# RIVERS STATE UNIVERSITY
# PORT HARCOURT

## INTERNATIONAL INSTITUTIONS: IMPACT ON STATE SOVEREIGNTY IN CONTEMPORARY SOCIETY

*AN INAUGURAL LECTURE*

BY


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# DEDICATION

This work is dedicated to Almighty God.

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# PROTOCOL

The Vice Chancellor and Chairman of this occasion, Sir,
Chairman and Members of the University Governing Council,
The Deputy Vice Chancellor (Academic),
The Deputy Vice Chancellor (Administration),
The Registrar and Secretary to Council and Senate,
The University Librarian,
The University Bursar,
Former Vice Chancellors and Emeritus Professors,
Former Deputy Vice Chancellors,
Heads of the Various Campuses of the University,
Provost of the College of Medicine,
Dean of the Postgraduate School,
Deans of Faculties and Directors of Institutes and Centres,
Heads of Departments and Units,
Distinguished Professors and Members of Senate,
Academic, Administrative and Technical Staff,
Great Students of Rivers State University,
Ministers of God,
Your Royal Majesties, Highnesses and Chiefs,
My Family Members and Friends,
Distinguished Ladies and Gentlemen.

## 1.0 Introduction

No treaty between the federation and any other country shall have the force of law except the National Assembly has enacted it into law. Prior to the Westphalia treaty, entities, kingdoms, empires and other systems of societal groups and organizations existed. With the Westphalia (1648) emerged the state system which centered politics around the state with absolute sovereignty. In other words, sovereignty expressed the independence or autonomy of the state to make and implement decisions within its territory without interference from other states.

However, inter-state relations and the unbalanced nature of relations in the international system has, over years, reduced greatly the sovereignty of nations as less economically strong ones depend on rich ones for financial assistance. This has also led to other forms of dependence including political dependence. Again, with the emergence of globalization, strengthened by the information technology which has weakened states borders, protectionist policies are no more fashionable leading to more free market economies and less restricted relationships among nations and further spread by the

1. Constitution of the Federal Republic of Nigeria, 1999 Cap C23 LFN 2004, s 12(1).
2. O Nnoli, *Introduction to Politics* (Longman Publishers 1986).
3. **C C Wigwe and I Ononye, 'Examining the Difficulties in Actualizing Single Market and Trade Liberalization in ECOWAS' [2021] (4)(1) *Journal of Law and Policy*, 143-156.**
4. **C C Wigwe, 'The Legal Impact of ECOWAS Single Monetary Policy on the**

democratic wind. This has led to MNCs, IGOs and NGOs having freer access to territories of states.

Furthermore, as states interact in the international system, with the need for coming together to solve common problems which may be difficult to solve individually, international organisations emerge (UN, World Bank, WTO, IMF, AU, EU and so on). Membership of states to these organizations entails the surrendering of some part of their sovereignties to these organisations giving the organisations some sort of supranational status. States also have the obligation of working towards the achievement of the goals of these organisations which include among others, human rights protection, non-proliferation of arms and environmental protection. Thus, politics and policies are continuously affected and shaped by the demands of these organizations.

Vice Chancellor Sir, as we have argued elsewhere, the rise of international organisations has deeply affected state sovereignty in theory, in law and in practice. On the one hand, the founding acts of certain International Organisations reaffirm sovereignty as a bedrock of international law. For instance,

**Sovereignty of Member States' Legal Essays in Honour of His Excellency, Henry Seriake Dickson (Owerri: Zuby Infinity Concept 2020) 458-490.**

5. **C C Wigwe, 'Freedom of Movement of Goods and Persons in International Trade: An International Economic Law Perspective' in *Book of Reading on Legal Essays* (Lagos: Princeton & Associates Publishing Co. Ltd 2021) 222-243.**
6. **C C Wigwe, 'The Doctrine of Non Intervention and the Use of Force in International**

**Article 2(1)** of the UN Charter proclaims that the organisation is based upon the sovereign equality of its members and **Article 2(7)** protects their domestic jurisdiction. Similarly, **Article 3** of the Charter of the Organisation of American States proclaims, *inter alia*, that 'international order consists essentially of respect for the personality, sovereignty, and independence of States'. On the other hand, however, many founding treaties, such as the Articles of Agreement of the International Monetary Fund, and also the UN Charter, clearly establish a difference among equals, notably in relation to member voting rights. What is more, the constitutional treaties of organisations with extensive powers vis-à-vis their members, including those such as the World Health Organisation, World Trade Organisation, and many others, make no mention of sovereignty at all. Moreover, it is clear that the practice of these and other organisations has affected sovereignty in numerous ways, regardless of what is contained within their constituent instruments.

In hindsight, it appears that the phenomenon of institutionalization on contemporary international law has caused a reconfiguration of sovereignty: the theoretical, legal and practical implications of institutionalization on state

**Law' [2014] (1) *Journal of Contemporary Legal and Allied Issues*, 1-11.**

7. **C C Wigwe and V Chizindu-Wigwe, 'The Law of International Institutions Examined through the Lenses of International Economic Law' [2018] (8)(1) *Humberside Journal of Law and Social Sciences*, 53-63.**
8. **C C Wigwe and A Ifiemi, 'The Impact of Stabilization Clause in International Oil Companies Agreement' [2022] (2)(1) *Journal of Environmental and Human Right***

sovereignty forced scholars, practitioners and official representatives to reconsider, often inadvertently, what sovereignty is, or at least what it has become. It is no coincidence that it has been the actions, policies and interventions of international organisations, which have led to ideas such as 'divided' or 'conditional sovereignty', the notion of 'sovereignty in abeyance' or 'sovereignty as responsibility'. These ideas, and the narratives and frameworks in which they are embedded, are articulated and promoted by professionals working on International Organisations, who are experts in their fields, some of whom have authority within the invisible college of international lawyers. Besides, these professionals often work in tandem or in coordination with a myriad of international and domestic non-governmental organisations. Consequently, in different ways, international organisations have clearly promoted changes in the idea of state sovereignty.

In the late 1980s, Robert Putnam proposed viewing the relationship between international and domestic politics through the lens of what he called the 'two-level game': At the national level, domestic groups pursue their interests by pressuring the government to adopt their favored policies, and

***Law*, 79-100.**

9. R D Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games* [1988] (42) *International Journal of Diplomacy,* 427.
10. *Ibid.*
11. C A Bradley, 'International Delegations, the Structural Constitution, and Non-Self-Execution' [2003] (55) *Stan Law Review*, 1557, 1567; J G Ku, 'The Delegation of Federal

politicians seek power and influence by constructing coalitions among these groups. At the international level, governments aim to maximize their ability to satisfy domestic pressures, while at the same time seeking to avoid adverse foreign developments. Although Putnam was not thinking specifically of international law when he wrote of the two-level game, the metaphor provides a useful tool for thinking about the ways in which international law and domestic politics are interwoven and mutually causative.

In recent years, one half of the 'game' described by Putnam - the impact of international law and politics on domestic law and politics - has become a central subject of debate in legal scholarship. Critics of international law have expressed concern about the instances in which international law infringes on domestic sovereign authority. Their discomfort, and hence their criticism, stems from the shared premise that the state ought to retain unfettered authority to make the laws that govern its own citizens. In this view, international law takes authority out of the hands of local decision-makers and gives it to persons and locations far removed from those the law governs, undermining self-government and the value of citizenship within the state in

Power to International Organizations: New Problems with Old Solutions' [2000] (85) *Minnesota Law Review*, 88–113; E T Swaine, 'The Constitutionality of International Delegations' [2004] (104) *Columbia Law Review*, 1492; E A Young, 'The Trouble with Global Constitutionalism' [2003] (38) *Texas International Law Journal*, 527; K Anderson, 'Foreign Law and the U.S. Constitution' [2005] *Policy Review*, 33.

12. O A Hathaway and A N Lavinbuk, 'Rationalism and Revisionism in International Law'

the process.

The activities of international organisations and the role they play in shaping global policy reveal that they wield enormous power. The emergence of international organizations is a product of an agreement by countries to come together under a common body for the purpose of achieving a common goal. Under this treaty arrangement, States cede part of their sovereign power to international organizations for the mutual benefit of the member states.

Traditionally, international organizations upon their establishment by a constituent treaty make regulations for their members, which are yielded back to the member states for ratification. This process of requiring ratification from member states somehow demonstrates the overriding power of the states in legal terms. The game is however changing; not necessarily because of increased power from the states but because international organizations are increasingly exercising power in the area of policy making, governance and human development programmes that require faster pace to accomplish. The sovereignty of states includes permanent sovereignty over natural and economic activities. This resolution means that

[2006] (119) *Harvard Law Review*, 1404.

13. R W Grant and R O Keohane, 'Accountability and Abuses of Power in World Politics' [2005] (99) *American Political Science Review*, 29.
14. United Nation General Assembly Resolution 1803 (XVII) of 14 December 1962.
15. **C C Wigwe, *International Law and Practice: The World Bank, IMF and State Sovereignty* (Mountcrest University Press, 2011) 4**.

independent nation states have permanent sovereignty over their natural resources.

The constituent treaty is usually the establishment instrument, and it spells out the objectives of the international organization, its functions and its general mandate. In principle, States usually retain the right to exercise these powers by inserting certain clauses in the constituent treaty to checkmate the exercise of powers by the international organizations that have the prerogative of setting the rules for governance and standard for effective participation by member states. Despite their powers and roles, it has been suggested that it is obligatory for international organizations to respect the principles of state sovereignty and limit themselves to the conferred powers; as such organizations cannot on their own determine their competence.

The above scenario poses a lot of challenges to the state system and states' sovereignty. The situation seems more critical when looked at from the less developed countries' position as they grapple with the internal dynamics of their national questions and continued existence, while at the same time engaging in international relations from a disadvantaged point orchestrated

16. Nnoli (n 2).
17. R D Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games* [1988] (42) *International Journal of Diplomacy,* 427.
18. Bradley (n 11).
19. Hathaway and Lavinbuk (n 12) 1404.
20. C C Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers 2011).

by colonialism and the present-day bizarre realities of these societies.

## 2.0 The Old-World Legal Order Before 1648

Before the Westphalia Treaty in France in 1648, the concept of State sovereignty was relatively unknown. Before the emergence of the concept of state sovereignty in 1648, the Roman Empire was ruling the whole Europe. There were frequent wars which led to so much massacre of human beings within the said period.

The 30 years old war was the longest and most destructive conflict that claimed the lives of more than eight million soldiers and civilians. One of the major causes of this war was the domination and ruling of the whole Europe by the Roman Empire.

Regardless of the customary laws of the nation States in Europe, the Roman Empire imposed their laws on the whole Europe. Germans tried to resist the Roman Empire Laws by stating that laws are found and not made. Their argument was based on the fact that every law must have relationship with the native law and custom of the people. Karl von Savigny, one of the great

21. *Ibid.*
22. J Hart, *Reading the Renaissance: An Introduction* (Garland Publishing 1996) 14.
23. C Wickham, T*he Inheritance of Rome: Illuminating the Dark Ages* (Penguin Books, 2010) 688.
24. **C C Wigwe and G C Okara, 'An Evaluation of Nigerian's Currency Swap Deal with China' [2020] (12)(1)*The Journal of Property Law and Contemporary Issues*, 1-7.**

German philosophers argued that Roman law is completely alien to the citizens of Germany. He was later joined by Henry Maine a British national in the position to introduction of Roman Law in Europe. They argued strongly that laws emanates from the "Spirit" of the indigenes, Roman Law therefore does not emanate from the indigenes of Germany.

The Historical school of Jurisprudence founded by Friedrich Karl Von Savigny from Germany Opposed the imposition of Roman law in Germany and opted for German Customary law. His argument was that Roman Law cannot be Superior to German Customary Law. He argued that Laws are found and not made, which aligns with the principle of Customary Law.

Henry Maine, who was from England United Kingdom, also aligned himself with Friedrich Karl Von Savigny in the restatement of Law. He argued that United Kingdom has a fully Common Law and equity that was working very well in the UK. The two philosophers argued that the Roman Law was too alien to English and German culture which was already in existence from when man was created.

25. J Sumption, *The Hundred Years War 1: Trial by Battle* (University of Pennsylvania Press, 1999) 672.
26. R Cavendish, 'Otto the Great is crowned Emperor of the Romans' (2012) <https://www.historytoday.com/archive/ottogreatcrownedemperorromans#:~:text=Otto%20I%20was%20crowned%20Emperor,XII%20on%20February%202nd%20962.&text=He%20made%20no%20claim%20to,936%2C%20was%20far%20more%20ambitiou

## 3.0 The New World Legal Order from and After 1648

The New World Legal Order started in 1648 after the Westphalia Treaty when the concept of State Sovereignty was mooted and agreed.

This concept of Sovereignty of States agreed at Westphalia brought relative peace in Europe because State were allowed to determine their own affairs, the Roman Empire now stopped the control of all European states. The concept introduced non-intervention in the domestic affairs of Member States or other Nation states, it also introduced the concept of self-determination. It was generally realised that the concept of State Sovereignty which allows each Nation State to administer itself in accordance to their Native Law and Customs brought about relative peace amongst Nation States.

The end of World War II ushered in the new world order, as the embattled colonialism began giving way to people's government, as the French colonial policy of Assimilation, the Belgian colonial policy of Paternalism, the Portuguese policy of *Assimilado*, and the British policy of Trusteeship or indirect rule came under unprecedented criticism, the accumulated freedom of political leadership by the native élites was released

s> accessed 13 February, 2023.

27. J Monfasani, *Renaissance Humanism, from the Middle Ages to Modern Times* (Routledge, 2006) 330.
28. D Gardinier, *French Colonial Policy of Assimilation: United Nations Challenge to Colonial Administration* (La Vine Publishers, 1963) 10.
29. Y Crawford, *The Belgian Colonial Policy of Paternalism; Politics in the Congo* (First

explosively as nationalist movements for self-determination took centre stage. Concurrently, the demise of the League of Nations and the birth of the United Nations as referee and enforcer of the new international constitutional legal order have now been pragmatically codified as an index of international law.

The Treaty of Westphalia, also known as the 'Treaty of Münster and the Treaty of Osnabrück', was signed in 1648 in Münster (Germany), it ended the 30 Years War, and the war that began with the revolution against Habsburg in Bohemia in 1618, which was caused by various conflicts over the Constitution of the Holy Roman Empire, and the state system of Europe. The Treaty of Westphalia ended with the signing of 2 agreements between the Empire as well as the latest Great Powers, France and Sweden, and the conflicts within the Empire was settled with their own guarantees. The Holy Roman Emperor, Ferdinand III, the Kingdom of Spain, the Kingdom of France, the Swedish Empire, the Dutch Republic, the princes of the Holy Roman Empire, and the kings of free imperial cities participated in the Treaty of Westphalia. The terms of the Treaty are:

Publishers 1965) 59.

30. J Duffy, *Portuguese Colonial Policy of Assimilado: Portuguese in Africa* (Harvard University Press 1962) 91-94.
31. P Mitchell, *British Colonial Rule-Trusteeship: African Afterthoughts* (Clarendon Press 1954) 274.
32. M Clodfelter, *Warfare and Armed Conflicts: A Statistical Encyclopedia of Casualty and*

a) Sweden gained west of Pomerania, Wismar, Stettin, Mecklenburg, and the bishoprics of Bremen and Bremen.
b) Sweden gained east of Brandenburg and the bishop of Magdeburg and Halper Stad.
c) Keep Bohemia in the hereditary domain.
d) Upper Austria restored to Hapsburg and
e) Spain's recognition of the United Provinces as a sovereign state.

The peace negotiations between Hapsburg and France, presented by the Holy Roman Emperor and King of Spain, were held in Cologne in 1641. Because of so many participants in that treaty and conflicting interests, it was hard to distinguish between negotiation patterns to determine the objectives of the main participants. The Emperor wanted to work for a full and final peace settlement, on account of the desperate situation of his, and was ready to make some far reaching religious and territorial concessions if necessary. He abolished Mazarin's desire for world peace after the collapse of negotiations with Spain in 1646. Spain has proved helpful to reach an agreement

*Other Figures, 1492-2015* (McFarland and Company, 2017) 824.
33. K Repgen, *Negotiating the Peace of Westphalia: A Survey with an Examination of the Major Problems - 1648: War and Peace in Europe* (Ravers, 1998) 17.
34. R J Barro and R M McCleary, *Which Countries have State Religions?* (University of Chicago Press, 2004) 51.
35. *Ibid.*

with the Dutch and keep on fighting. Therefore, as far as Germany was concerned, France wanted to destroy the effect of the emperor by strengthening the independence of the individual princes and replacing the existing imperial institutions with the Union for the leadership of France. Nevertheless, these designs were not really popular with the German princes, who appreciated the Holy Roman Empire. The French demands were among the Alsace and parts of the Lorraine, which was rather modest because of France's desire towards the Spanish territory.

From 1648 to the present day, the situation in Europe has changed, but the most significant change was in 1648 when the Thirty Years' War was ended and a modern European continent of sovereign states was established. The religious divide and conflict in Europe and the spread of chaos, killing and disease were among the most important reasons that led the Europeans to hold the peace of Westphalia and retreat from wars and conflicts. The German province of Westphalia was chosen to hold the peace agreement because it lies in the middle between the capitals of Sweden and France. Those who worked on this

36. J Baylis, *The Globalization of World Politics* (Oxford University Press, 2011) 648.
37. S Hans-Werner, 'Europe Finally Pulls the Trigger on a Military Force' <https://www.hanswernersinn.de/en/europe-pulls-the-trigger-on-a-military-force-ps-211120128> accessed 13 February, 2023.
38. P Sonnino, *Mazarin's Quest: The Congress of Westphalia and the Coming of the Fronde* (Harvard University Press 2009) 330.

agreement were Ferdinand III, who ruled the Holy Roman Empire, Louis XIII, King of France, and Christina, Queen of Sweden. This conference led to a European reconciliation that included more than one document.

This treaty recognizes that every European country has its own geographical boundaries and that other countries must respect those boundaries and not interfere in the internal affairs of any other country, this principle has created a kind of equality between European countries, regardless of state power or size. This treaty created a kind of religious respect, because it recognized the different sects in Europe from Catholic to Lutheran to Calvinist, which created a sense of satisfaction for the European people and removed the option of resorting to war for religious reasons. The European state today adopts the principle of secularism in work and in dealing with the people, this is due to the reconciliation of Westphalia, which reduced the powers of the Church and made the city-state ruling. ***Modern Europe is based on the principle of separation of religion and state, respect for the sovereignty of each state and respect for the religious freedom of each individual***. These principles,

39. Barro and McCleary (n 34).
40. P Wilson, *The Thirty Years War: Europe's Tragedy* (Belknap Press, 2011) 1024
41. Monfasani (n 27).
42. H Kissinger, *World Order: Reflections on the Character of Nations and the Course of History* (Penguin 2000) 378.
43. P Burke, *The Spread of Italian Humanism: in the Impact of Humanism on Western Europe*

derived from the peace of Westphalia, made Europe a peaceful region and removed religious wars from it, which was the main cause of the wars that took place in the past.

After the Peace of Westphalia, European policies were arranged on the basis of the supreme interest of the State and the welfare of the people. The Church no longer had any power to intervene in the policy-making of European countries; the interest of the State was applied irrespective of the religion of the king or the people. Before the Peace of Westphalia, each church demanded unity among its sovereign states and incited the followers of each church to fight for more land and thus greater control of the church. After the Peace of Westphalia, the Church lost its credibility, especially after the devastating wars. The principle of dealing on the basis of respect for the sovereignty of each state, rather than a union between states on a religious basis, has been transformed.

The concept of international relations is based on respect for the sovereignty of the state and secularism as a system of government after the religious system was ruling and after the

(Fin Publications 1999) 292.

44. D Woodward, *The History of Cartography: Cartography in the European Renaissance* (University of Chicago Press, 2007) 1120.
45. R R Edgar and Others, *Civilizations Past and Present* (Pearson, 2007) 832.
46. C Gallagher and S Greenblatt, *Practicing New Historicism* (The University of Chicago Press, 2000) 260.

wars between the countries in the European region did not end. The Peace of Westphalia was a model for all nations to resolve their differences and stay away from war. The Peace of Westphalia was the first diplomatic agreement and paved the way for a new international order based on respect for state sovereignty and treating states on equal bases regardless of size or power. This system is currently being applied in diplomatic relations between countries.

The principle of sovereignty established by the Peace of Westphalia gave every European country the right to choose its political, social and economic system without reference to religious or other authority and without any interference from external states. This principle was also enshrined in the Charter of the United Nations after the end of the Second World War. Henry Kissinger considered that the Peace of Westphalia had transferred Europe from one system to another entirely different. It can be considered that the emergence of modern Europe today goes back to the peace of Westphalia. The Westphalia Convention also introduced the recognition of the rights of all, including religious minorities, without any

47. P H Wilson, *Europe's Tragedy: A History of the Thirty Years War* (Allen and Lane, 2009) 1040.
48. J Whaley, *Germany and the Holy Roman Empire* (vol 1 Oxford University Press 2012) 746.
49. T W Wallbank and Others, *Civilization Past and Present* (Harpercollins 1996) 528.
50. M Leonard and Others, *Redefining Europe's Economic Sovereignty* (European Council on

negative interference in their affairs.

## 4.0 Paris Peace Conference and the Treaty of Versailles 1919

The Peace Conference of 1919 was an interplay of Westphalia Treaty of 1648. Emphasis was made on the need for Nation State to possess state Sovereignty. Delegates from 32 countries met and agreed that in order to prevent another war, Countries must have their Sovereignty. The principles of Self Determination and non-intervention in the affairs of another Country was proclaimed. This led to the establishment of the League of Nations in January 1920.

President Woodrow Wilson proposed the establishment of League of Nations at the Peace Conference of 1919 because he felt that it will encourage disarmament, prevent further war through collective security, settling disputes between countries through negotiation and diplomacy. It can be argued that the essence of the League of Nations was to encourage World peace by institutionalism and enhance total observance of principles of State Sovereignty.

The League of Nations had three principal organs namely:

Foreign Relations, 2019) 23.

51. W P Guthrie, *Battles of the Thirty Years War: From White Mountain to Nordlingen* (Greenwood Press, 2002) 335.
52. P D Lockhart, *Denmark, 1513-1660: The Rise and Decline of a Renaissance Monarchy* (Oxford University Press, 2007) 300.
53. A Sharp, *The Versailles Settlement. Peacemaking After the First World War, 1919-1923*

secretariat headed by the General Secretary based in Geneva, a Council and an Assembly.

The League of Nations failed for many reasons;

1) There was no permanent institution or office to enhance its operation.
2) The League of Nations was too weak because USA, Russia and Germany were not members and these countries possess economic and military powers.
3) The principles of State Sovereignty were never adhered to during its existence.
4) The non adherence to the principles was one of the major reasons that led to the Second World War.

Peacemaking proceeded in stages. The Paris Conference ran from 18 January 1919 until 21 January 1920. Its main forum was initially the Council of Ten – the heads of government and foreign ministers of America, Britain, France and Italy, as well as two Japanese representatives. After March 1919 this group divided. The Council of Four – Prime Ministers Lloyd George of Britain, Georges Clemenceau (1841-1929) of France, Vittorio Orlando (1860-1952) of Italy and American President

(Basingstoke, 2008) 19.

54. J S Lee, *Aspects of European History 1494-1789* (Routledge 1984) 312.
55. M N Janis, *Sovereignty and International Law: Hobbes and Grotius* (Kluwer Academic Publishers, 2008) 10.
56. K Repgen, *Negotiating the Peace of Westphalia: A Survey with an Examination of the Major Problems - 1648: War and Peace in Europe* (Ravers, 1998) 17.

Woodrow Wilson (1856-1924) – became the main decision-making body until the German treaty was signed. Their respective foreign ministers –Arthur Balfour (1848-1930), Stephen Pichon (1857-1933), Sidney Sonnino (1847-1922) and Robert Lansing (1864-1928), together with Baron Makino Nobuaki (1861-1949) of Japan - became the Council of Five, which undertook much of the detailed work on the new frontiers of Europe and the treaty with Austria, referring sensitive decisions to the Four. On 28 June 1919 Germany signed the Treaty of Versailles, the first and most significant of the five Parisian treaties.

## 5.0 The New International Legal Order

Towards the end of the World War II, a new International Legal Order was established by codifying the emerging principles of International Law. The United Nations was established on the 24th October 1945, at San Francisco, California United States with its Headquarters in New York. The establishment of United Nations was also an inter play of Westphalia Treaty of 1648 and Peace Conference of 1919.

With the formation of the United Nations, the principles of

57. R J Barro and R M McCleary, *Which Countries have State Religions?* (University of Chicago Press, 2004) 51.
58. J Baylis, *The Globalization of World Politics* (Oxford University Press, 2011) 648.
59. P Sonnino, *Mazarin's Quest: The Congress of Westphalia and the Coming of the Fronde* (Harvard University Press 2009) 330.
60. Kissinger (n 42).

International Law were now codified for the first time. United Nations Charter was proclaimed a Treaty which is today seen as Bible or Koran of International Law for the whole world.

The most fundamental principles of the new International Legal Order and the United Nations is the principle of State Sovereignty. Though the United Nations is a multilateral treaty, it provided a major or fundamental basis for the worlds new legal system; it is a classical international legal order postulated to regulate the world of sovereign states.

**Article 103** of the United Nations Charter provides *inter alia*, that in the event of a conflict between the obligations of the members of the United Nations and their obligations under any other agreement, the obligations under the United Nations Charter shall prevail.

The purposes of the United Nation Charter 1945 include;

1) to maintain international peace and security;
2) to develop friendly relations among Nations based on respect for equal rights and self determination of the people which will strengthen universal peace.

**Article 1(1)** of the United Nations Charter provides inter alia that the organization is based on the principles of Sovereignty of

61. United Nations Charter 1945, art 103.
62. A Osiander, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) (55) (2) *Journal of Humanities,* 251-287.
63. United Nations Charter 1945, art 1(1).
64. L Gross, 'The Peace of Westphalia, 1648-1948' [1948] (42) (1) *American Journal of International Law*, 20-41.

states. The UN Charter provides also that states no matter how small or big, Nation Statesare juridicially equal. This particular section of the Articles of Agreement solidifies the principles of State Sovereignty. The protection of State Sovereignty is so affirmative in all circumstances, because it has been revealed that it is the panacea for world peace and security.

**Article 2(7)** provides inter alia, that states or member states of the United Nations shall not interfere in the domestic or internal affairs of another state or country. The codification of this Treaty, is ultimately the beginning of the paradigm shift from State domination of another state.

The Vice Chancellor, Sir, the essence of State Sovereignty has been established. It is only the Nation State that possesses the inherent powers of State Sovereignty. The moment a state or country is established, it automatically acquires the inherent sovereign powers of state.

Although Nation State or countries are the only ones vested with the powers of State Sovereignty, the need for economic integration, political co-operation, cultural integration and social co-operation may create the need of establishing international institution for co-operation. Sometimes the need

65. J Rosenau, *Turbulence in World Politics* (Princeton University Press, 1990) 504.
66. United Nations Charter 1945, art 2(7).
67. C Tomuschat, *The United Nations at Age Fifty: A Legal Perspective* (Martinus Nijhoff Publishers, 1995) 327.
68. K J Holsti, *Peace and War: Armed Conflicts and International Order* (Cambridge University Press, 1991) 400.

for the creation of these international institutions might be as a result of economies of scale.

United Nations, World Bank, International Monetary Fund (IMF), World Trade Organization (WTO), Economic Community of West African States (ECOWAS), European Union (EU), are few of the international institutions created or established to perform functions beneficial to its members. Technically, since member states are the subscribers, shareholders and members of these institutions, it therefore means that the services of these institutions will cut across the member states of the institutions.

## 6.0 Conventional Sources and Powers of International Institutions

### 1. The Enabling Instrument /Article of Agreement

The sources and powers of international institutions are derived from the Articles of Agreement or the instrument that is used in setting them up. The enabling instrument or Articles of Agreement stipulates their functions and activities. They are not supposed to operate outside the enabling instruments so as not to erode the sovereign powers of members.

69. **C C Wigwe, *The Economic Perspective of the Law of International Institutions* (2nd edn Chrismarcus Chambers, 2023).**
70. P Wilson, *The Thirty Years War: Europe's Tragedy* (Belknap Press, 2011) 1024.
71. **C C Wigwe, *Roles of International Organisations and their Exercise of Sovereign Power: International Economic Perspective* (G-Prints Publishers 2017).**
72. M Lewis, *How the Financial Crisis created a New Third World* (Norton & Co Inc. 2011)

According to **Article 2(4) and (7)** of the UN charter 1945 and United Nations General Assembly Resolution 2526 of 24th December 1978, no member state or institution is allowed to interfere in the domestic affairs of member states. It therefore means that institutions which carry out activities not provided in the Articles of Agreement are actually interfering in the domestic affairs of member states.

The Articles of Agreement determines the procedure to be adopted in carrying out their functions. Member states of international institutions subscribe to the Articles of Agreement as a condition for becoming part of the institution.

In interpreting the enabling instrument or Articles of Agreement of international institutions, only literal rules are allowed to be adopted. The golden rule, ejusdem generis rule, mischief rule and complete context rules which are adopted under statutory rules of interpretation are not allowed. There is an irrebuttable presumption that the enabling instrument or Article of Agreement are interpreted in good faith (pact sunt servanda) in accordance to **Article 26 and 51** of Vienna Convention on laws of Treaties 1969.

That was the decision of the International Court of Justice in

213.

73. H Clout, *After the Ruins. Restoring the Countryside of Northern France after the Great War* (Exeter, 1996) 273-300.
74. A Sharp, *The Versailles Settlement. Peacemaking After the First World War, 1919-1923* (Basingstoke, 2008) 19.
75. United Nations Charter, 1945, art 2(4)(7).

***Admission Case*** ICJ REPORT 1948, where 12 states sought for admission into the United Nations, a committee was set up to look into the eligibility of their status to become members of the United Nations. In addition to the guidelines provided in **Article 4** of the United Nations charter 1945, they included that the prospective members may not have engaged in violence while asking for independence or self-determination from colonial masters. Applying the regulation will shut the door or prevent most colonized territories from becoming members of the United Nations because most of the new states have at one point or the other engaged in the struggle for independence.

The International Court of Justice held *inter alia*;

a) That International Agreement, Articles of Agreement, of International Institutions, including the enabling instrument must be given literal interpretation in good faith in accordance to the principle of "*pact sunt servanda*".

b) That other forms of interpretation of International Agreement or enabling instrument of International Institutions may deviate from the actual intention of the framers of the agreement.

76. F S Marston, *The Peace Conference of 1919. Organisation and Procedure* (Oxford University Press 1981) 19.
77. D Stevenson, *With Our Backs to the Wall: Victory and Defeat in 1918* (Alvin Publications 2011) 30.
78. M MacMillan, *The Paris Conference of 1919 and Its Attempt to End War* (Splutter and Shay, 2001) 35.

c) That any interpretation of the agreement outside the agreement's literal meaning of the agreement which must be done in good faith will amount to the erosion of the sovereignty of member states which will constitute a breach to the principles of non-intervention in the domestic affairs of member states as provided in **Article 2(4)** of the UN Charter 1945.

d) The enabling instrument or the Articles of Agreement of International Institution is the basis of its existence and powers. In fact, Article 103 of the United Nations Charter 1945 provides *inter alia*, that in the event of any conflict between obligations of members of the United Nations and obligations under other international agreements, the obligations under the United Nations Charter 1945 shall prevail.

## 6.1 Sources/Powers of International Institutions

### 1. United Nations Charter 1945

One of the major sources and powers of International Institutions is the United Nations Charter 1945. The United Nations Charter 1945 is the Bible and Koran of the entire world.

79. R S Baker, *Woodrow Wilson and the World Settlement* (Creative Media Partners 2022) 56.
80. *Ibid*.
81. Vienna Convention on laws of Treaties 1969.
82. R Henig, *The League of Nations* (Haus Publishing 2010) 81.
83. W R Louis, *African Origins of the Mandate Idea* (Cambridge University Press 2009) 20.
84. *Admission Case* ICJ Report 1948.

It is the major and fundamental instrument that regulates the affairs of the world. Any International Instrument which is at variance or inconsistent with the provisions of the United Nations Charter 1945 will be declared null and void. This is provided in Articles 103 of the Charter. International Institutions are bound by the provisions of the UN Charter 1945.

## 2. Principles of Public International Law

This is another strong source and power of International Institutions. The principles of Public International law regulate relations between states and international institutions amongst International Institutions.

Public International law is a combination of rules and customs governing relations between states and international institutions in different fields of life, such as armed conflict, human rights, the air and sea space trade, territorial boundaries and diplomatic relations.

The doctrines of self-determination, non-use of force, non-intervention in the domestic affairs of member states or other countries, the promotion of human rights, the prohibition of acquisition of territory by use of force and respect to preemptory

85. *Admission Case* ICJ Report 1948.
86. *Ibid*.
87. *Ibid*.
88. H W Briggs, *The Development of International Law by the International Court* (Stevens and Sons 1958).
89. **C C Wigwe, 'The Pitfall in the Enforcement of International Law' in *Constitutional***

norms of international law (*jus cogen* or *erga omnes*). Preemptory norms of International law has no jurisdictional barrier. It overrides any country's constitution which may be in conflict with its principles.

What are the principles of *jus cogen* or *erga omnes*? They are prohibition of slavery, genocide, ethnic cleansing, rape (but for rape to qualify as *jus cogen* or *erga omnes*, it must be consistent rape), elimination of all forms of racial discrimination, particularly discrimination against women, elimination of torture and other cruel and degrading treatment and punishment, including the protection of child and people with disabilities.

Although the United Nations Charter 1945 takes priority over all international agreements in accordance to **Article 103** of the Charter, but *jus "cogen or erga omnes*" which is just a preemptory norm of international law, has no jusrisdictional barrier and can override any country's constitution which breaches its principles. This is also stated by the House of Lords in the case of *Augusto Pinochet v Baltasa Garzon*. Where Pinochet relied on Chile's Constitution and Diplomatic Immunities and Privileges Act 1962-1978 to defend his actions

***Law, Politics and Good Governance: An Interdisciplinary Text*** **(Princeton & Associates Publishing Co. Ltd. 2022) 1345-1366.**

90. *Ibid*.
91. M A Helfand, *The Persistence of Sovereignty and the Rise of the Legal Subject* (Cambridge University Press 2015).
92. J L Brierly, *The Law of Nations: An Introduction to the International Law of Peace*

while he was Head of State in Chile. The Court held *inter alia*; that '*jus cogen* or *erga omnes'* norm does not have jurisdictional barrier and that it overrides any country's Constitution which violates the principles.

3. **Customary International Law**

Customary International law is another source and power of international institutions. This is provided in Article 38(1) (a-h) of the Statute of ICJ 1946. It allows international institutions or states to make use of customary international law where the treaty did not make provision on a particular issue.

Vice Chancellor Sir, it should be noted that Customary International Law can only be resorted to where there is no treaty or the treaty is silent on a given issue. That is the essence of Article 38(1) (a-h) Statute of ICJ 1946.

4. **Laws of Host States**

International Institutions Possess Domestic and International Legal Personality. This Domestic Legal Personality enables them to do business like renting houses for their offices and for residential purposes.

Although they are bound to obey the laws of host States or Countries but the intergovernmental institutions also possess

(Oxford University Press 1978)103.

93. R Thakur, 'Global Norms and International Humanitarian Law: An Asian Perspective' [2001] (83) (841) *International Review of the Red Cross,* 19-44.
94. F K Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention in the Evolution Practice of Sovereignty* (1st edn Springer, 1993) 12.
95. D Cortright, *Economic Sanctions: Panacea or Peace-building in a Post-Cold war World*

privileges and immunities similar to that of embassies. However, it should be noted that the privileges and immunities do not cover business activities. This is in consonance with the Immunities and Privileges Act of UK 1978.

## 6.2 Unconventional Sources and Powers of International Institutions

Most International Institutions possess unconventional powers that are not specified in the enabling Instrument or Articles of Agreement. It is quite true that all countries are juridically equal. Legally, the sovereign equality of all states is sacrosanct in accordance to **Article 2(4)** of UN Charter 1945, including the natural principles of public international law.

In practice, the Articles of Agreement and Principles of International Law are diluted. For Instance, amongst the member States of United Nations, there are members who command more influence than the others.

## 7.0 Some Notable International Institutions

### 1. United Nations

There are five permanent members of the security council which is the highest organ of the United Nations. These are USA, UK,

(1st edn Routledge, 1995) 97.

96. B Milestein, *The Crisis of External Sovereignty: The US and the World* (Fab Books 2009) 19.

**97. C C Wigwe and I F George, 'Developing Trade Liberalisation and Removal of Inequalities in the West African Market: An International Economic Law Dimension' [2018] (4)(1) *Port Harcourt Journal of Business Law*, 1-10.**

France, China and Russia. They are regarded as the Big 5. Each of these countries can influence the decisions of the United Nations by ordinary resolution or by exercising their right of Veto. They enjoy more respect and influence in the United Nations more than other members of the Institution.

The United Nations (UN) was established in 1945, after World War II, as a replacement for the League of Nations with the objective of promoting international cooperation and to establish international order that will prevent another world war. The aims of the UN include maintaining international peace and security, protecting the environment, fostering social and economic development, human rights protection, providing humanitarian aids to member states from natural disaster and armed conflict.

The UN had 51 members at its founding and a current membership of 193 countries across the world, with its headquarters in New York. The United Nations is also saddled with the responsibility of developing friendly relations among nations; promoting social progress and better living standards. The UN is made up of six bodies with specific functions – The General Assembly, Security Council, Economic and Social

98. [2000] (House of Lords Decision).
*99. Pinochet v Baltasa Garzon.*
100. I Brownlie, *Principles of Public International Law* (5th edn Oxford University Press, 2002).
101. J Bodin, *The History of Political Thought: Sovereignty* (Cambridge University Press 1992)23.

Council, Trusteeship council, Secretariat and an International Court of Justice.

Its function as carried out through the General Assembly is to discuss, debate, and make recommendations on a range of subjects pertaining to international peace and security. The UN is an international organization designed to make the enforcement of international law, security, economic development, social progress, and human rights easier for countries around the world.

The General Assembly is the main deliberative and policymaking arm of the UN and the Assembly's President changes at each annual session and is usually elected by the body itself. The UN Security Council has five permanent members – U.S, U.K, France, Russia, China – and ten rotating members, with the permanent members each having the right to veto any move by the council.

The UN embarks on peacekeeping missions in troubled spots around the world. In Africa, the UN has conducted a number of peacekeeping missions beginning from 1960, which were as a result of civil wars or conflicts in Africa including Angola, the Congo, Liberia, Somalia, and Rwanda. The UN has remained

102. D Philpot, *Revolutions in Sovereignty; How it shaped Modern International Relations* (Princeton University Press 2001) 23.
103. W Twining and D Miers, *How to Do Things with Rules* (2nd edn Cornell University Press 1984)126.
104. D Emmet, *Rules, Roles and Relations* (St Martin's Press 1966) 12.
*105. Ibid.*

very vital in resolving global crisis and producing blueprints for equitable development.

The United Nations (UN) is an intergovernmental organization tasked to promote international cooperation and to create and maintain international order. It is a replacement of the League of Nations and its establishment is to prevent another such conflict. The headquarters of the UN is in Manhattan, New York City, and experiences extraterritoriality. Further, main offices are situated in Geneva, Nairobi *and* Vienna. The UN is the largest, most familiar, most internationally represented and most powerful organisation in the world. It is financed by voluntary contributions from its member states.

The UN has six principal organs: The General Assembly (the main deliberative assembly); the Security Council (for deciding certain resolution for peace and security); The Economic and Social Council (ECOSOC for promoting international economic and social cooperation and development); the Secretariat (for providing studies, information and facilities needed by the UN); the International Court of Justice (the primary judicial organ); and the UN Trusteeship Council (inactive since 1994).

106. F Hansley, *State Sovereignty* (Devon 1966) 126.

**107. C C Wigwe and N Akani, 'An Examination of ECOWAS Legal Framework as it affects Rail and Pipeline Transportation' [2019] (9)(1)*The Journal of Property Law and Contemporary Issues*, 1-6.**

*108. Ibid.*

109. L Henkin, *International Law: Politics and Values* (Martinus Nijhoff 1995) 9.

### *Purposes of the United Nations*

The purposes of the United Nations are:

a). To maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to breach of peace;

b). To develop friendly relations among nations based on respect for the principles of equal right and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

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

110. A Briney, 'History and Principles of the United Nations' (2017) <http://thoughtco.com.the-united-nations> accessed 2 March 2023.
111. United Nations Council on Foreign Relations, 'The Role of the UN General Assembly' (2016) <http//: www.cfr.org> accessed 2 March, 2023. The presidency follows a pattern of regional rotation by tradition and usually may not be from any of the five veto-wielding permanent members of the Security council.

d). To be a centre for harmonising the actions nations in the attainment of these common ends.

Thus, the original members of the UN shall be states which having participated in the UN conference in International organisation at San Francisco**,** or having previously signed the declaration by united nations of 1st January 1942. Membership is also open to other peace-loving states which accept and, in the judgment of the organisation, are able and willing to carry out these obligations. The admission of any such state to membership in the Nations will be effected by the decision of the Assembly upon the recommendation of the Security Council.

Nonetheless, the organisation (UN) can still ensure that states which are not members of the UN act in accordance with the principles of the UN set out in Article 2 of the UN Charter, as may be necessary for the maintenance of international peace and security.

Therefore, any member of the United Nations which has persistently violated the principles contained in the charter may be expelled from the organisation by the General Assembly upon the recommendation of the Security Council.

**112. C C Wigwe, *International Monetary Law: Effects of Trade Liberalization in West African Countries and their Currencies* (Mountcrest University Press 2018).**

113. United Nations' <http://www.nationlgeographic.org/encyclopedia/international-organisation> accessed 2 March, 2023.

**114. C C Wigwe and V Chizindu-Wigwe, 'Understanding ECOWAS Single Monetary Policy within the Framework of International Economic Law' [2018] (8)(1) *Prime***

## 2. The World Bank and International Monetary Fund

These are multilateral and universal Institutions dealing with almost all Nations in the World. Europe and USA exercise more influence in running the two institutions. In-fact when the two institutions were established in Bretton Woods Hemisphere in USA in 1944, it was agreed amongst other things that the head of World Bank must be an American and the head of International Monetary Fund (IMF) must always be European. This agreement has never been altered from 1944 till date. So, these two continents exercise so much influence above all other member States. This is just a few examples of how sovereign equality of States or juridical equality is being diminished within most international Institutions. United Nations, World Bank and International Monetary Fund are all based in the United States.

### *THE WORLD BANK*

The World Bank was established after World War II for reconstruction of countries that were devastated by the effect of the war. Its role later expanded to that of economic

***Journal of Advanced Legal Studies*, 31-40.**

115. UN Charter 1945, art 1(I).
116. *Ibid*, art 1 (2).
117. *Ibid*, art 1(3).
118. UN Charter 1945, art 1(4).
119. *Ibid*, art 3.

development. Thus, the World Bank shifted from European reconstruction to financing development activities and urging policy frameworks in nearly all of the world's developing countries.

The World Bank is well positioned to cater for the developmental needs of its less developed member states. It provides capital for countries of the world for capital programs. An author who also shares this sentiment stated that: "The World Bank also gives interest-free loans and grants (similar to foreign aid) to the poorest developing countries. This aid has been heavily used in Africa; indeed, in 2003, 51 percent of it went to sub-Saharan Africa. This overlap of missions, proliferation of adjustment loans, and expansion of conditionality are central issues today."

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

*120. Ibid*, art 4(1).
*121. Ibid*, art 4(2).
*122. Ibid*, art 2(6).
*123. Ibid*, art 6.
**124. C C Wigwe, 'A Discourse on the Effects of Protectionism in International Trade Law' [2018] (8)(2) *African Journal of Social Sciences*, 66-71.**

The World Bank is an international financial institution that provides loans to countries of the world for capital programs. It comprises of two institutions; the International Bank for Reconstruction and Development (IBRD), and the International Development Association (IDA), it was formed on July 1945.

Four affiliate agencies were established later, that is, International Finance Cooperation (IFC) in 1956; the International Development Association (IDA) in 1960' the Multilateral Investment Guarantee Agency (MIGA) in 1988, and the International Centre for Settlement of Investment Dispute (ICSID) in 1960.

The establishment of this institution was as a result of a compromise by the US with the major European trading nations to allow the establishment of the IMF; the main aim of the conference at Bretton Woods.

The decision to address the issue of reconstruction of war-torn areas in the western European nations resulted in what is today known as the World Bank. It is alleged that it became apparent, through an unofficial memorandum of understanding, that the US, which was not intended to benefit immediately and was to make substantial contributions towards the share capital, should

**125. C C Wigwe, 'The Implications of the Powers of World Bank and IMF on Sovereign Powers of Member States' in *The Role of Judiciary in Nigerian Democratic Process* (Vox Nigeria Limited 2008) 122-140.**

126. A Mohammed, 'The New-Old Disorder in the Third World' [1995] (1) (1) *Global Governance*, 59.

127. J W McAthur and E Werker, 'Developing Countries and International Organizations:

become chief executive of the World Bank, whereas the IMF should be headed by a European. Owing to the success of the Marshall Plan and the strict compliance with the code of conduct in the Article of Agreement with particular reference to state sovereignty, the acceptance of the institutions by non-members is quickened.

***Purposes of the World Bank***

The purposes of the World Bank are as follow:

i). To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies that are destroyed or disrupted by war;

ii). To promote private foreign investment;

iii). To promote the long-range balanced growth of international trade and the maintenance of equilibrium in the balance of payments;

iv). To arrange loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects will be dealt with first and

Introduction to the Special Issue' [2016] (11) (2) *The Review of International Organizations*, 157.

**128. C C Wigwe and A Gabriel-Whyte, 'Economic Sanctions without Treaty Benefit: An Examination within the Framework of International Economic Law' [2017] (7)(1) *The Journal of Property Law and Contemporary Issues*, 75-84.**

**129. C C Wigwe, *Single Monetary Policy in ECOWAS: Prospects and Challenges* -**

v). To conduct its operations with due regard to the effects of international investment on business conditions in the territories of member states.

In summary, it is therefore imperative to state that the Marshall plan named after General George Marshal, Chief of Staff, American Army and later Secretary of State and an act known as the Economic Cooperation Act 1948 (ECA) created confidence in the organization, helped to feed the starving and shelter the homeless, at the same time it helped to stem the spread of communism and put the European economy back on its feet. Hence, the success of the Marshall Plan underscores the position and negative impacts of the World Bank's policies for the sovereignty of borrowing and non-borrowing states.

However, it is argued that the original functions, focus and agenda of both the WB and IMF changed after the Marshall plan because the highly industrialized and trading nations, the leading members of the institutions were saturated with liquidity and capital inflow. As regards the sustainability of the institutions, the focus is now directed towards the developing countries.

***Interpretation of Article IV (10) of the World Bank's Articles***

*International Economic Law Perspective* **(Port Harcourt: G-Prints Publishers 2017).**

**130. C C Wigwe and Others, 'The Pitfall in Trade Liberalisation between Nigeria and other West African Countries: An International Economic Law Approach' [2017] (6)(1)** ***Journal of Property Law and Contemporary Issues*****, 53-64.**

131. D Bandow and I Vásquez (eds), *Perpetuating Poverty: The World Bank, the IMF, and the Developing World* (Washington: Cato Institute 1994) 71.

***of Agreement***

Many controversies have arisen over the interpretation of Article IV (10) of the World Bank's Articles of Agreement. The view of the WB is that governance is not linked with member states' political activities. They define governance as a mere exercise of authority, control, management, and the power of government, which includes the utilization of government power to manage the states' resources which thus has an impact on the social and economic life of the citizens. The WB further considers the term 'governance' as consisting in three interrelated concepts: accountability, predictability, and transparency. Observers agree that the Bank's functions are related to governance; however, the issue here is to identify the aspects of governance relevant to the WB's functions as understood and consented to by the member states under its Articles of Agreement.

It appears to be difficult to determine the World Bank's incidental Powers, without breaching the Articles of Agreement, over the governance, scrutiny and control policy. This is in itself instructive of the fact that the institution is prohibited from political considerations in dealing with

132. R J Barro and J Lee, 'IMF Programs: Who Is Chosen and What Are the Effects?' Working Paper No. 8951 (Cambridge, Massachusetts: National Bureau of Economic Research 2002).
133. G Bird and D Rowlands, 'The Catalyzing Role of Policy-Based Lending by the IMF and the World Bank: Fact or Fiction?' [2000] (12) (7) *Journal of International Development*, 951–73.

member states. The line between governance and political consideration is very latent; while it is good for public officers to be accountable for their actions under the rule of law, the national or domestic legal instruments - and not the institutions - should be allowed to correct any anomalies.

It could, perhaps, be held that there are two possible interpretations of Article IV (10) of the WB's Articles of Agreement: one interpretation is possibly to prevent the institutions from interfering into a member state's internal affairs, consistent with the doctrines of state sovereignty and, by implication, consistent with Article 2 (7) of the United Nations Charter and similar to Article 15 (8) of the Covenant of the League of Nations. The other interpretation may be the possible prohibition of the politicisation of WB as the constitutional embodiment of the functionalist principles within the WB Charter. The Charter does to some extent protect members from interference in their domestic affairs by the WB. The first part of the prohibition is in relation to the decision-making by the officers of the WB, holding that political considerations should not influence their decisions in granting loans to member states; the second is non-interference in the political affairs of member

134. P Conway, 'IMF Lending Programs: Participation and Impact' [1994] (45) *Journal of Development Economics*, 365–91.

**135. C C Wigwe, 'The Doctrine of Non Intervention and the Use of Force in International Law' [2014] (1) *Journal of Contemporary Legal and Allied Issues*, 1-11.**

**136. C C Wigwe, 'Inter-Relationship between International Organizations and Member States' [2012] (1)(1) *Journal of Private and Property Law*, 187-197.**

states. It is logical to argue that Article IV (10) of the World Bank Articles of Agreement is intended to protect the sovereignty and independence of the borrowing member states. It has been claimed, the apprehension and doubts expressed during the negotiations stage of the institutions at Bretton Woods may, have prompted the inclusion of this provision to appease members who feared that their sovereignty may be eroded by the activities of the institutions; it was intended principally as an assurance to the former USSR that not only would the institutions refrain from interfering in the domestic or political activities of member states, but would, further, not influence their political ideology. Concerning the IMF, a special request was made to the member states for them to relinquish a small proportion of their sovereignty with regard to the regulation of foreign exchange. These assurances are further reinforced by the Articles of Agreement of the International Financial Corporation (IFC) that provides, *inter alia*:

> The Corporation and its officers shall not interfere in the political affairs of any member nor shall they be influenced in the decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their

137. U I Haque and M S Khan, 1998, 'Do IMF Supported Programs Work? A Survey of the Cross- Country Empirical Evidence,' IMF Working Paper No. 98/169 (Washington: International Monetary Fund).
**138. C C Wigwe, 'Insight into World Bank, IMF and State Sovereignty' [2010](1)(2) *Nigerian Environmental Law Review*, 77-87.**
139. UN Charter 1945, art 2(7).

> decisions and these considerations shall be weighed impartially in order to achieve the purpose stated in this agreement.

Article V Section 6 of the International Development Association (IDA) has similar provisions prohibiting political activities or the exercise of its influence in consideration of dealings with member states. The plausible explanations for these provisions are that the institutions should operate in accordance with the functionalist theory in the sense that all decisions should be based on technical considerations and not on politics. The WB supports this approach; the Executive Directors (EDS) have endorsed the view that Section 10 of Article IV of the WB Articles of Agreement is a reflection of the functional aspect of the Bank. The question remains as to what it was that prompted the institutions to overlook this injunction in their structural adjustment loans (SALs) and structural adjustment policies (SAPS). Article IV Sections 1 to 7 clearly spelt out the types, the mode and conditions for obtaining loans and guarantees, including possible penalties for breach of either loan or agreements; there is no such thing as SALS or SAPs.

140. Covenant of the League of Nations, art 15(8).

**141. C C Wigwe, 'Political and Economic Analysis of the Legal Framework of the World Bank & IMF' [2009] (3)(1) *West African Journal of Management and Liberal Studies*, 99-109.**

**142. C C Wigwe, 'World Bank, IMF and State Sovereignty: A Critical Insight' [2008] (3)(1) *Ikeja Bar Review*, 30-38**.

The positive injunction and directive that only economic considerations shall be relevant to the decisions of the institution suggest that a substantial part of the conditionalities not based on economic considerations that states were compelled or coerced to adopt are such as to erode their state sovereignty. This argument is reminiscent of the International Court of Justice (ICJ) advisory opinion on conditions of admission where the court concluded that the UN members were not juridically entitled to make their affirmative votes concerning the admission of new states dependent on conditions other than those expressed in Article 4, paragraph 1 of the United Nations Charter. The ICJ opinion says that only conditions enumerated in the United Nations Charter shall be relevant. Article 4 of the UN Charter and the decisions of the ICJ are similar to Article IV (10) of the World Bank's Articles of Agreement to the fact that no conditions outside the Articles of Agreement should be considered in the decisions of the Bank in granting facilities to Borrowing Member States (BMS).

It can be observed that the injunction in Article IV Section 10 of the IBRD and Article V Section 6 of the IDA Articles of Agreement has been further reinforced. In order to maintain the

143. M G De Vires, *The IMF in a Changing world 1945-85* (International Monetary Fund 1986) 97.
144. IFC Articles of Agreement, art III (9).
145. IDA Articles of Agreement, art V (6).
146. Letter of the General Council of the World Bank to the United Nations Secretariat on S May 1967 cited in the United Nations Juridical Yearbook (1967) 121.

impartiality of the institutions, together with protection and respect for sovereignty of states, and to prevent the highly developed nations from having undue advantage over the BMS, it is provided specifically that the President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of his duty and shall refrain from all attempts to influence any of them in the discharge of their duties. This provision is predicated on the rules of international law, regarding the sovereign equality of all member states, and to prevent the domination of BMS. The examination and the analysis of the following issues will determine whether the institution's legal obligations to be bound and comply with the Articles of Agreement in order to complement the principles of state sovereignty are fulfilled. The issues are:

whether the WB and its staff comply with this provision; who the members of Paris Club are; what constitutes their roles; whether they are recognized in the Articles of Agreement; who controls the WB: the Articles of Agreement vests control of the institution in the Board of Governors, who delegates powers to

147. UN Charter 1945, art 4 para 1.
*148. Admission Case* ICJ Reports 1947-1948, 63.
149. IBRD Articles of Agreement, art V (5) (c); IDA Articles of Agreement, art VI (5) (c).
**150. C C Wigwe and V Wigwe-Chizindu, 'The Evolution of Permanent Sovereignty and its effects in Developing Countries' [2019] (7) (2) *Best International Journal of Humanities, Arts, Medicine and Sciences*, 13-24).**

the president and the executive directors to run the organisation; whether the institutions are subordinated to any other body; the constituent members of the organisation and the Group of Ten; the role they perform; whether these roles are provided in the Articles of Agreement or were ever discussed at the negotiation stage during the Bretton Woods Conference in 1944. The answers to these questions might determine the extent to which some provisions in the Articles of Agreement achieve compliance from the institutions.

### *INTERNATIONAL MONETARY FUND*

The IMF was set up to cater for the fixed exchange rate system created at the Bretton Woods conference of 1944. It had an initial membership base of 29, which grew up to 189 members over time. Under the IMF, members work together to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world.

The aim of IMF was to build a framework for economic cooperation to avoid a repetition of the competitive

*151. Ibid.*

**152. C C Wigwe, *The World Bank, IMF and State Sovereignty* (Mountcrest University Press, 2011) 89.**

*153. Ibid.*

**154. C C Wigwe and V Chizindu-Wigwe, 'The Effect of the Elastic Interpretation of the term "Adequate Safeguard" in Article 1(V) of International Monetary Fund (IMF)**

devaluations that significantly contributed to the Great Depression of the 1930s that eventually led to the world war. The role of IMF was altered as a result of the collapse of the Bretton Woods fixed exchange rate system necessitating the IMF to deal with developing countries more than the developed ones.

The essence of the functions of the IMF with permanent structures, lacking in old economic order when states were at liberty to determine their exchange rates, is to maintain international peace, thereby preventing wars caused by the previous unhealthy competitive currency depreciation. The attention given to IMF was basically because of its role to foster international trade and cooperation.

Upon certain conditions, IMF grants short term loans to countries experiencing economic difficulties provided such countries are willing to make changes in their policy as well as their institutional sectors. As more countries bought into the 'structural adjustment' agenda, IMF's role became that of promotion of economic growth of member countries.

IMF has been described as an Institution with a unique mandate that is promoting economic prosperity and financial stability

**Articles of Agreement 1944' [2019] (10) (1)** ***The Journal of Property Law and Contemporary*** **Issues, 1-9.**

*155. Ibid.*

156. Articles of Agreement of the IMF, art II, Para (i).

*157. Ibid*, art 1, Para (ii).

*158. Ibid*, art 1, Para (iii).

through international cooperation and an open system for the free flow of goods and investments. The IMF had shifted from creating stability in the global fixed exchange rate regime to tackling debt problems in many developing countries.

The IMF promotes economic stability and global growth by encouraging countries to adopt sound economic and financial policies and regularly monitors their economic development. The policies of IMF have not altogether achieved the set developmental goals, 'driven by a market fundamentalist' ideology and special interests ('global finance') in the advanced industrial countries, IMF officials have imposed the wrong policies on the LDC's and worsened their economic and political situations. They have focused more on inflation and fiscal policies than economic growth and development.

***Purposes of the International Monetary Fund***

The purposes of the International Monetary Fund are as follows:

i. To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration in international monetary problems.

ii. To facilitate the expansion and balanced growth of

159. Articles of Agreement of the IMF, art 1, Para (v).
*160. Ibid*, art 1, Para (vi).
*161. Ibid*, art II (1).
*162. Ibid*, art II (2).
*163. Ibid*, III (1).
*164. Ibid*, III (2) (a)-(d).

international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

iii. To promote exchange stability, to maintain orderly exchange arrangement among members and to avoid competitive exchange depreciation.

iv. To assist in the establishment of a multilateral system of payments in respect to current transaction between members and in elimination of foreign exchange restriction which hamper the growth of world trade.

v. To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.

vi. To shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

*165. Ibid*, art IV (1) para (i).
166. Articles of Agreement of the IMF, art IV (1) Para (ii).
*167. Ibid*, art IV (1) Para (iii).
*168. Ibid*, art IV (1) Para (iv).
**169. C C Wigwe, *The World Bank, IMF and State Sovereignty* (Mountcrest University Press, 2011) 90**.

Therefore, the original members of the fund shall be those of the countries represented at the United Nation Monetary and Financial Conference whose governments accept membership before December 31, 1945. Though membership shall be open to other countries at such times and in accordance with such terms as may be prescribed by the Board of Governor. These terms, including the terms of subscriptions, shall be based on principles consistent with those applied to other countries that are already members.

Each member shall be assigned a quota expressed in special drawing rights. The quotas of the members represented at the United Nations Monetary and Financial Conference which accept membership before December 31, 1945 shall be those set forth in *Schedule A***.** the quotas of other members shall be determined by the board of governor. Whilst, the subscription of each member shall be equal to its quota and shall be paid in full to the fund at the appropriate depository. However, the aforesaid quotas are subject to adjustment.

Thus, in recognizing that the essential purpose of the IMF is to provide a framework that facilitates the exchange of goods, services and capital among countries and that sustains sound

170. M G De Vires, *The IMF in a Changing world 1945-85* (International Monetary Fund 1986)15.
171. F Ragnar, 'On the Need for Forecasting a Multilateral Balance of Payment' [1947] (37) (4) *American Economic Review*, 16.
172. C Simon and C C Mabbs-Zeno, *Structural Adjustment and Agriculture: Theory in Africa and Latin America* (International Monetary Fund 1991) 139.

economic growth, and that a principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability, each member state is obliged to:

i. Endeavour to direct its economic and financial policies towards the objective of fostering orderly economic growth with reasonable price stability, with due regard to its circumstances;

ii. Seek to promote stability by fostering orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions;

iii. Avoid manipulating exchange rates or the internal monetary system in order to prevent effective balance of payment adjustment or to gain an unfair competitive advantage over other members; and

iv. Follow exchange policies that are compatible with the above stated.

Similarly, in order to remove barriers to world trade, the code of conduct has been established and enshrined in the Article of Agreement. The code of conduct includes some behavioral

173. Articles of Agreement of the IMF, art 1 (v).
174. S G Redding, *The Spirit of Chinese Capitalism* (De Gruyter 1995) 8.
175. Articles of Agreement of the IMF, art 1 (2).
176. M McNaughton (ed) *Oxford School Dictionary* (O U P 2002) 9 & 619.
177. Directive Principles of States refers to Fundamental Objectives of States dealing with the Government and its People, Political Objectives, Economic Objectives, Social

standards in international financial matters; exchange rate stability; orderly arrangement; the avoidance of competitive exchange and a regime of international payment with simple convertibility of currencies and freedom from exchange restrictions. These are viewed as essential to the attainment of full employment and promoting world trade and international investments, dissimilarly to in the past when national economic policies adopted restrictive measures that created barriers to international trade and investment.

It is therefore submitted that at the establishment of institutions, particularly with respect to the IMF, foreign exchange regulations and international interest rates take precedence over national interest.

### *Interpretation and Application of Article 1 (V) of the Articles of Agreement: The Controversy*

There are controversies over the application of Article 1 (v) of the Articles of Agreement which provides, *inter alia*, that the general resources of the fund should be made temporarily available to members under safeguards, thus providing them with the opportunity to correct maladjustments in their balance

Objectives, Educational Objectives, Foreign Policy Objectives, Directive on States Culture, Obligations on the Mass Media and National Ethics based on the principles of self-determination and national sovereignty. In Nigeria this is provided in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999; in India it is contained in Part IV of the Constitution; in England in the Bill of Rights 1689, US Bill of Rights 1787.

178. All conceivable global issues which include judicial reforms governance issues, civil

of payments without resorting to measures destructive of national or international prosperity. Some authors are of the view that this provision justifies the Structural Adjustment Policy (SAP) of the institutions; however, it appears that the provision has been given an elastic interpretation based on which some policies are promulgated and implemented. As long as the interpretations are within the meaning and intentions of the Articles of Agreement, the institutions cannot be regarded as violating the express international agreement in such a way that this might result in the erosion of member state sovereignty.

Perhaps, it does appear that the term "adequate safeguard" has not only been given a subjective, one-sided interpretation, but is elastically interpreted to include policies which might have been rejected at the time of the registration of the membership of a state. Some policies of the institutions, neo-liberal in character and nature, are completely alien to some member states that are prevailed upon to accept a given policy as a precondition to obtaining financial assistance from the Fund.

For instance, the effects of the down-sizing of employment in public corporations; the liberalization of an emerging economy as part of SAP; the minimization of the role of states, and

service reforms, legislative reforms economic reforms including social educational and cultural reforms not provided in the Articles of Agreement are addressed by the institutions without taking steps to amend and legitimize those policies, thereby bringing their respect for and compliance with state sovereignty and the principles of state sovereignty into question.

179. (1918)AC 514.

privatization, including the non-protection of domestic industries and the other adjustment policies that include currency devaluation and increased interest rates are, if effected simultaneously, devastating to many developing countries, some of which fared better before their involvement with the institution.

Commentators are of the view that policies which require the emerging economies to open their borders or liberalize their economy towards globalization without protecting the neophyte domestic or local industries are destructive of the national and international prosperity of the member states and are thus contrary to the intentions of Article I (v) of the IMF Articles of Agreement. Also, it has been commented that complete privatization and withdrawal of the states' role in enterprise may not be totally appropriate; empirical evidence shows that the Chinese economy, one of the most successful in the world, is regulated and by government regulations and interventions.

There are many controversies surrounding the interpretation of Article 1 (v) of the IMF Articles of Agreement. While some authors are of the view that the provision is unambiguous but

180. (1973) 36 MLR 270.
*181. J. H. Farrar v D. G. Powles* (1973) 36 MLR 270.
182. (1966) 2 QB 656; (1966) 2 All ER 674.
183. In *Bell Houses v City Wall Properties Ltd.* (1966) 2 QB 656, the plaintiff's actions which were declared as *ultra vires* in domestic or national courts, would have amounted to a violation of or encroachment on the sovereignty of states in international law.

elastically and subjectively interpreted by the institutions, others argue to the contrary. Even where all of the legal rules of interpretation are adopted, it can be argued that the policies must reflect and be restricted to the provisions of the Articles of Agreement. Article 1 (ii) of the IMF Articles of Agreement is emphatic on the institutions' promoting policies that will enhance high levels of employment and real income; therefore, policies, which militate against the achievement of this objective, may not be in compliance with the obligations imposed by the Articles of Agreement.

Critics have stated that while Article 1 (v) gives the institutions a free hand in protecting the resources of the Fund, similarly to that which obtains in an ordinary lender-borrower relationship in a business context, the policies and conditionality for the loan must be such as may not be to the detriment of the real intention of the Articles of Agreement.

In the light of the above, it is further argued that Article 1 (v) must not be read or interpreted disjunctively from the other provisions in the Articles of Agreement, as doing so might result in the loss of focus and possible encroachments into the sovereignty of borrowing member states. Article 1 (v), slightly

184. D D Driscoll, *The IMF and the World Bank: How do they Differ?* (International Monetary Fund 1995) 38.

**185. C C Wigwe, 'An Appraisal of Economic and Modern Application of State Sovereignty' [2008] (3)(1) *Ikeja Bar Review*, 201-217.**

**186. C C Wigwe, *The Economic Perspective of the Law of International Institutions* (1st edn Accra-Ghana: Mountcrest University Press 2018).**

subjective in theory but pragmatically regulated in practice, must be read and interpreted in conjunction with the other provisions of the Articles of Agreement, particularly with the aspect that guarantees full employment, a real income and a high standard of living. Article 1 (2) of the IMF Articles of Agreement can be expanded further to include the consideration of human rights in interpreting the term 'adequate safeguards' in the context of the cooperative society under which the institutions were established. Perhaps it can be suggested that since the institutions are set up as a cooperative society, the term "adequate safeguards" may have a moderate interpretation to include some social and humanitarian conditions and not strictly as market forces, as it is currently interpreted and designed.

Most policies of the institutions are based on the application and interpretation of Article 1 (v), which fall under the object clauses and purposes of the Fund. It can be argued that it is permissible and legal to impose any policy and Condition on borrowing member states. This is predicated upon the fact that there is no measurement or regulation of the term "adequate safeguard". At best, perhaps it can be suggested that "adequate

187. R H Jackson, *Quasi State: Sovereignty, International Relations and the Third World* (Cambridge University Press 1990) 26.

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

189. ECOWAS, <www.ecowas.int/about-ecowas/basic-information> accessed 23 February,

safeguard" should be interpreted to mean credit checks, security or collateral commonly used between borrower and lender in a normal financial transaction, but not so as to change the entire course of the sovereign state through reform policies of the institutions. Similarly, there is an underlying assumption that interpreting the term "adequate safeguard" gives the institutions some measure of discretion in formulating policies that will guarantee the security and protection of the institution's resources; human rights is a universal and global legal obligation which would have been taken into account in formulating the policies and reforms, including the restriction of its policy to the international character of the institutions and membership.

The combined meaning and definition of "adequate" and "safeguard" are "sufficient" and "protection" respectively, perhaps it can be argued that the institutions' conditionalities, policies and reforms that compel the states to abandon their Directive State Principles that guarantees certain basic social amenities and the provision of employment. Some Directive State Principles are not based purely on free market forces, but on some socio-economic factors which demands that states

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190. Instead of an executive secretary, we now have an empowered president of the commission with a vice president and fifteen commissioners.
191. Article 1 of ECOWAS protocol relating to the mechanism for Conflict Prevention, Management, Resolution, Peace keeping and Security, December 1999.
192. ECOWAS Protocol (n 185).

should provide basic amenities at minimal cost. The introduction of user fees for basic amenities may not have been contemplated by the initiators of the Bretton Woods institutions as the meaning of the term "adequate safeguards" perhaps is relied upon to introduce user fees for primary basic amenities under structural adjustment policies.

It can further be suggested that the interpretation of the term "adequate safeguards" that does not respect the states Directive Principles and Objectives erode the sovereignty of the state. While the term "adequate safeguards" permits the institutions to adopt policy that could guarantee the safety of the scarce funds and to prevent their abuse, the term cannot be said to permit the institutions to formulate policies on every conceivable issue not even contemplated by the initiators of the Bretton Woods institutions.

Although the general principles of law frown on organisations and institutions engaging in every conceivable activity without confining itself to the Articles of Agreement and Memorandum of association, in *Cotman v Brougham* and *J. H. Farrar v D. G. Powles* sharing similar facts, where the Memorandum of Association are similar to the Articles of Agreement of

193. A James, *Sovereign Statehood* (London: Allan and Unwin 2014) 25.
194. J Crawford, *The Criteria for Statehood in International Law* (Clarendon Press 2012) 96
195. M Oakeshott, *The Rule of Law: On History and Other Essays* (Oxford University Press 2017)125.
*196. Ibid.*
197. The Chairman of the Paris Club between 1978-1984, Michel Camdessus, became the

international organisations, the first company's Memorandum of Association was to deal with rubber where as the second company was to deal with railway materials.

The internal workings of the companies in their Articles of Association included doing all things in addition to their main object clauses; the House of Lords in a unanimous decision held inter alia that implied or wide object clauses that allow the company to do all things are null and void.

However, while the general principles of law will restrict any policy not in conformity with the main purposes of the organization, yet the term "adequate safeguard" in Article 1 (v) has been interpreted elastically to accommodate principles which tend to run contrary to the obligations imposed by the Articles of Agreement. The institution's Articles of Agreement focusing on developmental aid, human rights and socio-economic development can logically be argued to constitute part of the global and national development; policies, which tend to dissuade states from achieving this purpose, which is also fundamental in their Directive Principles of States, may contribute to the erosion of their sovereignty.

The main purpose of the Fund as agreed by member states and

Managing Director of the IMF from 1987-2000.

198. IBRD Articles of Agreement, art IV (10) and art V (5) (c); and IDA Articles of Agreement, art VI Section (5) (c).
199. T Klein, 'Innovation in Debt Relief: The Paris Club' [1992] (29) *Finance and Development*, 42.
*200. Ibid*. It should be noted that the temporary suspension of Zimbabwe from obtaining

expressed in the Articles of Agreement is to regulate foreign exchange, promote exchange stability and maintain orderly exchange rates, including the removal of exchange restrictions that may hamper or create barriers to world trade, every other provision is towards the achievement of and ancillary to the set objectives. For instance, in *Bell Houses Ltd v City Wall Properties Ltd*, dealing with ancillary and independent object clauses, analogous to the object clauses in the Articles of Agreement, the plaintiff company's business was the acquisition of vacant land and the erection thereon of housing estates. Its objects clauses as defined in clause 3 were, *inter alia*, to carry on trade or business of general, civil and engineering contractors and any other business that is ancillary to the main object clause.

The court held, *inter alia*, that the business of financial transactions, which the company involved, is itself not ancillary to the main object clause, but might stand on its own as independent object clauses. Policies of an organization or company must only support the main object clauses or act as ancillary to them.

Similarly, an independent object clause or purposes of an

assistance was due to the internal crisis in that country where it was alleged that the farms belonging to the white farmers were unlawfully seized without the payment of adequate compensation; also, it has been alleged that Zimbabwe converted some of the resources obtained from the institutions in supporting the Tutsi War in the Congo Republic. Stopping of developmental assistance to South Africa was based on political considerations influenced by the Paris Club, as the institutions can take almost no major decision without

institution cannot transform ancillary power derived from the term "adequate safeguards" into object clauses or main purposes, as can be seen in the policies of the institution, which includes: forced devaluation of currency of borrowing member states; privatization; the forced retrenchment of workers, leading to massive unemployment; the forced liberalization of trade unfavourable to the emerging economy of borrowing member states; the removal of subsidies that boost the local production of member states economy, and the introduction of user fees for education and health services to enable the repayment of resources borrowed from the Fund have, according to authors, made the institutions assume that they appear more as finance companies rather than as cooperative organizations set up mainly to regulate foreign exchange and solve problems associated with balance of payment accounts, with removal of those barriers that might hamper international trade.

Perhaps it can be argued that the Structural Adjustment Policy, which includes privatization, the minimization of the roles of states, and increased exports to generate enough foreign exchange to service and pay for loans, were not covered by the

its approval.

201. J Plamena, *On Alien Rule and Self-Government* (Longman1960) 21.
*202. Ibid*.
203. L Heinz, *The Development of Modern States* (1st edn Osteen 2019) 3.
204. M Wight, *Power Politics* (2nd edn New York University Press 1986) 125.
205. P Ford, *Racing Today's Conflicts Back to Colonialism* (Nado Media, 1999) 20.

term "adequate safeguard" nor contemplated by the Articles of Agreement. The Structural Adjustment Policy is fundamentally a micro- and macro-economic issue that touches and changes the economy of a nation. The argument that such economic issues could not have been covered by the term "adequate safeguard" may be sustained, as it might be difficult to apply the various methods of legal interpretation to arrive at the presumption of the SAP.

### 3. Economic Community of West African States (ECOWAS*)*

This is a subregional institution made up of the following of countries: Benin, Burkina Faso, Cabo Verde, Cote d' Ivoire, The Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. From all intent and purposes, Nigeria appears to be the most populous and powerful nation amongst them.

The political, parliamentary and judicial headquarters of ECOWAS is in Abuja, Nigeria. Nigeria has and exercises influence including giving aids and grant to some of the member states of ECOWAS.

The Economic Community of West African states (ECOWAS)

206. R N Chowduri, *International Mandates and Trust Trustee Systems* (Martinus Nihoff 1995) 60.
207. H S Wilson, *The Imperial Experience in Sub-Saharan Africa Since 1870* (Great Books 1977) 116.
208. H Bull, *European States and African Political Communities' in The Expansion of International Society* (Macmillan 1984) 99.

was established on May 28, 1975 via the treaty of Lagos. ECOWAS is a 15-member regional group with a mandate to promoting economic integration in all fields of activity of the constituting countries. ECOWAS was set up to foster the idea of collective self-sufficiency for its member states. As a trading union, it is also meant to create a single, large trading bloc through economies making up ECOWAS.

The vision of ECOWAS is the creation of a borderless region where the population has access to its abundant resources and is able to exploit its abundant resources and is able to exploit same through the creation of opportunities under a sustainable environment. In order to realize this vision unimpeded, the ECOWAS administrative machinery based in Abuja, Nigeria, transformed its secretariat to a commission in January 2007.

Furthermore, it is evident that the ECOWAS is a mechanism for collective security and peace to be known as 'Mechanism for Conflict Prevention Management, Resolution, Peace keeping and Security'.

The objectives of the above mechanism are:

a. Prevent, manage and resolve internal and external state conflicts under the conditions provided in *paragraph 45*

209. N Crawford, *Decolonisation as an International Norm: The Evolution of Arguments and Beliefs, in Emerging Norms of Justified Intervention* (Cambridge University Press, 2002) 37.
210. M W Janis, *An Introduction to International Law* (2nd edn Cambridge University Press 1993) 178.
211. T Donovan, 'Jurisdictional Relationship between Nations and their Former Colonies'

*of the framework of the mechanism* ratified as per decision A/DEC.11/101 98 of 31st October, 1998.

b. Implement the relevant provisions of Article 58 of the revised treaty

c. Implement the relevant provision of the protocols on non-aggression, mutual assistance in defence, free movement of persons, the right of residence and establishment.

d. Strengthen cooperation in the areas of conflict prevention, early-warning peace keeping operations, the control of cross boarder crime, international terrorism and proliferation of small arms and antipersonnel mines;

e. Maintain and consolidate peace, security and stability within the community;

f. Establish institutions and formulate policies that would allow for the organisation and coordination of humanitarian relief missions;

g. Promote close cooperation between members' states in the areas of preventive diplomacy and peace keeping;

h. constitute and deploy a civilian and military force to

[1999] (8) *Gonzaga Journal of International Law*, 26.

*212. Klausner v Levy* 83 F. Supp. (EE VA, 1949) 599.

213. L S Finkelstein, 'What is Global Governance?' [1995] (1) (3) *Global Governance,* 367-372.

*214. Ibid.*

215. Finkelstein (n 213) 370.

maintain or restore peace within the sub-region, whenever the need arises.

i. Set up an appropriate framework for the rational and equitable management of natural resources shared by neighboring member states which may be causes of frequent interstate conflicts

j. protect the environment and the steps to restore the degraded environment to its natural state;

k. safeguard the cultural heritage of member states.

l. formulate and implement policies on anti-corruption, money laundering and illegal circulation of small arms.

Therefore, within a region energized by a common purpose, West African citizens can also take ownership for the new vision of moving from an ECOWAS of states to an ECOWAS of people.

4. **Paris Club**

This is one of the sources and powers of International Institutions. Paris Club is not a conventional institution but its members cut across several international institutions and they exercise so much influence on several institutions. They are mostly creditor countries who through their resources

216. IBRD Articles of Agreement, art V Section 2 (b) and IBRD By-laws, s 14.
217. H J Bitterman, 'Negotiation of the Articles of Agreement of the International Bank for Reconstruction and Development' [1971] (5) (1) *The International Lawyer*, 79.
218. B Gordon, 'In Response to NGOs Campaign and Lord Gordon Brown requesting the Paris Club to Write-off Nigeria Debt', (2012) UK HM International Development Finance.
219. IMF Press Release No 00/52, 12 September 2006.

influences the world or any international institution they belong. The members of this unconventional institution include; Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Israel, Japan, Norway, Netherlands, Russia, South Korea, United Kingdom, and United States. They are actually a group of officials from major creditor countries whose role is to find coordinated and sustainable solutions to the payment difficulties experienced by debtor countries. Similarly, you can find G5 and G7 countries of the world amongst the Paris Club.

The Paris Club is an informal organisation or forum of regulators and creditor countries comprising a Chairman, usually a senior official of the French Treasury; and a representative of each of the IMF, the WB, the OECD, and the UNCTAD. These members are very powerful; their decisions, which include economic and political considerations, are binding on the WB and the IMF contrary to the provisions of the Articles of Agreement which provide, *inter alia*, that the institutions shall owe no obligation or subjugate itself to another authority except the Board of Governors. The decision to write off, reschedule or recapitalise debts depends entirely on their

220. IBRD Articles of Agreement, art V Section 5 (c); IDA Articles of Agreement, art VI Section 5 (c).
*221. Ibid.*
*222. Ibid.*
223. Comment made by Paris Club President Xavier Musca on the eve of the 50th anniversary of the Paris Club on 14 June 2006.

whims and caprices. They assert authority and influence the institutions in dealing with member states to rely on political considerations, a feature that may also be in non-conformity with the Articles of Agreement.

5. **Brics**

This is a voluntary and selective international institution made up of Brazil, Russia, India, China and South Africa. They want to admit six new members or countries like Argentina, Egypt, Ethiopia, Iran, Saudi Arabia and United Emirate. Some countries like Niger, Burkina Faso, Mali, Gabon are planning to join the institution. One of the basic aim and objectives of this institution is to change the political and economic world order where the west seems to be dominating the entire world.

The Institution views the West's proclivity to deploy unilateral financial sanctions, abuse of international payment mechanisms with the use of Dollar, renege on climate finance commitments (especially America) and growing disenchantments with international financial systems dominated by dollarization.

This new institution is fashioning a new world order which will be dominated by Russia and China as most of the current and political, economic and social institutions are dominated by the

224. IMF Articles of Agreement, art IV.
225. Report of Working Group and Statement by Central Bank Governors and Finance Ministers of G7 Countries, 29 April, 1983, 12 IMF Survey (June 1983) 137.
*226. Ibid.*
227. General Agreement to Borrow (GAB) Executive Board Decision No 1289, 24th Issue 1999.

West. Clearly, these two countries will possess unconventional powers over the developing countries.

The Vice Chancellor Sir, apart from the United Nations, some of its agencies like the International Atomic Energy Agency, that seeks to promote the peaceful use of nuclear energy and prohibit its use for military purposes including nuclear weapons.

Most of the Regional and Multilateral International Institutions are formed or set up for the singular purpose of economic integration. The World Bank, International Monetary Fund (IMF), World Trade Organization (WTO), ECOWAS, European Union, BRICS and many others are set up for purely economic integration and prosperity of its members. In fact, with respect to World Bank, Russia insists that for them to be a part of this institution, a clause must be inserted in the Articles of Agreement stating that the institution will not interfere in the political affairs of member states. This was done or complied with by USA and Europe, before the two institutions started its operations. **Article 4, Section 10** of World Bank Articles of Agreement provides, amongst other things, that the bank and its officers shall not interfere in the political affairs of any member nor shall they be influenced in their decisions by political

228. Gordon (n 218) 512.

**229. C C Wigwe, *International Law and Practice: The World Bank, IMF and State Sovereignty* (Mountcrest University Press, 2011) 4.**

230. The European Union is a good example of this paradigm shift as it has a constituted parliament that makes laws that are legally binding in all the member states. ECOWAS also has a parliament and have adopted the process of passing an Act instead of

character of the member nation concerned.

As we go further in this paper, we shall discover whether this instructive and fundamental obligations are kept by the World Bank and IMF.

## 7.1 The Relationship Between International Institutions and Member States

Ideally, the Nation States are the ones that came together and formed these institutions;

a. They should be regarded as principals to these institutions; and the institutions should be seen as agents to these Nation States which means member States should give directives to the institutions.

b. There relationships are further regulated by the enabling instrument or Articles of Agreement.

c. Where the relationship is based on delegated powers from the nation States following the principle of "*Delegatus non potest Delegare*", the Nation States that delegate the power to States are supposed to be the head or principal.

d. Where the relationships are based on grant of powers

Convention or protocols which the members seldom domesticate.

231. Gordon (n 218).
232. J E Alvarez, 'The Quest for Legitimacy' [1991] (24) *New York International Journal,* 77.
233. Vienna Convention on the law of Treaty between states and international organizations or between international organizations (1986) <www.legal.un.org> accessed 4 March 2023.
234. The UN Resolution 1244 adopted on 10 June 1999 was aimed at resolving the great

to perform certain functions, it therefore follows that the grantor of the power is higher than those the power is granted to.

e. Where the relationship is based on transfer of limited sovereign powers by States it therefore means that the Nation States are the Head as they can always recall or terminate the limited sovereign powers.

Vice Chancellor Sir, in practice, these international institutions do not abide by the rules of engagement.

## 7.2 Control of International Institutions

It is very important to mention that the underlying concept of international institutions is global governance. Although no explicit, standardised definition of global governance exists, according to Finkelstein, global governance can be defined as governing international relations without a sovereign authority. This broad definition allows for an adequate degree of flexibility regarding the scope, reach, formality, institutionalisation and the different actors of global governance which is indispensable in order to comprehend global governance in all its different

humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes, <www.nato.int> accessed 4 March, 2023.

235. P B Stephen, 'Accountability and International Lawmaking: Rules Rents and Legitimacy' [1996-1997] (17) *Journal of International Law and Business*, 681.

236. ICJ Report 11th April 1949.

forms. The need for global governance emerged on account of the internationalisation of problems previously considered as local or domestic, the interdependencies and the interconnections between states which developed over the years. Therefore, global governance should cover overlapping international functions such as information creation and exchange; a regulatory and normative function with the formulation and promulgation of principles; the promotion of cooperation, consensus and common conflict resolution; the allocation of resources; the provision of technical assistance, humanitarian aid and development as well as the maintenance of peace and order.

Like every other human institution and establishment, international organisations are not immune from control. The expression, 'he who pays the piper dictates the tune' holds true here. At the establishment of the World Bank and the IMF, the arrangement was that the United States, which was not intended to benefit immediately and was to make substantial contributions toward the share capital, should become chief executive of the World Bank, whereas the IMF should be headed by a European. It is evident that most international

237. R Gorgon, 'Saving Failed States: Sometimes a Neo-Colonialist Notion' [1997] (12) *American University Journal of International Law and Politics*, 940.

**238. C C Wigwe, 'Examining World Bank and IMF Judicial Reform Policy in BMS' [2008] (1)(1) *Lead City University Law Journal*,154-162.**

239. G Schwarzenberger, *The Frontiers of International Law* (London: Stevens, 1962) 44.

**240. C C Wigwe, 'The Implications of the Powers of World Bank and IMF on Sovereign**

organisations are controlled by the United States and some powerful European countries. The control of international organisations is usually done by proxy. What this entails is the voice of Jacob but the hands of Esau arrangement. The powerful nations of the earth exert some level of control on international organisations through groups like the Paris Club, G5 and so on.

It may be necessary to justify the fact that the Articles of Agreement recognize the Board of Governors as the highest authority within the WB rather than the Paris Club, as it is celebrated in recent times:

> The Executive Directors are authorized by the Board of Governors to exercise all the powers of the Bank except those reserved to the Board of Governors by Articles V Section 2 (b) and other provisions of the Articles of Agreement. The Executive Directors shall not take any action pursuant to powers delegated by the Board of Governors, which is inconsistent with action taken by the Board of Governors.

The Articles of Agreement and the institutions' by-laws justify the argument of the critics, most of whom are NGOs and academic scholars, that the roles of the Paris Club and G7,

**Powers of Member States' [2008] (1)(1) *Lead City University Law Journal*, 26-39**.

241. I Islami, *The Insufficiency of Legal Personality of Kosovo as Attained through European Court of Human Rights: A Call for Statehood* (University of Pristina Press 2005) 18.

**242. C C Wigwe, *International Law and Practice: The World Bank, IMF and State Sovereignty* (Mountcrest University Press, 2011)155**.

243. E Zoller., 'The Corporate Will of the United Nations and the Rights of Minority' [1987]

including the Group of Ten, assert great influence on both of the institutions and on borrowing member states and that this is illegal, as no attempt has been made to regularise these groups' roles in the Articles of Agreement. Recently, debtor countries, instead of approaching the institutions directly for debt relief, dealt with Paris Club through the campaigning of NGOs and obtained debt relief. For instance, while some countries were considered fit to receive outright debt relief, Nigeria brokered its debt with the Paris Club, who then insisted that Nigeria pay off her debt with her excess crude oil revenue. The Paris Club directs the WB and the IMF to implement decisions taken at its forum.

Contrary to the contents of the Articles of Agreement and doctrines of non-intervention and state sovereignty, the Paris Club dictates to the institutions on conditions other than economic considerations concerning the member states that qualify for debt relief. For example, the IMF's grant of debt relief to Mali totaling $870 million was based on the decision of the Paris Club. While this decision can be acknowledged, it suggests that there is a superior body that controls, regulates and dominates the activities of the institutions contrary to the

(81) *American Journal of International Law,* 610.

244. A Cassesse., *Modern Constitution and International Law* (Yale University Press 1985) 331.
245. C Bradley, 'The Treaty Power and American Federalism' [1997-1999] (97) *Michigan Law Review*, 390.
246. Constitution of Germany, art 24.

principles of sovereign equality under which the institutions were established.

There is a growing concern as to the unofficial status afforded to the Paris Club, whose membership now comprises nineteen creditor states' governments, over the sovereignty of the borrowing member states. The Articles of Agreement of the WB and the IMF did not provide for the recognition of anybody superior to the WB or the IMF, apart from the Board of Governors.

The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and no other authority. Each member shall respect the international character of his duty and shall refrain from all attempts to influence them in the discharge of their duty.

The involvement of the Paris Club in the activities of the institutions appears inconsistent with the provision of the Articles of Agreement that the officers of the Bank owe their obligation to the Bank and to no other authority as they are meant to be controlled by the Board of Governors and the Executive Directors only. It may also be held that the injunctive clause in the Articles of Agreement stating that institutions

247. *Frontini v Monistro delle Finance,* 2 CMLR (1974), 372; *Rutili v Minister of Interior*, ECR (1975) 1219.
248. Article 59(1) of the treaty establishing the European constitution provides *inter alia* that a member may decide to withdraw from European Union in accordance with its own constitutional requirements.
249. G A Gordon, 'Legal Protection of Individuals in the European community' [1980] (8) (3)

should respect the 'international character' of their duty is made in reference to the sovereign equality of member states, as no state or member has by virtue of the Articles of Agreement the privilege to control or dominate another.

It can, therefore, be argued that the self-imposition of the Paris Club as the *de facto* head and regulator of the WB and the IMF could amount to the erosion of the sovereignty of the BMS. On 14 June 2006, the Paris Club expressed concern that three new creditor countries, China, India and Brazil, who recently joined the Paris Club, are lending at a very high interest rate, and that this might undermine the debt relief policy of the unofficial body. According to Musca, 'we want to dialogue with these new lender-countries India, China, Brazil to explain why they can't have a free-ride attitude and lend for commercial purposes to countries for which the international community is making considerable efforts.'

The new loans from the institutions are currently awarded at higher rates of interest because the new states that joined the Paris Club are demanding commercial rates for their contributions and loans to the organizations; while this may appear to be justified from their economic point of view, such a

*America Journal of Comparative Law*, 509.

250. Wigwe (n 242) 138.

*251. Ibid.*

252. A P Mark, 'Theorizing the European Union: International Organizations, Domestic Polity or Experiment in the New Governance' [2005] (2) *Journal of Economics and Policies,* 357-398.

role as is now being played by the Paris Club and new lenders have no legal validity and this may likely undermine the sovereignty of the BMS.

It can be observed with respect to the G7, the group of seven industrialised countries, that they pledged to intensify economic and monetary cooperation and to use intervention in exchange markets to counter disorderly conditions, as provided in Article IV of the IMF Articles of Agreement; the G7 in 1983 also commissioned a Working Group to examine the ways to improve economic policies - yet such a role was never assigned to them because the G7 has not been recognized by the IMF Articles of Agreement.

The G7 Countries set the tone for the expansion and broadening the SAP to include democratization by the BMS as a condition for access to IMF resources. The G7 nations have an identity and characteristics similar to those of the Paris Club; it includes the expanded Group of Ten, which includes the Netherlands and certain other countries that were not democratised, but the WB and the IMF may have been deluded because of the financial resources of the non-democratised members. The latter has an equally assertive influence on the institutions; it is generally

253. Directive 2002/95.EC of the European parliament and the council of 27th January 2003 on the restriction of the use of certain hazardous substances and recycling.
254. R Gorden., 'The Strasbourg Case Law; Leading Cases from the European Human Rights Reports' [2001] (10) *Journal of Statistics*, 3.
255. *Foto-Frost v Hauptzouamt,* ECR (1987), 4199, 4230; Article 234 of the EC addressing the treaties of international organizations where state sovereignty is conferred on them

accepted that he who lends must be allowed to participate in the decision as to how the money is being spent, as well as to ensure both the safety of the Fund and return on investments. The Articles of Agreement of the WB and the IMF should be amended to accommodate these changing circumstances in order to prevent an infraction of international law.

## 7.3 Exercise of Power by International Institutions

International organisations are product of international agreements known as treaties and when they make laws, the states that conferred them with the powers they exercise do not play any direct role in the process. In the exercise of their power, they make rules and regulations for the member states. It is common to use the word 'regulation' under international organisation than 'legislation'. Regulation refers to the setting of rules, standards or principles that govern conduct by public and/or private actors.

Their activities somehow interfere with the powers of the States to make laws for their various States. This seeming conflict or overlap threatens the sovereign power of the independent member States. The entire world depends on the co-existence of

through transfer, the court held *inter alia*, that national courts within the European Union are obligated to adopt the same *ratio decidendi* in arriving at their own decisions. This is a typical example of the full transfer of powers.

256. Article 24 of the German Constitution of 23rd may, 1949; Article 15 of French Constitution; Article 9 of the Austrian Constitution.
257. Constitution of East Timor, s 8.

sovereignties between states, yet these sovereignties are legitimately exercised by international organisations when delegated through treaties. The essence of such delegation of power is that the state that delegated the power still retains the right to exercise that power.

Under traditional international law, conventions and regulations by international organisations require domestication by member states for it to acquire legal force domestically. But some international organisations are shifting away from this position by enacting laws that are binding and enforceable. The justification for this trend of 'global legislation' is to enable international law play its role of stabilising global legal order since their decisions are usually based on international agreements and/or decisions of international dealings. In the typical instance, modern treaties acknowledge, as they must, that international organisations are now considered international legal persons but they rarely spend any time considering the consequences of that proposition."

International organisations exercise powers either conferred on them by constituent treaty or by contractual treaty. The right of

258. Constitution of the Netherlands 1983, art 90.
*259. Ibid*, art 91.
260. L Fellous, 'The continuing transfer of British Political sovereignty to the European union' [2000] (6) *Journal of Politics,* 1-8.
261. J Areecza, 'The Dual character of EC Supranationalism: The Law and Practice of ICAO'[1979] (28) *ICLQ*, 1.

treating international organisations like States with right to accept binding obligations under international law has its legal backing under Art. 34 of the Vienna Convention which provides that 'A treaty does not create either obligations or rights for a third State or organisation without the consent of that State or organisation.' This provision, statutorily, accords state status to international organisations.

A typical example of this is found when the UN Security Council through UN Transitional Authority for Slavonia, Baranja and Western Sirmium, being areas in the territory of the Republic of Croatia, enacted by virtue of an Agreement signed by the Government of Republic of Croatia and the local Authorities of Serbian ethnic origin in Eastern Slavonia on 12 November 1995 which was aimed at peaceful re-integration of the regions into Croatian legal and constitutional system after 4 years of armed conflict between the Croatian government and the local Serbs which claimed so many lives. The UN Resolution 1244 vested the UN with the power that includes civil and administrative functions, organising and developing provisional institutions for democracy and self-governance including elections, building administrative institutions,

262. UN Charter 1945, art 1(2).
263. Wigwe (n 242) 76.
*264. Ibid*.
*265. Arab Monetary Fund v Hashim and Ors* (1990) 1 All ER, 690, where it was held that the AMF has International legal personality.
266. A E Oji, 'Effect of Globalization on Sovereignty of States' [2011] (2) *African Journal of*

ensuring public safety, building administrative institutions and overseeing their functions, carrying out peace building activities, supporting infrastructural and economic reconstruction, maintaining civil law and order including establishment of Police and so on. These powers were originally conferred by the affected state (Croatia) but the exercise of it by the UN was in accordance with the Resolution passed by the Security Council and within a period determined by the Security Council, acts were done without further recourse to Croatia.

Exercise of power by international organisations and the threat it poses to State sovereignty transcends States irrespective of their political and socio-economic strength. It is applicable to developed countries as well as undeveloped countries. "The debate in the United states over the adoption of the North America Free Trade Agreement (NAFTA) and the Uruguay Round Agreements has brought these questions to the fore. Critics on both the left and the right decry what they claim is a surrender of national sovereignty to secretive and countable international technocrats." Care indeed, must be taken in order to stem this tide of erosion of State sovereignty by international organisations.

*Law and Politics,* 266.

267. For instance, the ruling of the European court of justice has direct effect and supremacy with in national judicial systems, even though these doctrines were never explicitly endorsed in any treaty. The European Monetary Union created a central bank that now controls monetary affairs for three of the union's four largest states.
268. I Nguema, 'Human Rights Perspective in Africa' [1990] 11 *HRLJ,* 261.

## 8.0 The Erosion of State Sovereignty by International Institutions

### Interpretation of Enabling Instruments or Articles of Agreement

As a preliminary observation, international agreements must be interpreted in good faith (*Pact Sunt Servanda*). In accordance to **Article 26** of Vienna Convention on Laws of Treaties 1969 and 1975, Adjectival common law rules of Interpretation (Golden rule, Mischief rule and Ejusdem generis rule) are not allowed. This is also in accordance to **Admission Case**, where the court held *inter alia*, that International Agreements must be given literal interpretation in accordance to good faith. Here the committee on admission of new members into the United Nations went outside **Article 4** of the UN charter 1945 regarding the conditions for admission into United Nations. This was disallowed by the court because doing so will amount to overreaching what was not intended by the subscribers to the Articles of Agreement thereby breaching **Article 2(4)** of the UN

269. (1993) 14 HRLJ, 370.
270. The Declaration stressed the need to consider human rights in their national and regional contexts and emphasized the principles of respect for national sovereignty and non-interference in the internal affairs of states.
271. P Zhongying, '*Globalization v Economic Sovereignty*' [2005] (6) *China Quarterly*, 17.
*272. Ibid.*

charter 1945. Most International Institutions engage in elastic interpretation of the Articles of Agreement thereby breaching the principles of non-intervention in the domestic affairs of member States while carrying out their functions, for example **Article 1(5)** of the International Monetary Fund Articles of Agreement provides, *inter alia*, that funds of the institution shall be made available to members under "Adequate Safeguards". This provision has been given elastic interpretation by IMF to include, Judicial reform, political reform, privatization, social reform and other conditionalities which even destroys the favourable social facilities of member States. They also force member States to adopt structural adjustment policies which further results in financial weakness of developing countries, meanwhile the Articles of Agreement never contemplated such overreaching conditionalities before funds or loans will be made available to member States.

Also, **Article 4 Section 10** of World Bank Articles of Agreement 1944 provides, *inter alia,* that political considerations will not be applied in granting loans to member states, but this has been breached by the World Bank as they sometimes insist on political reform before loans are given to member states. This type of conditionality erodes the sovereignty of members States.

Vice Chancellor Sir, apart from the United Nations, most International Institutions are established for economic integration; not for political or social integration. Most International Institutions expand their activities outside the Articles of Agreement. For example, the European Union was setup purely for economic integration only. From there, they established European parliament, appointed European president and established European Court of Justice. Appeals from member states goes to the European Court of Justice -this was never contemplated. Most times, European Court of justice will upturn the judgement of court from member states. After a while, they began to have European Union flag, European Union National Anthem etc. This was why Britain left the European Union in the famous "Brexit" as they were of the opinion that membership of the European Union was actually diminishing their sovereignty.

Economic Community of West African States also towed similar path. ECOWAS was established for only economic integration on 28th May 1975. The revised Treaty amended in 1993 only restricted the activities of the institution to economic integration of member states.

Vice Chancellor Sir, ECOWAS is now meddling in the political or internal affairs of member states, like the threat of use of force against Niger in recent times. Even the establishment of

ECOMOG to stop the war in Liberia and Sierra Leone were illegal because such activities were not contained in the enabling instrument or the Articles of Agreement of the institution.

## 8.1 The Impact of International Institutions on State Sovereignty

Vice Chancellor Sir, the degree and weight attached to transfer of sovereignty to international institutions is higher than every other method of conferring sovereign powers by state on international institutions. When sovereign powers are conferred on international organisations by transfer, it might be very difficult, if not impossible for the powers to be exercised concurrently by states and international organisations. Thus, such words as 'delegation' 'agency' *and* 'transfer' are used to illustrate the conferment of sovereign powers to international organisations. These words are used interchangeably and they generate significant controversy. However, authors argue that the use of the word 'transfer' definitely suggests the irrevocability of the conferring of sovereign power unto international organisations.

Furthermore, the approach adopted at the Bretton woods conference negotiated the surrender of a portion of sovereignty with respect to the IMF's regulation of exchange rates and balance of payment account; it may be considered a transfer of

sovereign powers to the institutions. Generally, there is a presumption that states that confer sovereign powers on international organisations without securing their right of unilateral termination of the agreement, or at least have the option to withdraw from the agreement, may have contemplated partial or full transfer of sovereignty powers to the organisations. In fact, in some cases states normally indicate expressly whether the conferred power is transferred or delegated. This is evidenced in Article II of the Italian Constitution and Article 92 of the Netherlands Constitution which provides respectively for the transfer of sovereign power to international organisation, even though members are presumed to have the right of unilateral withdrawal even where the sovereign powers are transferred to the international organisations.

Furthermore, it has been opined that the transfer of sovereign powers to international organisations is an extreme case of conferment of sovereign powers by states to international organisations; although the use of the word is interchangeable with agency relationship and delegation and power, the arguments of commentators are that States lack the competence to transfer those core characteristics that touch on the existence of states with a defined boundary and assumption of full responsibilities on behalf of its citizens.

It is therefore rightly stated that the transfer of state sovereignty to international organisations is limited to the purpose of setting the international organisation and does not include the transfer of the entire state apparatus, which the electorates allowed only the elected representatives to exercise within its jurisdiction.Thus, it can be acknowledged that international organisations exercise sovereign powers as a matter of privilege, such privilege is limited to the provisions of the treaties or articles of agreement.

## 8.2 Transfer as a Limitation on State Sovereignty

There is a general presumption that the transfer of sovereign powers from state to international organisations limits the capacity of state sovereignty. The implication of the above is that, the international institutions will become the only lawful place where acts relating to the transfer of specific activities can be carried out.

There have been debates by some authors that there is a distinction between partial and full transfer, whilst some are of the view that all transfers of power are partial, as the states can withdraw from the international treaties, together with the fact that states still retain a residue of the sovereign powers. Thus, the argument is that states cannot centre their sovereign powers completely to international institutions without a residue that they can use to protect the electorates in the event of abuse by

the institutions.

In a similar vein, it has been observed that in the case of the partial transfer of sovereign powers to international organisations, states are not required to give backing to the conferment of powers through local or domestic legislation after signing the treaty or the international agreement, in the case of the full transfer of power, the states are required to give direct effects within their domestic legislation to the obligations arising from membership of the institution.

Owing to the membership of the institutions, signing of treaties and accepting to be bound by the decisions of the international organisations, states have unilaterally limited their sovereignty. However, the limitation of state sovereignty does not cover the international organisation if the act is *ultra vires*.

Even where states have a different interpretation on matters being considered by the institutions, that of the institutions will prevail as decision making is shifted to the institutions in the case of transfer. For instance, the decisions of the European court are binding on member states. While in multilateral treaties involving other member states, decisions of international organisations might be considered more binding than interpretations of individual member states.

Even though the full transfer of sovereign powers to international organisations carries with it substantial

responsibility and power for the institutions, it is said that the test attached to full transfer is very high as it is likely to be subjected to debate within the domestic jurisdiction before it is conferred on international institutions.

There is a latent line in the legalistic interpretations between partial and full transfer. Though, some authors are of the view that this is mere semantics, others have stated that it shows not only the degree of conferment, but serves to buttress the extent and degree of rights and obligations arising from such conferment of sovereign power, also, the control of international organisations by the states where the conferment is by full transfer may be limited, as state cannot exercise direct sovereign powers, together with interpreting the multilateral treaties, which might be binding on the members.

Matters relating to the transfer of sovereign powers of international organisations are clearly spelt out in some countries constitutions. The views are that if these countries are seen to be cautious in transferring sovereign powers to international organisations, that of East Timor clearly and in unambiguous terms defined the limits upon international organisations in exercising the conferred sovereign powers transferred from their states.

Nonetheless, there is a general presumption that the transfer of sovereign power on international organisations limits the

sovereignty of states only to the extent that it affects the subject matter for which the organisation was established and with full and not partial compliance with the principles of public international law. For instance, the Constitution of the Netherlands provides that the state can confer by transfer the executive, legislative and judicial powers to international organisations in pursuant to a treaty aimed at promoting the development of the state and international law, provided that national legal order is respected. Thus, some observers argue that the transfer of sovereign powers to international organisations is nothing other than surrender of political sovereignty.

## 8.3 The Legal Significance of the Doctrine of Ultra-Vires

An act is said to be *ultra vires*, where it is unauthorized, beyond the scope of power allowed or granted by a corporate charter or by law. Economic development and its sustainability are among the purposes of conferring sovereignty powers on the institutions, although there are still some economic activities based on national domestic directive principles of states that are not conferred. Thus, policies with the tendencies to creep into these cases may also be considered *ultra vires.*

The purview of sovereign powers granted to international institutions are expressly provided in their articles of

agreement. Therefore, an unauthorized expansion of the sovereign powers through their policies may not be considered *ultra vires*, even though, the exercise of sovereign power of state is usually done by these institutions for the common benefit of member states.

It has been argued that the exercise of sovereign powers by international organisations must not only be used for the benefit of member states; they must be consistent with the express and unequivocal agreements of organisations treaties.[258]

The legal significance of state sovereignty is to protect and enhance individual rights and self-determination of a state within its territory following an international norm of non-interference in the domestic affairs of another state. While the sovereignty of states emphasises the fundamental rights of individual and state self-determination, political autonomy, non-intervention, and internal authority as a *Peremptory norm* of international law, an unauthorized derogation from these concepts or the proclivity by another state to interfere in the domestic affairs of another, without first obtaining written consent, could amount to an erosion of state sovereignty. The United Nations based on its powers derived through the charter, has taken some pragmatic steps to ensure that the sovereignty of states are respected. Hence, the UN response on the North Korea attack, and the sanctions imposed on Libya during the

Lockerbie bombing and on Iraq during the invasion of Kuwait can be said to be an example of the UN's role to prevent state sovereignty from being eroded.

Similarly, at the Bretton woods conference, it appeared that the negotiators took cognisance of the principle of state sovereignty, the basic law of all nations, in drafting the Articles of Agreement that established the extent of the conferring of states sovereign powers on the WB and the IMF.

Whilst the legal essence of state sovereignty is to enhance the doctrine of self-determination, the articles of agreement are meant to draw the UN, such that state sovereignty may not be eroded. Despite the Articles of Agreement acting as a check on the activities of the institutions, they are also seen as evidencing the legality of the institutions' possession of sovereign powers, which ordinarily should be the exclusive preserve of the independent states.

In general, states have inherent sovereign powers, but international organisations established by these states, under international law, can perform these powers. Nonetheless, the exercise of these powers must be done in tandem with the provisions of the Articles of Agreement, treaties or charter establishing them, in order to avert a violation of the doctrine of *ultra vires*.

## 8.4 International Institutions- A Violation of Sovereignty?

It has been argued that belonging to an international institution like the AU, the EU, the UN, IMF, WB and so on, is inconsistent with conventional sovereignty rules. Member states have created supra natural institutions that can make decisions on their behalf.

These institutions are by-products of state sovereignty because they were created through voluntary agreement among its members states. But, in another sense, it fundamentally contradicts conventional understandings of sovereignty because these same agreements have undermined the juridical autonomy of its individual members.

Similarly, humanity has made a significant impact on international law; it has particularly affected the sovereignty of states and the assumption that international law is solely a state-based system and that states are free to treat their nationals the way they please. This development is the reflection of a wider phenomenon; the increased concern of people all over the world with the treatment accorded to their fellow human beings in other countries, particularly when the treatment fails to meet minimum standards of civilized behaviour. In **Article 56** of the UN Charter, 1945, all members pledged themselves to take joint and separate actions in cooperation with the organisation for the

achievement of these and related ends.

Thus, the notion of human rights is not only individualistic in nature but also protects certain group rights. The idea of people's right is based on the premise that there are certain rights, which are inalienable.

However, in spite of the constitutions from different hemisphere, it has been suggested that there can be no fully universal concept of human, the diverse cultures and political systems of the world. Ahead of the Vienna World Conference on Human Right 1993, Asian states adopted the Bangkok Declaration 1993, which challenged what was perceived as the Western Concept of Human Rights. Hence, with respect to human rights, a state must meet international standards or be held responsible for breach of international human right law.

Conversely, on the economic sphere, there have been allegations that underlying the economic sovereignty debate is a hidden power struggle on the world stage, contested by a number of prominent countries who use the language of globalisation in the pursuit of national agenda. Pang Zhongying therefore, warns any country opening their economy to the outside world that it is by no means a free lunch. The policy will inevitably come at a cost and the cost can be perceived to be a weakening of the nation's 'economic sovereignty', namely the erosion of permanent and exclusive privileges over its

economic activities, wealth and natural resources. A review of the world's history will find that it is common that the economic sovereignty of an individual member is influenced by global economic trends.

It therefore suffices to submit that the increase in the number of international organisations and the expansion of their functions has undeniably restricted an individual country's sovereignty to certain extent, more especially, where they act as principals to the member states. Thus, eroding the essence of their establishment, which in most cases are economically oriented.

## 9. Concluding Remarks

Vice Chancellor Sir, the background of international organisations reveals the yearning by states for partnership and cooperation among states and the need to have standard rules of engagement. The increasing powers of international institutions poses a challenge and subtle threat on the fundamental principle of sovereignty and state independence. Despite the implication of such cooperation to the powers of the states, membership of international institutions still holds a great pull for states.

The plethora of international institutions to which various countries ascribe their membership supports this assertion. While some of the institutions are general in scope and worldwide in their reach, others are specific in their subject, and some others, regional in their reach. In whatever capacity they

act, international institutions, due to their relevance, have acquired state status under international law and are recognised as such.

In order to attain significant development, developing nations have resorted to regional integration, which has been considered one of the ways to achieve significant relevance in the global market. Most of the regional integration efforts look up to the EU for providing a viable blueprint. However, the outcome of the UK's referendum which led to the UK exiting the EU – Brexit – has thrown a major setback to the concept of regional integration.

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

In a changing world, international institutions are facing numerous challenges both from new issues that confront them

daily to internal structure and bureaucracy. The emergence of many multinational institutions that render similar services and at faster pace, questions the continued existence and relevance of some traditional institutions. The continuous influence developed nations wield on international institutions poses another major source of concern for developing countries.

The policies of international institutions do not take the peculiar circumstances of developing nations into consideration. As such, they dish out policies and conditions that are not tailored to work for the developing nations. The resultant effect is that some of the countries are left worse than they were before adopting such policies.

The growing call for reform of the institutions indicates that there is need for them to pursue reform agenda. International organisations should be more transparent in their dealings with their members. Increased transparency and accountability and reducing the influence of special interest by giving the less developed countries themselves more ownership over the conditions imposed by the IMF will be a step in the right direction.

International financial institutions have a role to play in the redistribution of global wealth. This can only be achieved if they deliberately reset their agenda to accommodate the priorities of the developing nations. International institutions should

become more attentive to the social cost of their programmes and set their preference away from government expenditure and controlling inflation. They should adopt programmes that are more inclusive of the concerns of less developed countries.

In the exercise of power by international organisations, this paper establishes that international organisations are product of international agreements known as treaties and when they make laws, the states that conferred them with the powers they exercise do not play any direct role in the process.

The weight attached to transfer of sovereignty to international institutions appears to be higher than every other method of conferring sovereign powers by state on international organisations. When sovereign powers are conferred on international organisations by transfer, it might be very difficult if not impossible for the powers to be exercised concurrently by states and international organisations.

## 10. Recommendations

1. The concept or principles of Ultra Vires must be included in the enabling instrument or Articles of Agreement of International Institutions. This will legally act as control mechanism to prevent the institutions from going outside their mandate.
2. There should be a fundamental right of Member States to raise objections when the International Institution acts outside the object clauses as stated in the enabling instrument or Articles of Agreement.
3. International Institutions, must be legally prevented from adopting Common Law rules of interpretation for interpreting International Agreements. They must interpret all International Agreements in good faith and in accordance to 'pact sunt servanda' and also in accordance to Article 26 of Vienna Convention on Laws of Treaty 1969.
4. There should be regular workshop between the international institutions and member States where they should always be reminded that the member States are their principals and not the other way round. This interactive meeting has never happened in the World Bank and International Monetary Fund. These

particular institutions do not have respect for developing countries and they impose a lot of hardship and conditionalities to developing countries before letting them access credit facilities. The regular workshop on the relationship between the institutions and member States must be included in the enabling instrument or Articles of Agreement. Allowing the institutions to continue unilaterally imposing conditionalities, will sharpen the edges of the old-world legal order where the Roman Empire was seen to be ruling whole Europe that precipitated the thirty years old war.

5. In the case of conditionality for obtaining loans or facilities from International Institutions. They must consider the social and economic situations in each Member State before putting any conditionality in place.
6. Whether Regional or multilateral institutions, they must not operate outside the peripheri of the Constituent documents that created them. This also includes humanitarian intervention which ECOWAS engaged in 1991/92 through ECOMOG and United Nations intervention in North and Southern Korea war in 1950.
7. The International institutions must be legally stopped

from carrying out activities that are not authorized in the Articles of Agreement as that will breach the principles of non-intervention and self-determination as provided in the UN Charter and sharpen the edges of autocracy and erosion of State sovereignty.

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## PROFILE OF PROFESSOR CHRIS C. WIGWE, SAN, FCArb

Professor Chris C. Wigwe, SAN, obtained his LLB Degree at Ahmadu Bello University, Zaria, Kaduna State in1985 and was called to the Nigerian Bar in 1986. He is also a Solicitor of the Supreme Court of England and Wales.

He proceeded to bag his LLM Degree at the Middlesex University, London, United Kingdom in 2003. In 2006, he obtained his PhD in International Economic Law at the prestigious University of Leeds, Leeds United Kingdom.

He forayed into academics in 2007 following his appointment as a lecturer in the Rivers State University, Port Harcourt. He was promoted to the Rank of Senior Lecturer in 2013, promoted to the rank of Reader (Associate Professor) in 2016 and promoted to the rank of Professor of Jurisprudence and International Economic Law in 2019. Following his contribution to the legal profession and legal education through several well researched publications, he was elevated to the rank of Senior Advocate of Nigeria in 2021.

He is actively engaged in the University set-up as an administrator and as a teacher. He is presently the Dean of Law, Faculty of Law, Rivers State University, a position he assumed in February 2022. Before his appointment as the Dean of Law, he served as Acting Dean, Associate/Sub Dean of Law, Head of Department, Department of Private and Property Law and Head of Department, Department of Jurisprudence and International Law, as well as holding other key positions in the university at

various times. He is presently the Editor-in-Chief *Journal of Environmental and Human Right* and *Journal of Law and Policy*, having served as Editor-in-Chief for *The Journal of Jurisprudence and Contemporary Issues and The Journal of Property Law and Contemporary Issues.* He is also a visiting Professor of Law at Mountcrest University College, Accra Ghana.

The erudite law professor has over ninety (90) legal publications to his credit. These consist of published textbooks of international standard and acclaimed globally, peer-reviewed published law articles in local and foreign journals, specialized research monographs and Chapters in books. He has also presented papers in conferences, seminars and workshops in Nigeria and in the United Kingdom on specialized areas of Law like Merger and Acquisition.

Prof. Chris Wigwe is also a Fellow Chartered Institute of Arbitrators (FCArb).