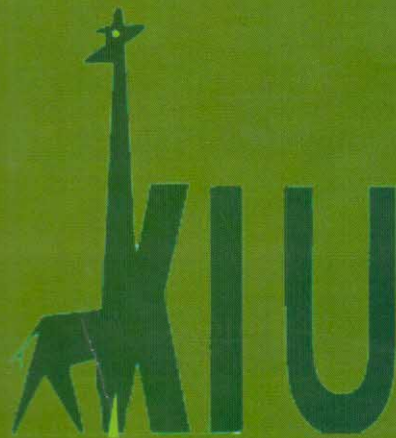

ISSN 2415-0843

1 (2) December 2016

KIU Journal of **Humanities**



EXPLORING THE HEIGHTS

**College of Humanities and Social Sciences
Kampala International University**

A Critical Appraisal of the World Trade Organization's Observance of Human Rights.

J.O. OLATOKE
University of Ilorin, Nigeria.

ADEBOYE OLUWASEYE THOMPSON
Kayode Olatoke & Co, Ilorin, Kwara State, Nigeria.

Abstract. Organizations are formed for specific purposes and the World Trade Organization is no exception in this regard as it was formed for the specific purpose of improving the standard of living of citizens in its member states by establishing legally binding rules which enable easy flow of trade.

However, in the pursuit of the fulfillment of these purposes, the World Trade Organization has been saddled with balancing these purposes with the fulfillment of human rights which have taken the center stage since 1947 especially by the coming into being of the Universal Declaration of Human Rights. It must be noted that trade and human rights cannot stand aloof of each other as many trading agreements touch on human rights whether positively or negatively and thus leaves no doubt that there is a symmetric relationship between both fields.

This article thus seeks to evaluate the relationship between the World Trade Organization and the Universal Declaration of Human Rights with a view to determining whether the World Trade Organization has deliberately or inadvertently violated same in the discharge of its functions.

1. Introduction

It has been noted that 'Money speaks sense in a language all nations understand'. The imperativeness of money (in practical sense, economic stability) being the product of trade among nations cannot be over emphasized. Over time, it has become somewhat settled that a country's ability or otherwise to improve the standards of living of its citizens has been hinged on its ability or willingness to trade successfully with other nations. It is the intention to trade successfully and ensure trade liberalization that brought to life the World Trade Organization. It is in furtherance of the fore-going that the activities of the World Trade Organization

and its relationship with the Universal Declaration of Human Rights are brought to the fore.

The World Trade Organization which came into force in 1995 has as its main aim, the improvement of the 'standards of living' of citizens of its member states by establishing legally binding rules which enable easy flow of trade. The WTO, as a trade organization seeks to achieve trade liberalization through a variety of actions; with such actions including the removal of trade barriers and ensuring all the main participants in the global trading system are aware of the applicable rules while also serving as a forum for trade negotiations amongst its Members including their multilateral trade relations in matters dealt with under the various agreements annexed to the WTO Agreement, and for settling trade disputes.

It must be noted that the World Trade Organization is one of the most important bodies in the international realm. It is probably the most efficient international body in terms of implementing its law which is evidenced by the production of far-reaching case law, thus shaping world jurisprudence.

The purpose of this paper is to appraise the relationship (if any) between the World Trade Organization and human rights and see if any adherence is done by the former to the latter. It must be noted that human rights adherence usually takes the back-burner of relevance in the operation of international organizations (especially ones formed for specific purposes not related to human rights). This paper thus seeks to evaluate how the World Trade Organization adheres with human rights principles (if it does) and where it expressly breaches same in the course of achieving its purposes.

It is imperative to note that a lot of furor has been generated about the World Trade Organization and human rights especially the lack of sensitivity shown by the former towards the latter, the atmosphere of secrecy and lack of transparency that characterize its dispute settlement. This article thus would evaluate the recognition and adherence of the World Trade Organization to the Universal Declaration of Human Rights if any.

The legitimacy of the World Trade Organization is not connected to its origin or status but to its relationship with the Universal Declaration of Human Rights. The World Trade Organization is a legitimate organization going by the voluntary membership which it promotes but in so far as it violates the Universal Declaration of Human Rights, its legitimacy is called into question. This is the focus of this work.

2. Brief Overview of Human Rights

The term 'human rights', like all definitions that touch on law, is not capable of a single and all-encompassing definition. It must be noted that the term 'human rights' has different meanings for different people around the world and that "each country is free to set its own human rights objectives, policies and strategies."

Human rights can be defined as rights that belong to an individual as a consequence of being human.' It has also been noted that four aspects of human rights make it important namely to wit, (1) Human rights are rights of individuals in society. (2) Human rights are universal in that they belong to every human being in every human society. (3) Human rights are rights and (4) Human rights are claims upon society.

The development of human rights on the international plane had a significant facet by the coming into being of the Universal Declaration of Human Rights which was adopted on 10th December, 1948. It was adopted by Resolution 217 (III) and has 30 articles covering the most important fundamental human rights.

The universality of the Universal Declaration of Human Rights is not in doubt as it applies to all whether or not the individual government has ratified it. The Universal Declaration of Human Rights is not binding legally on countries but countries are obliged to adhere to same. The Declaration, has been argued, is not, and does not purport to be a statement of law or of legal obligation.

The argument of the non-binding character of the provisions of the Declaration has seemed to have waned over time. It has been noted that 'Given the prima facie non-binding character of the Declaration, the immediate question arises as to the practical relevance of the consideration of the instrument. The most direct answer to the question is that notwithstanding the hortatory character of the Declaration over a period of time, its substantive provisions have become binding on all states.'

This is due to many reasons, chief of which include:

1. That the Declaration is an authoritative interpretation of the meaning of human rights as prescribed within the United Nations Charter. This argument is substantiated both by the travaux preparatoires of the Declaration and from its text.
2. The Declaration is part of customary International law which consists of two key ingredients, that is, State practice and the belief that such a practice amounts to law (opinion juris).
3. The Declaration binds States with its "jus cogens" character.

The rights which the Declaration contains range from civil and political rights to social, economic and cultural rights and to group or social rights (solidarity rights). A reproduction and evaluation of the Declaration is not per se the focus of this

article but an evaluation of its provisions as they touch on trade. As a matter of fact, many provisions of the Declaration provide for economic rights that can be said to touch indirectly on trade. Such provisions include Articles 22 (Right to social security), 23 (right to work), 24 (right to rest and leisure), 25 (right to decent standard of living), 4 (freedom from slavery or servitude, etc) which if adhered to strictly, would enhance international trade.

3. An Overview of the World Trade Organization

The importance of the World Trade Organization in trade affairs cannot be over-emphasized. It is beyond doubt that the WTO matters a lot as far as trade is concerned, as it is the primary instrument of neo liberal globalization to further economic globalization in international trade. It seeks to achieve the liberalization of trade through a range of actions chief of which include the removal of trade barriers and the provision of rules to bind all participants in trade. In this chapter, a cursory analysis of the WTO would be embarked upon with particular focus centred on its history, principles, purposes and its mode of operation.

The foundation of the World Trade Organization can be traced back to the General Agreement on Tariffs and Trade (GATT) of 30th October, 1947. This Agreement provided for the rules that governed global trading from 1947 to 1994. GATT was intended to be a provisional trading arrangement, a stop-gap pending the coming into existence of the international Trade Organization (ITO) as the main international trade institution and a specialized agency of the United Nations. Incidentally, GATT was never ratified thus ensuring that the ITO never came into existence though GATT continued as an ad hoc international trading organization.

Trade Organizations characterized the period during which GATT existed, several of which laid the precedent for the important Uruguay Round of Multilateral Trade Negotiations which led to the formation of the World Trade Organization. It has been rightly noted that the overall characterization of this history is that the institutions have developed bottom up, rather than top down because the original concept of an International Trade Organization (ITO), developed between the 1944 Bretton Woods Conference and the 1948 Havana Conference, failed to materialize. The International Trade Organization never came into being. The GATT was originally designed as a subordinate part of the International Trade Organization and the GATT was to be dependent on it for all of the institutional backups, such as a secretariat and dispute settlement processes elaborated at length in the Havana Charter. That plan failed, and therefore the GATT, despite its meager language, was left in place to fill gap this gap over time which it never really did.

The Final Act embodying the Results of the Multilateral Trade Negotiations of the Uruguay Round was signed at Marrakesh, Morocco on 15th April, 1994 by most of the representatives of the 124 governments and European communities that had participated in the negotiations thereby giving birth to the WTO by the Agreement Establishing the World Trade Organization (WTO Agreement).

The WTO Agreement takes into effect the establishment of the WTO structure and other agreements to which other member states are bound to subscribe. The original GATT of 1947 has been incorporated into the General Agreement on Tariffs and Trade of 1994. It must be noted however that at the onset, the WTO focused largely in trade in goods with little attention to services, intellectual property, dispute settlement and so on.

4. Human Rights and Trade

The question that comes to the fore is whether there is any correlation or relationship between human rights and trade. This is not unconnected to the fact that civil and political rights have gained more prominence over economic, social and cultural rights. People are mostly concerned about rights to life, liberties to do certain things without much attention given to the rights relating to the economic, social and cultural spheres of their life, the former to which trade belongs.

Initially, trade and human rights have been considered as separate from each other. As noted by ZAMAN, "Historically, trade and its humanitarian aspects have been considered as completely separate agenda within the broader paradigm of development though both trade and human rights aspire in their own ways after human welfare."

However, it must be noted that trade and human rights are inseparable as trade has enormous effects on human rights. It has been argued by some scholars that expediting trade without considering its human aspects is not sufficient to ensure sustainable development. Ex facie, it can be assumed that efficient trade as envisaged and contemplated by the World Trade Organization leads to economic growth and social development, better life and positive attitude towards human rights and human values.

The United Nations, commenting on the linkage between the law of trade and human rights rightly observed that, 'the realms of trade, finance and investment are in, no way exempt from human rights obligations and principles.' Thus, it must be conceded that in the course of trade, adherence to human rights principles must take the fore especially as one cannot be diffused from the other.

5. The World Trade Organization and Human Rights

Many a criticism has been levied against the WTO a being very insensitive to human rights especially as it relates to observance of its principles in its activities. This is not unconnected to the fact that the WTO is not ipso facto a human rights organization. However, it seems settled that all state and non-state actors are obligated to adhere to human rights.

The question that this segment would seek to answer is, how does the WTO violate human rights? According to Thomas Pogge, human rights violations involve both the non-fulfillment of a human right and a certain causal responsibility of human

agents for its non-fulfillment. Thus, a simple analysis of the criticisms of the WTO as regards its non-compliance with the Universal Declaration of Human Rights would cut across two segments, to wit: Non-fulfillment and Actual violation. To the critics of the WTO, these are what the WTO is guilty of.

As regards non-fulfillment, it can be said that if the WTO is guilty of non-fulfillment of human rights, it would cover Henry Shue's triad of Basic rights which connotes to avoid depriving, to protect from deprivation and to aid the deprived.

Actual deprivation would involve conscious acts of non-adherence to human rights in a bid to advance the interests of the WTO. Thus, it is common place for writers to conclude that by non-fulfilment and actual deprivation, the WTO has turned out to be an illegal institution as far as human rights are concerned.

For the purpose of this work, the Universal Declaration of Human Rights (UDHR) and how the WTO violates same would be considered. The reason for this is not far-fetched as the UDHR is the focal point of human rights all over the world. Thus, an analysis of the relationship of the WTO and human rights in this work would be done by considering how the WTO violates the UDHR (representative of human rights).

It must be argued that some of the most forceful critics premise their argument on the basis that the WTO system of rules makes it harder for member states to meet their obligations to respect, protect and advance human rights as delineated in the Universal Declaration of Human Rights-the code of human rights developed by the members of the United Nations.

The fast growth of the global economy has been met by a corresponding increase in human rights awareness. In the same vein, an increase in the activities of the WTO has also opened up its non-committal stance to human rights. Such violations include violations of core labour standards, non-committal stance towards the rights of indigenous people amongst others. These issues would be addressed in ensuing paragraphs.

6. Article XX of the General Agreement on Tariffs and Trade

The interpretation of Art XX of GATT by the Dispute Settlement body has led to the World Trade Organization's reputation of failing to respect human rights, environmental or social standards. The example of the case of Thailand - Restrictions on Importation of an Internal Taxes on Cigarettes readily comes to mind. It must be noted that Art. XX and similar provisions in other WTO agreements, such as Art XXIII GPA does not contain a human rights or social clause. Some human rights violations could however be covered by the existing specific exceptions as contained in the Articles. The legal bases for the implementation of social or human rights standards through trade measures could

be the public morals exception, the protection of human, animal or plant life or health exception, the prison labor exception, or measures relating to the conservation of exhaustible natural resources. As noted by Zagel, whereas paras (a) and (e) have hardly been applied or mentioned in any reports of the Dispute Settlement institutions, paras. (b) and (g) have often been invoked to justify environmental or public health measures. Art. XX para. (e) encourages measures relating to the products of prison labor, and covers measures directed at goods produced by prison labor. The exception could probably be extended to workers' situations which are similar to enslavement as noted by Francioni. Another potential legal basis is the public morals exception contained in para (a) which could be interpreted as prohibiting e.g. pornographic material produced under the serious mistreatment of women or even children. Other gross violations of human rights could similarly be covered by para. (a). Both exceptions could serve as justification for trade restrictions on goods related to a violation of these standards.

The point being made in essence is that all these sanctions and rights to place trade restrictions are discriminatory and are in flagrant breach of the provisions of the Universal Declaration of Human Rights particularly Article 7. It has been noted that general sanctions against a country for its human rights violations will most likely be qualified as an arbitrary and unjustifiable discrimination.

Despite the potential of Article XX, a major restriction in the ability of governments to depart from their WTO obligations under a general exemption with the aim of enforcing human rights obligations is conditional on the preamble or '*chapeau*' of Article XX. The *chapeau* states that the measures taken should not "constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail". This means that a country cannot ban a tradable good because it utilized forced labour from another country without applying the ban to all like-products (similar goods) from all countries.

This no doubt is a major drawback in the adherence of the World Trade Organization in its bid to adhere with and take into effect the provisions of the Universal Declaration of Human Rights.

7. The Rights of the Indigenous People

The non-protection of the human rights of Indigenous peoples is a major criticism of the World Trade Organization as its emphasis is on States and trans-national interests to the neglect of the indigenous people. This is absolutely a grey area especially when the activities of the UN human rights system are considered in the protection and enforcement of indigenous human rights. Examples of the UN's activities in this sphere abound in the proclamation of the International Decades of the World Indigenous Peoples; Programme of activities for the International Decade of the World's Indigenous People, Second International Decade of the World's Indigenous People, a Permanent Forum on Indigenous Issues, an annual Working Group on Indigenous Populations, a Commission on Human Rights

working group elaborating a Draft Declaration on the Rights of Indigenous Peoples and Fundamental freedom of Indigenous Peoples

As noted by Megan Davis, 'The malleable nature of sovereignty as it relates to the implementation of international trade rules is particularly vexing given that many contemporary violations of Indigenous human rights have been the direct result of International trade rules and agreements and the conduct of multilateral trade institutions and transnational corporations'

It has been noted that globalization of the production and consumption of few elite countries, corporations and individuals is a threat to the continued existence of diverse and sustainable Indigenous livelihoods. Complaints of indigenous people have ranged from exploitation of lands and resources, severe damage on environmentally sensitive areas, destruction of traditional lands to disruption of cultural practices. Developmental projects embarked upon by countries with the backing of the WTO have inflicted severe damage on environmentally sensitive areas, seriously disrupted biodiversity and pre-existing eco-systems and devastated the lives of Indigenous communities.

Another criticism is that the WTO encourages policies hampering on indigenous human rights by not doing anything to stop such policies when they are implemented by member countries. On agriculture, the WTO has hampered the lives of Indigenous peoples as the subsidies it has placed 'had led to artificially cheap agricultural products, leading to the loss of livelihood of thousands of Indigenous peoples and farmers'

Indigenous women have also not been left out in these human rights violations. The same thing can also be said of Indigenous knowledge especially traditional knowledge and intellectual property which have mostly been hampered. This has been noted in the Report of the Working Group on Indigenous Populations in its twenty-third session. As noted by Davis, Indigenous people believe that the acquisition and protection of Intellectual property for monetary benefit is inimical to the Indigenous knowledge.

8. Labour Related Rights

Another key area where there are human rights concerns about the activities of the WTO is labour. Labour standards and trade have had a strong link throughout the 20th Century as made apparent in the earliest multilateral treaties on labour and trade. Examples of this can be found in the first multilateral labour treaty adopted in 1906 which prohibited the manufacture, sale and importation of matches containing white phosphorus, a highly toxic-chemical.

It is beyond doubt with anyone who has had the most minimal contact with or acquiescence of International trade labour that gross violations of labour and human rights accompany international trade and investment.

The WTO, which no doubt is the leading international trade body has come under increased scrutiny by human rights groups for its failure to prevent any and all cases of perceived trade-related labor exploitation in developing countries across the world. Apparently disagreeing with this point, it has been noted that what human rights groups have intentionally overlooked is that developed countries have attempted to establish a concrete link between trade and core labor standards, but this has been rebuffed by developing countries who claim that the imposition of improved labor standards amounts to nothing more than veiled protectionism which of course is discriminatory. This link argument cannot stand in the face of overwhelming cases of trade labour exploitation in developing countries epitomized by the gulf between developing and developed countries.

It must be highlighted that the WTO does not have many provisions touching on labour standards. As a matter of fact, the only labour standard currently in the WTO Charter is embedded in Article XX (e), permitting member nations to prohibit imports of goods produced by prison labour.

Another example can be seen in the Waiver Concerning Kimberly Process Certification Scheme for Rough Diamonds issued by the WTO General Council in 2003. The Kimberly Process certifies diamonds not originating from countries in which illegal trade in diamonds is funding gross human rights violations. The waiver allows WTO members participating in the Kimberly process to prohibit imports of uncertified diamonds due to the human rights violations of labourers in diamond mines and the role played by diamond profits in human rights violations.

The basic right which has been the WTO's Achilles heel is the right to human dignity especially as it concerns labour. Gross violations like forced labour and human trafficking abound in the world. Workers are induced to migrate based on false pretences on a daily basis and the WTO has done little or nothing to stem this tide. On the issue of child labour, Brown rightly noted that "Labour standards that prohibit the employment of children without addressing the root causes of poverty and credit constraints pose a risk of unintended consequences."

9. Accession Policies

Another example of how the WTO vitiates human rights principles can be seen in its accession policies for new members. Alan Sykes noted certain criticisms of the World Trade Organization which cannot be overlooked. He noted that such criticisms include admission into the World Trade Organization of nations violating human rights such as China. Aaronson on her part has rightly argued that the World Trade Organization like its predecessor, the GATT does not have human rights/democracy criteria for accession into the WTO. The condition seems to be full autonomy of a state in its trade policies. The right to set down terms of membership is determined by World Trade Organisation members who in the exercise of this right have successfully pressed for changes within States though it must be noted that these changes are not strictly trade-related.

Aaronson claimed to have examined the accessions of countries like Armenia, Cambodia, Saudi Arabia, Macedonia, Nepal, and Vietnam from January 2003 to April 2007 as well as the China accession documents in a bid to ascertain if existing WTO members expressed concerns about the potential acceding country's human rights practices. She found that each of these States had difficulty protecting human rights prior to its accession.

An example can be seen in the attempt by Saudi Arabia to accede to the WTO. Saudi Arabia's adherence to the rule of law during deliberations on the accession was on the front-burner as members of the WTO Working group asked questions ranging from the rights of Saudis and non-Saudis to participate in various elements of the economy. They also urged the country to publish notices of proposed measures related to trade and to provide an opportunity for 'interested persons' to provide comments and views on such measures prior to their adoption and implementation. In essence, what the Saudis were being asked was more information about political participation in trade issues. Saudi Arabia agreed to establish an official website for trade policymaking and to 'provide a reasonable period for members, individuals, associations and enterprises to provide comments to the appropriate authorities before such measures were adopted'.

When deliberations started for the accession of China, a major furore arose. It came to the fore that China had used three zones (special economic China zones) to experiment with market-based, outward-oriented policies. In many of these zones, the Chinese government ignored or flouted its own labor laws. Members of the WTO expressed concern albeit rightly that China would attract investment from countries that have more stringent workers' rights standards. They also noted that China lacked an impartial judiciary, an effective and transparent social and environmental regulatory system, and a strong central government capable of enforcing the law. All these, no doubt are tied to human rights which the Universal Declaration of Human Rights protect.

The provisions of the WTO Agreement were made applicable to the entire customs territory of China including special economic zones and other areas where special regimes for tariffs, taxes and regulations are established. The agreement also calls on China to 'apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures pertaining to or affecting trade. China shall establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application.'

The agreement requires China to notify the WTO about 'all the relevant laws, regulations and other measures relating to its special economic areas'. Finally, it obligated China to ensure that 'those laws, regulations and other measures pertaining to and affecting trade shall be enforced'.

The major criticism of the WTO is that its members generally did not use the accession deliberations with the new entrants, particularly China to push new entrants to change their human rights practices and attitudes. However, members have pressed for broad changes (such as improvements in the rule of law and greater transparency) that could facilitate human rights improvements over time. Thus, the China accession document did not address labor laws explicitly, but it reveals that members recognized that the failure to enforce human rights laws, whether labor law or intellectual property law, could distort trade.

Moreover, the US action on Vietnam's accession could signal that some countries would be willing to use the opportunity posed by accession to obtain an acceding state's commitment to improve human rights governance.

WTO members not only decide which country can join the WTO, they can also decide to deny WTO benefits (known as non-application) to a potential member. Article XXXV of the Agreement allows members to deny application of WTO benefits to a new member, so long as they do so before the WTO Ministerial Council approves the member's accession agreement. If countries use non-application under the WTO, they must use it for all of the WTO agreements.

In principle, members are free to use this process to punish WTO applicants for their human rights practices but this has not been the case. In practice, only the United States, Peru, and El Salvador have ever used the provision. The United States is the only WTO member to use non-application as a strategy to punish other countries for human rights violations, but it has generally done so on a temporary basis. The United States relies on non-application to deny trading privileges to terrorist nations or former members of the Soviet bloc.

As noted by Sykes, a limitation of the WTO as it relates to human rights is that the rules of the WTO system can interfere with the ability of its members to punish human rights violators by restricting trade with them. In his words:

Sanctions are most likely to be effective when they pertain to matters of modest importance, and when the sanction has the potential to inflict large losses on the target.

10. Open Trade Policy and Human Rights

Open trade which is one of the hallmarks of the World Trade Organization has been said to encourage production of goods in areas of lax environmental standards thus culminating in environmental degradation. Similarly, competitive pressures that result from open trade cause regulators to lose control over local regulating matter thus throwing to the backburner matters such as social welfare standards, environmental standards and worker protection legislation.

Open trade also, according to Sykes, breeds irregularity in the distribution of income as developed countries, as a result of more technology and resources earn more income than the less developed and under developing countries.

Dispute settlement inherently favors stronger countries in the WTO. It is a resource-intensive process to commence and contest, and ultimately the enforcement of a finding of violation relies on the penalty of sanctions on trade. For a small trading nation, sanctions do not pose a credible threat as it does to big countries.

11. Rights Relating to Agriculture

Trade liberalization in agriculture can create export opportunities in agricultural exporting countries and promote growth and development. This seems to be the widespread belief as regards the impacts of the World Trade Organization on agriculture. However, as noted by the United Nations,

From the above, it can be gleaned that the WTO has not done enough to protect the rights of the small farmers who mostly plant food crops for subsistence. **Article 22** of the UDHR for rights to social security and through national effort and international co-operation and in accordance with the organization and resources of each member state. Now, when the small farmer does not have the capacity to compete because of his meager resources, can it be said that his human right to economic growth and free development of his personality are protected? The answer to this query in my opinion is an emphatic no. This no doubt would go a long way in hampering the supposed legality of the WTO vis a vis the provisions of the Universal Declaration of Human Rights.

12. Equal Statutes and Rights of Members

A major goal of the WTO is to provide equal trade rights to its members and foster equal trade. This is however not the true position of things in practice as the developed countries have wielded and enjoyed more advantage over and above the developing countries.

This is in stark neglect of the provisions of Article 23 of the UDHR which provides for equal statuses of citizens irrespective of any criterion.

13. Medicine and Health Related Rights

The Agreement on Trade-Related Aspects of Intellectual Property Rights significantly constrains the policy options available to states in regulating the manufacture, trade, and distribution of essential medicines. Section 5 of TRIPS imposes an obligation on states to offer patent protection for any pharmaceutical product or process, regardless of where it was devised for twenty years. This can be said to offer freedom against discrimination. Although TRIPS does not stipulate the criteria for patentability, little flexibility exists with respect to pharmaceuticals. The rule against discrimination as to the field of technology precludes patent laws that discriminate as a matter of fact or law against certain kinds of pharmaceuticals, with the exceptions being drugs for diagnostic, therapeutic, surgical methods, or biological processes as non-patentable subjects. The Agreement also mandates

owners of pharmaceutical patents the enjoyment of exclusive rights to make, use, or trade the drug.

On Medicine and Health, the WTO has also impacted albeit negatively on the Universal Declaration of Human Rights. The contribution of Zagel cannot be discountenanced in this area as he has cited many instances of non-adherence to human rights by the WTO in the field of health. In his words, 'For instance, the right to health was encroached upon by the Thai Cigarettes case, the Hormone Beef case and the Asbestos case, as well as by the TRIPS agreement which impedes poor people from access to affordable medicine, namely generic drugs, which are produced, imported or sold without respecting existing intellectual property rights as protected under the TRIPS agreement.'

The Office of the United Nations High Commissioner for Human Rights also had this to say about the World Trade Organization and intellectual property related human rights:

"Intellectual property protection—particularly patent protection—should lead to more investment in innovation, including in pharmaceutical research, which is necessary for the promotion of the right to health. At the same time, it may result in an overly commercial approach to innovation and a concentration of control over the dissemination of drugs and other technology in the hands of relatively few corporations. In so doing, the protection of intellectual property might lose sight of its overall developmental objectives. In particular, highly priced drugs could become unaffordable for poor people and have negative implications for the enjoyment of the right to health and other human rights"(Underlining is mine for emphasis)

Now, if drugs becomes unaffordable to the poor and certain segments of the society, can that not be said to inhibit the provisions of the Universal Declaration of Human Rights particularly Article 25.1 which provides that everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services. Article 12 of the International Covenant on Economic, Social and Cultural Rights is also instructive in this regard.

Other human rights which the WTO seemingly infringe upon are not limited to the following:

1. The Organization is fundamentally undemocratic in the sense that its rules are mostly made by and for corporations who have inside access to negotiations and who control the organization. Developing countries mostly do not get to participate in the decision making of the WTO
2. It limits policy space. This is usually brought to the fore when the application of WTO rules raises human right concerns.

3. The WTO also destroys the environment in the sense that they dismantle hard-won local and national environmental protections which are mostly attacked as barriers to trade.
4. The WTO by its rules, is increasing insecurity especially with its free trade policy which apparently is not working for the majority of the countries of the world.
5. The WTO is increasing hunger, hurts the poor and small countries in favor of the richer and more powerful countries.
6. The WTO also undermines local level decision making and national sovereignty by its provisions binding all countries to treat all corporations equally, etc.

14. Conclusion

The foregoing has revealed, without any shred of controversy that the WTO indeed is not at home when it comes to adherence with the Universal Declaration of Human Rights and other human rights instruments. This no doubt, as the title of the essay suggests, makes the WTO attain a status of illegality that places a question mark over its continued existence and its humanitarian front. If it is agreed that trade is an important sphere of man, and that no man is an island on his own, then there is need for a realization of the fact that better trade would only be accomplished and achieved if there is strict adherence to human rights, in this case the Universal Declaration of Human Rights.

It is conceded that while the WTO has ensured trade liberalization, its stance towards the UDHR has been a cause for concern which has no doubt affected its acceptability. In truth, the WTO cannot pay lip service to the UDHR for as Howse and Mutua have argued, the objectives of trade liberalization as set out in the WTO Agreement can only be achieved in the context of respect for human rights. The growing number of sectors covered by multilateral trade and investment agreements in an era of rapid economic globalization has enlarged the potential for new human rights abuses that are not adequately covered under existing international human rights standards. Thus, there is great need for WTO to work in this direction to ensure that it ceases to have that 'illegal' status that it has for itself.

In conclusion, it has been established that a relationship between international human rights and international trade law exists and that the latter has the means to promote the former by using a venue such as the WTO.

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The WTO thus needs to avoid paying lip service to adherence to the UDHR and other similar human rights covenants as a synergy between both would go a long way in ensuring trade liberalization which the WTO tries to foster.

References

- Benn A, (1640-1689) 'The Rover', Book of Quotations, (Geddés and Grosset, Poland, 2009) 14
- Paragraphs 1 and 2 of the Preamble to the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") made 15th April, 1994.
- Lumina C, *Free trade or just trade? The World Trade Organization, human rights and development (Part 1)* www.saflii.org/za/journals/LDD/...11.pdf assessed on 4th July, 2014
- Hinz M.O, *The paradigm of human rights and its relevance for Africa*. http://www.fb10.unibremen.de/inputs/pdf/universalitaet_kulturalitaet_menschenrechte.pdf&sa accessed at 12th July, 2014 at 02:55am
- Howse and Mutua: *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization*, <http://www.ddrd.ca/english/commndoc/publications/globalization/wtoRightsGlob.htm> assessed on 30th June, 2014
- Aaronson S.A, *Seeping in Slowly: How Human Rights Concerns Are Penetrating the WTO: World Trade Review* (2007) available at http://www.usitc.gov/research_and_analysis/economics_seminars/2008/Aaronson.pdf&sa assessed on 24th August, 2014
- Rehman J, *International Human Rights Law* (Pearson Education Ltd, Edinburgh Gate, England, 2010) 75
- Rodley, *The Treatment of Prisoners in International Law*, (Clarendon Press, 1999) 3
- Buchanan J.M, *Alternative Perspectives on Economic and Public Policy Report* (Cato Industries, Vol.6, No1, 1984) 1-5.
- Finger J.M, *The GATT as International Discipline Over Trade Restrictions, Policy, Research and External Affairs*, (Working Papers, 1990) 123
- Caroline Dommen, "Raising Human Rights Concerns in the World Trade Organization: Actors, Processes and Possible Strategies, Human Rights Quarterly 24 (2002)
- Jackson, "The World Trade Organization: Constitution and Jurisprudence (2008) 1986-1994
- Lumina C, *Free Trade or Just Trade? The World Trade Organization, Human Rights and Development (Part 1)* available at <http://www.saflii.org/za/journals/LDD/2008/11.pdf&sa> assessed on 4th August, 2014.
- Jackson J.H, *The Jurisprudence of GATT and the WTO, Insights on Treaty Law and Economic Relations*, (Cambridge University Press, 1st Ed. 2000) 26
- Mainstreaming Human Rights Norm in International Trade Policy: A Critical Assessment with Particular reference to Current Financial Crisis available at http://gbmfconf2009.dufinance.ac.bd/papers/GBMF_Conf_Paper_for_Shima_Zaman.pdf&sa assessed on 31st December, 2013 at 3:06pm
- The Butland Report, WCED, Our Common Future, page 19.