETO is in place.

### 3.1 Making a Case for the Establishment of African Economic Trade Organisation (AETO):

Commercial laws in Africa are outpacing commercial practices in most countries by a very wide margin. This point was argued by Igbunugo and Adiyia<sup>79</sup> that most regions of Sub-Saharan Africa are in connection with the development of harmonized commodity and transactional laws. These laws aimed to foster regional and international trade. In recent time, most Sub-Saharan African nations suffered from outdated legal systems. One of the ways to come out of these dead laws is through economic groupings within the Continent.<sup>80</sup> The grouping member states are for purposes of advancing to integrate trade protocols with certainty of efficient legal architecture.

The Common Market for Eastern and Southern Africa (COMESA) has twenty member countries. It needs be mentioned that most countries in the Southern African Development Community (SADC) region are currently eyeing similar initiatives. It is also noteworthy that some of these regional arrangements were the initiatives of OHADA.<sup>81</sup> The question of whether Africa is ready to comply with the new trend in commercial law, using legislative guides where necessary and possibly using modern laws that incorporate indigenous approach to be as inclusive as possible is presently in the affirmative. The only indeterminable factor in all these regional integration is if there are strong punitive measures for any member country that chooses to become deviant to the laws. However, the foregoing notwithstanding, Africa is changing for better as there is a willing heart and the zeal for economic freedom within the region. That is, the readiness to solve some of the existing problems in the African Union; reaching a compromise and concession by member countries to give room for the formation of a strong economic trade organisation for Africa.

Aside the above, the problem of diversity of laws remains a major problem in the circle of regional integration. Indirectly put, diversity of African ought to make the region strong and not serve as an obstacle to African economic development. It is been argued that this aspect has not been the subject of any intensive consideration or given attention by African states.<sup>82</sup> The writer believes the above argument may not be the case may not be the present situation as some commercial regional law agreements between some African countries has being existing and are performing creditably well. The situation of non-cooperation in the region is changing as there are establishments such as OHADA, ECOWAS and SADC. The pressure from the West and the rest of Europe on the rule of law as a condition for cross-border entry of goods as enumerated in the GATT rules posed a great challenge for African trade. If development at WTO means market access, preferential treatment, commodity dependence, food importing countries,<sup>83</sup> rural development and food security, then Africa is far from reaching its goal of economic development and raising the income level of the people. Notably, there is a wide disparity between matters of private essential law to a widespread change in the traditionally subordinate role

<sup>79</sup> . H. A. Igbunugo & F. Adiyia, “The Harmonization of Business Law In Africa: Possibility or Fantasy?” (2009), The African Counsel, Volume 1, Issue 2.

<sup>80</sup> *Id.*

<sup>81</sup> C. M. Fombad, “Some Reflections on the Prospects for the Harmonization of International Business Laws in Africa: OHADA and Beyond.” (2013), Africa Today, Vol. 59, No. 3, pp. 51-80. Indiana University Press. Available online at [www.jstor.org](http://www.jstor.org). Accessed: 11-2-2017.

<sup>82</sup> B Gbenga, “Transnational Law, Unification and Harmonization of International Commercial Law in Africa.” (1994), Journal of African Law, Vol. 38, No. 2 pp. 125-143, School of Oriental and African Studies. Available online at [www.jstor.org](http://www.jstor.org). Accessed on 11-02-2017. See also the argument of H. W. Arndt on Asia.

<sup>83</sup> , J.”Oduwale, “WTO Special and Differential Treatment: Africa’s Golden Fleece or Trojan Horse?” (2013), 3 (1) SADC Law Journal. See further analysis of A. C. Muller on “Special And Differential Treatment” Available Online at <file:///C:/Users/ECS/AppData/Local/Temp/Special%20and%20%20Treatment%201.pdf>. In her analysis, she explained bits about S&D and what potential it was supposed to mean to Developing countries. However, the question is did it achieve its aim in terms of promoting trade liberalisation for developing countries, promotion of active participation of DCs in international trade by alleviating the difficulties DCs might encounter in joining WTO or implementing WTO trade agreements? The answer is negative.

which law plays in the contract of private business.<sup>84</sup> Notwithstanding that some of these laws met certain passionate reception by African policymakers; the reality is that it has not occasioned the desired change in individual attitudes and principles essential to a widespread change in the habitually subordinate role of laws to power play at WTO. The resultant effect is that it brought into being a significant gap between written commercial laws and commercial behaviors in most developing countries.

Trade practices and sales of products unlike any other human endeavour, are fundamentally important to countries all over the world. There is need to have a focus in commercial agreements which binds contracting parties and it should not be left in one party's domain to dictate or decide the fate of the other party. Noteworthy also, is the naked fact that rules, when created and are uniform in nature are easy to manage and apply but it needs not be created in uniform structure and this is often the problems in commercial agreements in low-income countries of Africa. It is prominent in Africa that a primary product of low level processing accounts for the bulk of national production exports.<sup>85</sup> Development demands could easily pass for a lost ambition in the expedition of African region at WTO if not strategically handled.

The present low level trade in Africa has taken a different dimension than the earlier economic growth expectation envisaged by the continent. The introduction of part IV into GATT in 1965 on the recommendation of the GATT committee on Trade and Agreement was such that developing countries were somewhat absolved from reciprocal commitment under part IV of GATT. They were also marginalised from the future key decision-making in the system.<sup>86</sup> The effect is that Africa must search inwards for its development needs in terms of how it can boost its economy. The structure of WTO, the GATT rules and its own structure notwithstanding, the aptness or otherwise of such structure has not given any country in Africa the needed opportunity for trade growth because of the barriers of tariffs as all members are bound by GATT rules. There is a steady growing realisation among developing countries of the need to for trade expansion but it is increasing danger of being jeopardised.<sup>87</sup> Also, there is a presence of certain definitive constraint arising from uncertainties and antagonisms in trade relations, especially against the developing countries in WTO. These wide gap between developed and developing countries have often called for reflections on the existence of imbalances of trade adjustment for decades between the developed and developing countries.

The foundation of the problem of changing structure of the world trade is such that some countries which have participated little in the global integration are primary commodity- dependent countries and this includes Africa. These countries are inefficient in manufacturing sectors of highly technical goods. They do not have the capability to compete with the advanced economies of Europe and America and of late, even the Asian countries. Furthermore, any country in Africa that wishes to embrace economic growth, there is a need for such country to first questions the conventional wisdom that when it continues to be commodity dependent, its economic growth is doomed to fail. At best, the countries of Africa should strive to be among the countries of less dependent on importation and work towards productions which have high potential for export and income growth.

Questioning how Africa can achieve trade growth which ought to lead to economic development with its membership in WTO especially, with the highly technically GATT rules as annexed to WTO, the way forward is a home-grown economic strategy The technicalities of GATT rules explain why Arthur Lewis<sup>88</sup> analysed the consequences of a slowdown of the engine of growth in developing countries (LDCs) and proposed a strategy to revive it. The engine, according to Lewis, is trade, which in the past was fueled by industrial growth in developed countries. He attributed the slow down to a secular decline in the state of economic growth in developed countries since the 1970s. At some periods, it was argued that in order to keep the engine of LDCs growth beating at a satisfactory rate, there must be in existence of an alternative source

<sup>84</sup> P. McConaughay. "Rethinking The Role Of Law And Contracts In East- West Commercial Relations" (2000) Law and Economics Working Papers Series. University of Illinois, College of Law.

<sup>85</sup> The World Bank report of Committee on Trade and Development. Participation of developing countries in World Trade: Overview of major trends and underlying factors (1996), WT/COMTD/W/15.

<sup>86</sup> Mike Campbell (Pvt) Ltd et al. v. Republic of Zimbabwe, Supra not 78 at page 27. See also Trade and Development. Part IV, GATT, 1947 in the GATT Analytical Index. Available Online at [wto.org/English\\_res\\_e/bookshp\\_e/gatt\\_ai\\_e.htm](http://wto.org/English_res_e/bookshp_e/gatt_ai_e.htm). Accessed on 29 - 2- 2017.

<sup>87</sup> H. W. Arndt "GATT and the Developing World: Agenda for a New Trade Round." Weltwirtschaftliches Archive, Bd. 123, H. 4(1987), PP. 705-718, Springer, jstor.org. Accessed on 23- 5 - 2016.

<sup>88</sup> J. Riedel, "Trade as the Engine of Growth in Developing Countries Revisited" (1984), The Economic Journal, Vol. 94, No. 373 pp. 56-73. Wiley for Royal Economic Society. Available Online at [www.jstor.org](http://www.jstor.org). Accessed: 18-11-2016.

of fuel. The alternative fuel being referred in his paper lies among the developing countries who failed to take up the slack brought by the developed countries. This study disagrees with that line of thought as it sidelined the small market share allocated to Africa. In order to further buttress the disagreement, Africa may not be technically sound in production of sophisticated industrial produced but it has raw matters which are used in Europe, its sales which should earn Africa some good income are clogged with high tariffs.

#### 4. DISCUSSION ON FINDINGS

1. The study finds that foreign aid has failed Africa. The rush for free trade has not helped the economy of the continent. The rules of GATT as annexed to WTO made it very impossible for the poor countries in Africa to grow through trade. Furthermore, globalization confers immense benefit but also poses great challenge to most developing countries. For Africa, over the years, globalization's benefit has largely proven very elusive in Africa.<sup>89</sup> The argument that trade would liberate Africa can only work if Africa can reason within by prioritizing its regional arrangements in pooling of its resources to negotiate at the World trade centre. GATT rules of quantitative restriction, likeness of goods description, Most Favoured Nation rules and the anti-dumping rules at WTO are mere sham and they do not help the economies of Africa.

2. The study further observes that in reaping the benefit of globalisation, Africa is lagging behind because of the position apportioned to it by the rules made GATT in 1947 which did not contemplate the place of Africa as a developing country without technology. The rules of nondiscrimination of GATT are themselves discriminatory in nature.<sup>90</sup>

3. The study also finds that in most of the available texts and articles about development of African market, none of them have taken credit of trade growth at WTO. As against the view of the Subramania and Tamirisa, who claims that Africa missed out because Africa failed to take the benefits of globalization and therefore did not globalized, globalization itself is a policy of the West which did not take the special needs, the environment and geographical position of the continent into consideration. The acceptance of free trade by Africa because of globalization has not aided the region's economy because of its shares in the global market. The larger market share belongs to the strong economies of Europe and America. Africa is a dependent nation and exports less of its products outside its region. The study finds that the best option for Africa is to grow at its own pace and not at a pace dictated to it with '*globalise this and globalise that.*'

4. The study also observes that when Sachs wrote his book, 'the End of Poverty,' the global rush was to embark upon a strategic plan to bring vivid result in development.<sup>91</sup> Few years letter the world soon realized that Sachs's ideas of a "Big Push" to end world poverty may not be the quickest solution as against the premonition of end of poverty. The idea of "doing it fast, do it big, and do it comprehensively has its own problems as such ideas apart from being western did not take into consideration the economic culture of Africa, which is the foundation of wealth creation in the region. While such ideas may have worked in Europe and America, Africans are special breed in terms of a people, geography, natural resources and economic culture. Same ideologies which have succeeded in Europe may have difficulties achieving success in Africa. Quite often such stamped ideas of implanting development theories on Africa have led to misplaced priorities and that is one of the major reasons why aid failed in developing countries.

5. The study further finds that when Paul Collier argues in his book titled 'the bottom billion,'<sup>92</sup> that the Third World shrunk because they did not participate or shared in globalization's success; that is, in trade, capital inflows and migration, as an economist, Paul failed to consider or contemplates the effect of law in his argument when he said the bottom billion (poor countries) have missed the boat. However, the study finds that in the last forty-five years, the development challenge

<sup>89</sup> A , Subramania. N . Tamirisa. Africa Trade Revisited (2001) IMF Working Paper. Africa and Policy Development and Review Department.

<sup>90</sup> J. Whalley, "Non-Discriminatory Discrimination: Special and Differential Treatment under the GATT for Developing Countries." The Economic Journal, Vol. 100, No. 403 (1990), pp. 1318-1328, Wiley on behalf of the Royal Economic Society. Available Online at [svwww.jstor.org](http://svwww.jstor.org). Accessed: 23-05-2016.

<sup>91</sup> J. Sachs Supra note 148 at page 44. See also, William Easterly's comment on Sachs' End of Poverty, ( 2006) .*Journal of Economic Literature*, Vol. 44. No. 1.

<sup>92</sup> P. Collier, "The Bottom Billion: Why the Poorest Countries are failing and What Can Be Done About It." (2007) Oxford University Press.

has only been a rich world of the one billion people facing a poor world of five billion and most of the five billion people live in developing countries. One fact which is as sure as the daily rising sun is that Africa cannot boast today of its economic growth through whatever means Europe and America have used in the past 35 years to develop the region.<sup>93</sup> Africa can indeed sort out its economic problem starting from regional trade integration within its shores.

6. The study observes that in questioning what can Africa anticipate over the next twenty years; it is not easy to come to a single conclusion. It is not also hopeful that the answer would be more of what it is now. If it is not to be more of the same, what economic and political processes needed to change?<sup>94</sup> When one looks into Africa's future, it is clear of what must be done if Africa will not remain in the same economic position in the next twenty years. The study observes that rather than planning for posterity and tomorrow's generation, most Africans, leaders, if not also their governments, are more concerned with getting by the day.<sup>146</sup> However, this attitude is gradually changing as Africa is suddenly cut up with the reality that her economic development lays in the ability of its citizens and governments to put in place a solid legal framework for development institutions such as a trading organizations with strong enforcement legal mechanism. The way forward to boosting the trade of the continent is the setting up of various regional organisations for pooling of resources and common understanding amongst the sub-regions for economic development. Given the current patterns set up by the current regional organisations already discussed in this study, the expectation from African cannot be less encouraging. There is more improvement towards integration of African economy beginning with regional basis to a one single trade organisation in the near future.

7. This study observed that Africa should see itself by 2025 as a viable economic region. The reasons are that it is reasonable to expect that Africa will have become even more important source of the world's minerals, resulting in a strong, even dominant presence of large and small, extractive and agricultural industries by internal funding through regional market with the establishment of AETO. This is a chance Africa must not allow to slip away. Africa presently witnesses a problem of political, economic, environmental and social impact of non-productive industries. Africa should never allow itself fall into regression because of lack of focus by year 2025.

## 5. CONCLUSION

This paper has attempted to highlight the constraints of past development and the pursuit of strategies for sustainable development trade in Africa by proposing a legal framework that seemed workable. Components and strategies which have often been employed or abandoned by policy makers have been recommended for implementation in the light of the new development drive. Africa must work in closer collaboration with other African colleagues to conduct research as to the causes of Africa's economic crisis and possible strategies for sustainable development through trade laws and market integration. In the light that what happens in Africa one way or the other affects changes taking place in Europe and America is a fact.

It must be clarified that although the situations in which Africa finds herself are not sufficiently similar so as to admit common assumptions, but the continent share similar economic and development goals. This explains why AETO is non-negotiable in the continent at the moment. For development to take place in Africa there must be the new face of Africa in terms of development laws which must be clothed with legal teeth. Such law must incorporate treaty clauses with certain countries in Europe and the non-align nations. This is achievable in view of the presence of some sub-regional legal framework of some organisation in the continent. These organizations serve as a stepping stone for possibilities of Africa taking charge of her commercial affairs and in preparation for the formation of AETO which was never thought of for Africa until this study.

The politics of basic needs<sup>95</sup> dictated by oversea donors for Africa must be stopped by African policy-makers. Finally, African Heads of government must adopt a *'how to make it work' approach* by jettisoning her subjugation at WTO and attract investors at the formation of AETO, match existing legal arrangements in the sub-regional arrangement between countries and subsume same into AETO. In carrying out the above, African states need assimilate the interest of the

<sup>93</sup> D. Moyo, "Dead aid: why aid is not working and how there is a better way for Africa Review. Dead Aid: Why Aid Is Not Working and How There Is a Better Way for Africa" Penguin Books, New York.

<sup>94</sup> Martin P. J. "Africa: the next twenty years" (2012) [www.pambazuka.net/en/category.php/features/85839](http://www.pambazuka.net/en/category.php/features/85839).

<sup>95</sup> <sup>148</sup> P. Streeten, "Basic Needs: Some Unsettled Questions" (1984), World Development Institute Easton University.



stakeholder and change their mindset of a “me, myself and I alone”, present stand of the states in Africa to a win-win situation for every states in the continent. It is possible to have a world without poverty in Africa if the question of acquisition of wealth and power is not the driving force in governance, if people are free to explore their various potentials to make life better for everyone else irrespective of race and color.

## 6. RECOMMENDATIONS

1. Each member state in Africa is to make it as a matter of its national priority to ensure the formation of AETO.
2. Members' state must understand the urgency for the formation of AETO for Economic development of the continent.
3. Members' state need to realise that GATT/WTO rules is Anti-African promotion of Trade especially with respect to quantitative restriction rules, Anti-Dumping and the rule of Non-Discrimination rule presently existing at WTO.
4. Political commitment and tacit will of Member states are non-negotiable
5. COMPROMISES and understanding of Member States are sine qua non to the formation of AETO.
6. *The continent should take the bull by the horns to encourage sustainability of African produce in African markets*
7. *The members state must assert ownership of AETO as a made-in-Africa organization as against what obtains in WTO*
8. Africa must Search within for its Economic Success and shun continuous dependency on external development theories and ideologies which have failed the continent over the years.

## REFERENCES

- [1] Akin-Olugbade, A. “The importance of law in the economic development process of African countries, and the ADB Group's support of efforts to harmonise legal systems in Africa” (2008) International Business Law Journal.
- [2] Alabi, T. Omoke A. R., todo, W., Sule, I. D., Hamisu, K. M. (2016). ‘Despite Federal Government’s Bailout, States Still Owe Salaries,’ “Daily Trust Newspapers Publications Ltd.
- [3] Alesina, Dollar, D. “Who Gives Foreign Aid to Whom and Why?” (2000), Journal of Economic Growth , Vol. 5, No. 1 pp. 33-63. Springer
- [4] Arndt H.W. “GATT and the Developing World: Agenda for a New Trade Round.” Weltwirtschaftliches Archive, Bd. 123, H. 4(1987), PP. 705-718, Springer, jstor.org. Accessed on 23- 5 - 2016.
- [5] B Gbenga, ”Transnational Law, Unification and Harmonization of International Commercial Law in Africa.” (1994), Journal of African Law, Vol. 38, No. 2 pp. 125-143, School of Oriental and African Studies. Available online at [www.jstor.org](http://www.jstor.org). Accessed on 11-02-2017
- [6] Barbara, R. “Trade Not Aid: Why Trade Facilitation Is Important For Africa.” ( 2011), Africa trade policy notes ; No. 27. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/676621468201835737/Why-trade-facilitation-is-important-for-Africa>.
- [7] Beauchard, R Mahutodji, J., V., Kodo, “Can OHADA Increase Legal Certainty in Africa?” (2011), Justice & Development, working Paper. p. 5.
- [8] Bela B. ‘Trade Between Developed and Developing Countries: The Decade Ahead.’ (1984), OECD Economic Studies. Volume 3, at pp. 7-25,
- [9] Birdsall, N. “Seven Deadly Sins: Reflections on Donor Failings.” (2005) Working Paper Number 50. Centre for Global Development.
- [10] Bourguignon, F. and M. Sundberg, “Aid Effectiveness: Opening the Black Box” (2007, American Economic Review 97(2): 316 –321.

- [11] Carothers T. Brechenmacher S, “Accountability, Transparency, Participation, and Inclusion: A New Development Consensus? (2014). Available on <http://carnegieendowment.org/2014/10/20/accountability-transparency-participation-and-inclusion-new-development-consensus-pub-56968>. Accessed on 31/7/2017.
- [12] Christin, J. Sunstein C. R , Thaler, R. “A Behavioral Approach to Law and Economics” (1998), Stanford Law Review, Vol. 50, No. pp. 1471 -1550. Available at .jstor.org. Accessed: 11-02-2017.
- [13] Collier, P. “The Bottom Billion: Why the Poorest Countries are failing and What Can Be Done About It.” (2007) Oxford University Press.
- [14] Daemmrch, A. “Epistemic Contests and Legitimacy of the World Trade Organization: The Brazil — USA Cotton Dispute and Incremental Balancing of Global Interests” (2012) Vol. 4 (1) Trade, Law & Development 200.
- [15] Dambisa, M. “Dead Aid: Why Aid Is Not Working and There Is Another Way for Africa” (2009), New York: Farrar, Straus and Giroux.
- [16] Easterly W.’s comment on Sachs’ End of Poverty, ( 2006) .Journal of Economic Literature, Vol. 44. No. 1.
- [17] Easterly, W. “Reliving the 50s: the Big Push, Poverty Traps, and Takeoffs in Economic Development” (2005) NYU.
- [18] Easterly, W. “The Ideology of Development”, (2007), Available on <http://economistsview.typepad.com>. Accessed on 17-6-2016.
- [19] Easterly, W. Williamson, C. “Rhetoric versus Reality; The Best and Worst of Aid Agency Practices,” (2011) World Development, Volume 39, Issue 11, Pages 1930—1 94.
- [20] Easterly. W. “The tyranny of experts: Economists, dictators, and the forgotten rights of the poor” (2014) Basic Books”.
- [21] Enonchong, N. “The Harmonization of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?” (2007), Journal of African Law, 51, 1 pp. 95 - 116.
- [22] Erik. Lundsgaarde, C. Breunig A. Prakash. “Trade versus Aid: Donor Generosity in an Era of Globalization”, Policy Sciences, (2007), Vol. 40, No.2, pp. 157-179. Springer
- [23] Fombad C. M. , ”Some Reflections on the Prospects for the Harmonization of International Business Laws in Africa: OHADA and Beyond.” (2013), Africa Today, Vol. 59, No. 3, pp. 51-80. Indiana University Press. Available online at [www.jstor.org](http://www.jstor.org). Accessed: 11- 2- 2017.
- [24] Fosu, A. K.”Growth of African Economies: Productivity, Policy Syndromes and the Importance of Institutions” (2012), CSAE Working Paper WPS/2012-1.
- [25] Fosu, A.”Growth, Inequality, and Poverty Reduction in Developing Counties: Recent Global Evidence”, (2011), CSAE Working Paper WPS.
- [26] Frank J. Garcia, Ciko, L. “Theories of Justice and International Economic Law” (2011), Boston College Law School.
- [27] G. Schwarzenberger “ The Province and Standards of International Economic Law” (1948), The International Law Quarterly, Vol.2, No.3, pp.402 – 420. Cambridge University Press on behalf of the British Institute of International and Comparative Law. E. J. Wells.
- [28] Gbenga, B.”Transnational Law, Unification and Harmonization of International Commercial Law in Africa.” (1994), Journal of African Law, Vol. 38, No. 2 pp. 125-143, School of Oriental and African Studies. Available online at [www.jstor.org](http://www.jstor.org). Accessed on 11-02-2017.
- [29] Graham C. , ‘Strengthening Institutional Capacity in Poor Countries: Shoring Up Institutions, Reducing Global Poverty’, (2002), Available at <https://www.brookings.edu/research/strengthening-institutional-capacity-in-poor-countries-shoring-up-institutions-reducing-global-poverty>. Accessed on 1/8/2017.
- [30] Hardin, R. “The Morality of Law and Economics” (1992), Law and Philosophy, Vol. 11, No. 4 (1992), pp. 331-384. Springer. Available at [jstor.org](http://jstor.org). Accessed: 11-2-2017.

- [31] Hoekman B., (2005). Operationalising the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment. In Reforming the World Trading System (Reforming the World Trading System, Chapter 11). Journal of International Economic Law, 8(2), 405–424.
- [32] <http://www.abc.net.au/news/2015-05-13/foreign-aid-cuts-under-new-budget-africa-indonesia/6465264>. Accessed on 17-8-2017.
- [33] Igbanugo H. A., Adiyia, F. “The Harmonization of Business Law In Africa: Possibility or Fantasy?” (2009), The African Counsel, Volume 1, Issue 2.
- [34] J. Sachs, “The End of Poverty: Economic Possibilities for Our Time” (2005) New York: Penguin Press.
- [35] J. Stiglitz “Globalization and Its Discontents” (2003.) W M Norton & Company.
- [36] Jacobs, D. “Democratizing global economic governance” Paper presented at the Conference “Alternatives to Neoliberalism: New Rules for Global Finance”, (2000), NGO-Coalition, Monterrey.
- [37] Jarrett M. B. ‘Lights out: Poor Governance and Africa’s Energy Crisis’ (2017), <http://www.africaprogresspanel.org/lights-out-poor-governance-and-africas-energy-crisis>. Accessed on 1-8-2017.
- [38] Kalejaiye, P. Lliyu N. ‘Ethnic Politics And Social Conflicts: Factors In Nigeria’s Underdevelopment’, (2013), The Journal of International Social Research, Volume: 6 Issue: 27, Available at [www.sosyalarastirmalar.com](http://www.sosyalarastirmalar.com). Accessed on 2/8/2017.
- [39] Kubzansky M., Chidzero B., Cooper. A. (2011) “Promise and Progress: Market-based solutions to poverty in Africa.” Available on file:///C:/Users/ECS/Downloads/Documents/Africa-%20PromiseAndProgress-MIM\_2.pdf. Accessed on 24/7/2017.
- [40] Macedo, S. ‘The Law of Peoples What Self-Governing Peoples Owe to One Another: Universalism, Diversity, and the Law of Peoples’, (2003-2004), 72 Fordham L. Rev. 1721/. Available online at HeineOnline. Accessed on 12/1/2017.
- [41] Martin, P. J. (2012) “Africa: the next twenty years” [www.pambazuka.net/en/category.php/features/85839](http://www.pambazuka.net/en/category.php/features/85839).
- [42] McConaughay P. “Rethinking The Role Of Law And Contracts In East- West Commercial Relations” (2000) Law and Economics Working Papers Series. University of Illinois, College of Law.
- [43] Mike Campbell (Pvt) Ltd et al. v. Republic of Zimbabwe, Supra not 78 at page 27. See also Trade and Development. Part IV, GATT, 1947 in the GATT Analytical Index. Available Online at [wto.org/English\\_res\\_e/bookshp\\_e/gatt\\_ai\\_e.htm](http://wto.org/English_res_e/bookshp_e/gatt_ai_e.htm). Accessed on 29 – 2- 2017.
- [44] Moyo, D’s argument in “Why Foreign Aid Is Hurting Africa” (2009). Available at <https://www.bartleby.com/essay/Why-Foreign-Aid-Is-Hurting-Africa-PKJLWS2KTC>. Accessed on the 7/10/2016.
- [45] Nicholson, J. ‘ Budget 2015: Foreign aid to Africa cut by 70pc; contributions to Indonesia nearly halved’, (2015), Available at
- [46] Nnabuihe, N, S. Aghemalo, A, Okebugwu N. E. (2014) “Ethnicity And Electoral Behaviour in Nigeria’, European Scientific Journal at p. 1.<sup>1</sup>
- [47] Oduwole, J. “WTO Special and Differential Treatment: Africa’s Golden Fleece or Trojan Horse?” (2013), 3 (1) SADC Law Journal. See further analysis of A. C. Muller on “Special And Differential Treatment” Available Online at file:///C:/Users/ECS/AppData/Local/Temp/Special%20and%20%20Treatment%201.pdf.
- [48] Oke, Y. ‘Developing Counties and the global trends in Natural Resources Management ‘, (2009), New York, at pp.19-20. See also, Robert Bartlett, “Ecological Rationality: Reason and Environmental Policy” (1986) 8 Environmental Ethics, at 230.
- [49] P. Collier, & D. Dollar “Development effectiveness: What have we learnt?” (2004), The Economic Journal, Policy .

- [50] R. Ishaya, Why Africa must develop infrastructure – World Bank Report (2017). Available on <http://www.nan.ng/business/why-africa-must-develop-infrastructure-world-bank>. Accessed on 28/7/17.
- [51] Riedel, J. “Trade as the Engine of Growth in Developing Countries Revisited” (1984), *The Economic Journal*, Vol. 94, No. 373 pp. 56-73. Wiley for Royal Economic Society. Available Online at [www.jstor.org](http://www.jstor.org). Accessed: 18-11-2016.
- [52] Shah. A. “Foreign Aid for Development Assistance” (2004), Available at <http://www.globalissues.org/article/35/foreign-aid-development-assistance>. Countries, *Economic Journal*, 97(387), 616–641. Accessed on the 20/2/2016.
- [53] Snyder, F. G. “Law and Development in the Light of Dependency Theory” (1980), *Law & Society Review*, Vol. 14, No. 3, Contemporary Issues in Law and Social, pp. 723-804. Wiley for Law and Society Association.
- [54] Stepek, M. J. “The Importance Of Commercial Law In The Legal Architecture Of Post-Conflict "New" States” (2008), 60 *Me. L. Rev.* 487,
- [55] Stephen Macedo, “The Law of Peoples What Self-Governing Peoples Owe to One Another:
- [56] Streeten, P. “Basic Needs: Some Unsettled Questions” (1984), World Development Institute Easton University.
- [57] Subramania A, Tamirisa N.” Africa Trade Revisited (2001) IMF Working Paper. Africa and Policy Development and Review Department.
- [58] Subramania. A , Tamirisa. N. “Africa Trade Revisited (2001) IMF Working Paper. Africa and Policy Development and Review Department.
- [59] Tarp. F. “Aid Effectiveness” (2009) ANU – WILDER Publication. For further readings, Available at [http://www.wider.unu.edu/publications/working-papers/discussion-papers/2009/en\\_GB/dp-05/](http://www.wider.unu.edu/publications/working-papers/discussion-papers/2009/en_GB/dp-05/). Accessed on 8/10/2015.
- [60] The World Bank report of Committee on Trade and Development. Participation of developing countries in World Trade: Overview of major trends and underlying factors (1996), WT/COMTD/W/15.
- [61] Trubek, D. M., Santos A. “The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice” (2006), in *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press.
- [62] Universalism, Diversity, and the Law of Peoples” (2003-2004), 72 *Fordham L. Rev.* 1721/. Available online at HeineOnline. Accessed on 12/1/2017.
- [63] Warden, E. “Africa rising? Why transparency matters in the governance of Africa’s resources” (2017). Available on <https://eiti.org/blog/africa-rising-why-transparency-matters-in-governance-of-africas-resources>. Accessed on 31/8/2017.
- [64] Whalley, J, “Special and Differential Treatment in the Millennium Round”, (1999), Centre for the Study of Globalisation and Regionalisation (CSGR), University of Warwick, Coventry CV4 7AL, United-Kingdom. Available online at [www.csgr.org](http://www.csgr.org). Accessed on the 15/11/ 2016.<sup>1</sup>
- [65] Whalley, J. “Non-Discriminatory Discrimination: Special and Differential Treatment under the GATT for Developing Countries.” *The Economic Journal*, Vol. 100, No. 403 (1990), pp. 1318-1328, Wiley on behalf of the Royal Economic Society. Available Online at [svww.jstor.org](http://www.jstor.org). Accessed: 23/05/2016.
- [66] Yeoh, P. “international trade agreements and global economic governance”(2016). *Comp. Law.* 37(8), 235-243.