

# INTERNATIONAL ECONOMIC LAW IN AN ERA OF MULTIPLE CRISES: Opportunities and Challenges for Africa

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## Abstract

*This Special Issue on ‘International Economic Law in an Era of Multiple Crises: Opportunities and Challenges for Africa’ is based on selected papers presented at the Sixth Biennial Conference of the African International Economic Law Network (“AfIELN”) hosted by the Ghana Institute of Management and Public Administration’s (“GIMPA”) Faculty of Law in Accra, Ghana, in June 2023. In this introduction, we set the background for the contemporary issues discussed in the conference. The issue comprises the Keynote Address, two reflections on the Keynote Address and six full-length articles.*

## 1. INTRODUCTION

The Sixth Biennial Conference of the African International Economic Law Network (“AfIELN”), hosted by the Ghana Institute of Management and Public Administration’s (“GIMPA”) Faculty of Law in June 2023, materially contributes to the discourse on international economic law (“IEL”) through the lens of Africa. This special issue of the *African Journal of International Economic Law* features selected papers from the conference, each offering a critical examination of IEL. The introduction highlights three contemporary subject matters through which Africa can capitalise on opportunities and confront the challenges it faces: the African Continental Free Trade Area (“AfCFTA”), sovereign debt, and climate governance.

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These opportunities and challenges are examined in the context of Africa's aspirations under the African Union's Agenda 2063, a master plan for transforming the continent into a global powerhouse of sustainable and inclusive development.<sup>1</sup>

The AfCFTA is arguably one of Africa's most transformative trade initiatives; it aims to break new ground by creating a single continental market for goods and services across the continent. Its primary promise lies in enhancing intra-African trade, which currently stands at about 16 percent, by reducing tariff and non-tariff barriers to trade in goods, liberalising trade in services, and harmonising fragmented regulatory frameworks. This is expected to foster economic diversification, promote regional value chains, and increase foreign direct investment ("FDI").<sup>4</sup>

The AfCFTA offers a platform for regional industrialisation, as it aims to reduce Africa's reliance on the export of raw materials and support value-added production instead. However, despite its ambitious scope, the AfCFTA faces significant challenges.<sup>5</sup> These challenges include infrastructure limitations, such as transportation and digital connectivity, which hamper the efficient movement of people, goods, and services across borders. Additionally, incomplete continental legal frameworks and uncertainties around dispute settlement,<sup>6</sup> including the investor-state dispute settlement system, further complicate the implementation of the AfCFTA Protocols.<sup>7</sup> For the AfCFTA to achieve its full potential (beyond the political will, finances, institutional capacity, and continental cooperation required), African countries must invest in infrastructural developments to ensure smoother trade flows. Sovereign debt remains a thorn for

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- 1 African Union Commission, *Agenda 2063 Framework Document—The Africa We Want* (2015), <https://au.int/en/agenda2063/overview>.
  - 2 Agreement Establishing the African Continental Free Trade Area art. 3, May 30, 2019, 58 I.L.M. 1028, 1032 (hereinafter AfCFTA Agreement); African Continental Free Trade Area (AfCFTA), *About the AfCFTA*, <https://au-afcfta.org/about/> (last visited Nov. 10, 2024).
  - 3 AfCFTA Agreement, *supra* note 2, arts. 3, 4; see also James Gathii, *Agreement Establishing the African Continental Free Trade Area*, 58 INT'L LEGAL MATERIALS 1028 (2019).
  - 4 Chidebe M. Nwankwo & Collins C. Ajibo, *Liberalizing Regional Trade Regimes Through AfCFTA: Challenges and Opportunities*, 64 J. AFR. L. 297, 312 (2020).
  - 5 Olabisi Akinkugbe, *Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment*, 28 AFR. J. INT'L & COMPARATIVE L. 138 (2020); Regis Y. Simo, *Trade in Services in the African Continental Free Trade Area: Prospects, Challenges and WTO Compatibility*, 23 J. INT'L ECON. L. 65 (2020).
  - 6 See e.g., Regis Y. Simo, *Non-Exclusivity and an Ocean of Possibilities: The AfCFTA Jurisdictional Lex Specialis*, 2 TRANSNATIONAL DISP. MGMT. 1 (2023).
  - 7 The AfCFTA Protocols include the following: Protocol on Trade in Goods, Protocol on Trade in Services, Protocol on Dispute Settlement Mechanism, Protocol on Intellectual Property Rights, Protocol on Investment, Protocol on Competition Policy, Protocol on Women and Youth in Trade, Protocol on Digital Trade.

many African countries as they grapple with unsustainable debt burdens, exacerbated by the continent's reliance on external financing and vulnerability to global economic shocks.<sup>8</sup>

This underscores the need for a reformed international debt and financial architecture that is more equitable and adaptable to Africa's economic realities.<sup>9</sup> While Africa, with its 55 countries and 1.3 billion people, represents an important and growing constituency in the global economy, its voice has been underrepresented in debt negotiations, often leaving the continent sidelined in discussions that shape international financial frameworks and determine the terms of debt restructuring. Accordingly, Africa must push for more equitable debt restructuring mechanisms that prioritise its long-term development goals and reduce the burden of debt servicing. Innovative financing solutions also present opportunities to align Africa's financing needs with its development goals.<sup>10</sup> In *Transforming Climate Finance in an Era of Sovereign Debt Distress*, James Gathii, Adebayo Majekolagbe, and Nona Tamale argue that “unless climate finance is fundamentally transformed, its growing number of instruments and initiatives will entrench the sovereign debt crisis while failing to resolve the ecological crisis that many countries are already experiencing.”<sup>11</sup>

Relatedly, climate governance is another pivotal subject for Africa, as the continent faces some of the most severe impacts of climate change, despite contributing less than 4 percent of global greenhouse gas emissions.<sup>12</sup> Africa is experiencing severe environmental challenges, including biodiversity loss, pest infestations, desertification, rising sea levels, and increasingly frequent droughts.<sup>13</sup> These impacts threaten core

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8 See African Sovereign Debt Justice Network, AFRONOMICSLAW <https://www.afronomicslaw.org/category/afsdjn> (last visited Nov. 10, 2024) (for comprehensive analysis and news updates of the African Sovereign Debt Justice Network); see also, Danny Bradlow, *Africa's debt crisis needs a bold new approach. Here's what countries can do*, WORLD ECON. FORUM (Feb. 28, 2024) <https://www.weforum.org/stories/2024/02/africa-debt-crisis-new-approach/>.

9 James T. Gathii, *How to Reform the Global Debt and Financial Architecture* (2023).

10 James T. Gathii, Adebayo Majekolagbe, et al., *Transforming Climate Finance in an Era of Sovereign Debt Distress* (2023).

11 *Ibid.*

12 United Nations, *Africa is Particularly Vulnerable to the Expected Impacts of Global Warming*, U.N. CLIMATE CHANGE CONFERENCE (2006), [https://unfccc.int/files/press/backgrounders/application/pdf/factsheet\\_africa.pdf](https://unfccc.int/files/press/backgrounders/application/pdf/factsheet_africa.pdf).

13 Gebremedhin Gebremeskel Haile, Quihong Tang, et al., *Projected Impacts of Climate Change on Drought Patterns Over East Africa*, 8 EARTH'S FUTURE 1 (2020); Abubakr A M Salih, Marta Baraibar, et al., *Climate Change and Locust Outbreak in East Africa*, 10 NATURE CLIMATE CHANGE 584 (2020); Titilayo Adebola & Chika Charles Aniekwe, *The Lake Chad Basin Region: Conflicts, Crises and Contemporary Developments*, UNIV. ABERDEEN SCH. L. BLOG (Aug. 26, 2022), <https://www.abdn.ac.uk/law/blog/the-lake-chad-basin-region-conflicts-crises-and-contemporary-developments/>.

sectors, such as food and agriculture, which are vital to the livelihoods of millions of Africans. Through continental collaboration and concerted approaches, Africa can place itself at the forefront of global conversations on climate justice, including by actively advocating for transparency in sovereign debt instruments and the scaling up of finance for climate adaptation and mitigation.<sup>14</sup> The continent's rich renewable energy resources, particularly solar, wind, and hydroelectric power, offer significant potential for a sustainable energy transition that could drive socio-economic growth and development.<sup>15</sup>

Beyond these tripartite opportunities and challenges, Africa's engagement with international economic governance institutions, such as the World Bank and the World Trade Organisation ("WTO"), continues to be marked by systemic inequalities. Despite some progress in representation, Africa remains marginalised in decision-making processes, with limited power to influence outcomes that directly affect its economies. This lack of meaningful representation in key global institutions often results in trade and investment agreements that disproportionately benefit the Global North, thus undermining Africa's development priorities. As Africa continues to confront the challenges of economic vulnerability, including commodity price fluctuations and the ongoing impacts of geopolitical tensions, the need for reforming IEL to promote inclusive growth and sustainability has never been more urgent. Strengthening economic resilience requires reforming IEL frameworks to ensure they prioritise Africa's long-term development goals, address its structural vulnerabilities, and foster greater integration into the global economy.

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14 Lukoye Atwoli, Gregory E. Erhabor, et al., *COP27 Climate Change Conference: urgent action needed for Africa and the world*, 23 *The Lancet Oncology* 19 (2022); Lukoye Atwoli, Gregory E. Erhabor, et al., *COP27 Climate Change Conference: urgent action needed for Africa and the world: Wealthy nations must step up support for Africa and vulnerable countries in addressing past, present and future impacts of climate change*, 30 *INT'L J. PHARMACY PRAC.* 492 (2022); Festus Fatai Adedoyin, Festus Victor Bekun, et al., *Glasgow Climate Change Conference (COP26) and Its Implications in sub-Saharan Africa Economies*, 206 *RENEWABLE ENERGY* 214 (2023); African Sovereign Debt Justice Network, *Statement of the African Sovereign Debt Justice Network (AfSDJN) on the Occasion of the 28th Meeting of the Conference of Parties to the United Nations Framework Convention on Climate Change (COP28)*, *AFRONOMICSLAW* (Nov. 20, 2023), <https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/statement-african-sovereign-debt-justice>; James Thuo Gathii, *Afronomicslaw Press Release: Wanjiru Gikonyo and Afronomicslaw File East Africa Court of Justice Case Against Kenya Seeking Transparency on Debt Swaps*, *AFRONOMICSLAW* (July 2, 2024), <https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/afonomicslaw-press-release-wanjiru-gikonyo>.

15 I.D. Ibrahim, Y. Haman, et al., *A review on Africa energy supply through renewable energy production: Nigeria, Cameroon, Ghana and South Africa as a case study*, 38 *ENERGY STRATEGY R.* 1 (2021).

## 2. CONFERENCE SPECIAL ISSUE PAPERS

This special issue consists of six articles. The first article in the special issue is written by Kathleen Mpofu. This paper focuses on the ongoing reforms of international investment law and addresses the viability of investor liability provisions as a missing threat in the current talks.<sup>16</sup> Mpofu argues that the reforms undertaken by UNCITRAL Working Group III fall short of the required expectations. Indeed, by focusing on procedural aspects of the investor-state dispute settlement system (“ISDS”), Mpofu argues that it legitimises the current system that prioritises the protection of foreign investors to the exclusion of other stakeholders. According to Mpofu, there is a danger of perpetuating the inequality and unfairness inherent to the existing system if the potential negative impacts of investments that affect local and Indigenous communities and how to address those are not tackled. Mpofu offers solutions on how these reforms can be better inclusive in holding investors accountable for adverse conduct, including to what extent such an approach should be incorporated in the Investment Protocol to the Agreement Establishing the African Continental Free Trade Area (“AfCFTA”).

The second article by Atupele Masanjala tackles the topic of cotton trade reform negotiations as a controversial issue at the World Trade Organisation (“WTO”), notably the associated export subsidies that are provided by developed countries.<sup>17</sup> The paper discusses the role played by the so-called “Cotton-4” countries (“C-4”) (Benin, Burkina Faso, Chad and Mali) in initiating and driving that reform and the potential benefits for other African countries engaging in the international cotton trade, notably Malawi. Masanjala begins her paper by tracing the evolution of the cotton issue in the WTO before embarking on the Malawian case study, where she evaluates the extent to which the cotton industry has used the campaign against export subsidies.

The next article by Chido Muza focuses on emerging technologies in trade, notably blockchain technology. The paper explores the potential of this technology for secured payments in international commercial transactions.<sup>18</sup> She focuses on the unique characteristics of blockchain, such as transparency, immutability, and decentralisation and argues that the existing problems of trust, security, and efficiency associated with traditional global payment systems (such as letters of credit) have found a solution

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16 Kathleen Mpofu, *Assessing the Viability of Investor Liability Provisions in the Reform Agenda of International Investment Law* (6<sup>th</sup> Biennial Conf. Afr. Int’l Econ. L. Network, 2023).

17 Atupele Masanjala, *Malawi’s Cotton Trade: Riding the Coattails of the Cotton-4* (6<sup>th</sup> Biennial Conf. Afr. Int’l Econ. L. Network, 2023).

18 Chido Teclar Mitchel Muza, *Unlocking the Potential of Blockchain Technology for Secured Payments in International Commercial Transactions* (6<sup>th</sup> Biennial Conf. Afr. Int’l Econ. L. Network, 2023).

with this tool. However, she also points out some drawbacks that the adoption of this technology may also pose, including its relative immaturity, the problems of jurisdiction when disputes arise, and the data protection challenges.

In the following paper, Mbakiso Magwape tackles the fiscal challenges associated with revenue losses resulting from tariff liberalisation under the AfCFTA.<sup>19</sup> He argues that while domestic revenue mobilisation is a priority to attain AU Agenda 2063 and to improve the standard of living and quality of life for Africans, domestic taxes are one of the most sustainable financing methods African countries leverage for development. Since taxes run parallel with trade and economic rules and play a critical part in integration, particularly on issues such as investor rights and revenue mobilisation for the government, Magwape argues that the AfCFTA project can play a significant role in facilitating harmonisation that addresses base erosion and profit shifting, and common approaches that increase domestic tax collection and revenue.

Focusing on the decolonisation of international economic law pedagogy, Suzzie Onyeka Oyakhire and Ohiocheoya Omiunu reflect on their experiences as Global South teachers of IEL while situated on the opposite sides of the North-South divide.<sup>20</sup> They seek to fill the gap in the decolonisation of international economic law pedagogy scholarship by exploring the comparative perspectives and experiences of Global South scholars who teach IEL at Nigerian and UK universities. From these personal reflective teaching experiences, Oyakhire and Omiunu highlight the benefits of networks such as the African International Law Network (AfIELN), Afronomicslaw, TWAIL, and the IEL Collective as instrumental in their critical approaches to teaching IEL in a context characterised by eurocentrism.

Completing the decolonisation topic and concluding the special issue is a paper by John Nyanje on using Swahili to decolonise the East African Court of Justice (“EACJ”).<sup>21</sup> Nyanje underscores the importance of language as a means of communication in regional courts and argues in favour of making Swahili not only an official and working language of the EACJ, but also its dominant language. Nyanje argues that the citizens of the East African Community live in a colonial continuity that makes Swahili appear

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19 Mbakiso Magwape, *AfCFTA and Revenue: Navigating Outstanding Fiscal Issues and Legal Framework to attain Agenda 2063* (6<sup>th</sup> Biennial Conf. Afr. Int’l Econ. L. Network, 2023).

20 Suzzie Onyeka Oyakhire & Ohiocheoya Omiunu, *Decolonising the Teaching of International Economic Law (IEL): A Critical Reflection of Two Global South Scholars Situated on Either Side of The North-South Divide* (6<sup>th</sup> Biennial Conf. Afr. Int’l Econ. L. Network, 2023).

21 John S. Nyanje, *Swahilisation’ of the East African Court of Justice: Decolonising Through Language* (6<sup>th</sup> Biennial Conf. Afr. Int’l Econ. L. Network, 2023).

unsuitable for use in the Court. The reform Nyanje proposes will liberate them from the shackles of colonialism that continue to oppress them and ultimately strengthen access to justice in East Africa.

### 3. CONCLUSION.

#### **BEYOND CHALLENGES: CHARTING OPPORTUNITIES FOR IEL FROM AFRICAN PERSPECTIVES**

As the continent works to realise the aspirations of Agenda 2063, a proactive and collaborative approach to IEL would be essential for achieving sustainable development and ensuring Africa's equitable participation in the global economy. While the AfCFTA provides an ambitious step in the right direction, its eight Regional Economic Communities ("RECs"): the Arab Maghreb Union, Common Market for Eastern and Southern Africa, Community of Sahel-Saharan States, East African Community, Economic Community of Central African States, Economic Community of West African States, Intergovernmental Authority on Development and the Southern African Development Community must also play their vital roles in advancing Africa's socio-economic goals. This Special Issue underscores the importance of amplifying African voices in global economic governance and fostering scholarship that bridges theory and practice. The insights offered by these papers are a testament to Africa's capacity to turn challenges into transformative opportunities for the benefit of its people and the global economic order.

Moving forward, twin interconnected avenues for building proactive and collaborative approaches to IEL are suggested. First, translating IEL research into law, policy and practice. While African academics have produced extensive research on the continent's engagement with IEL, much of this knowledge remains confined to academic discourse, limiting its impact on law/policy making.<sup>22</sup> For instance, AfIELN has markedly contributed to promoting IEL scholarship from African perspectives, having already hosted six conferences and published articles on all core IEL subjects. However, real gaps exist between the robust existing body of research and its practical application in law, policy and practice. For Africa to maximise its opportunities, a structured approach must be adopted to translate research into law/policy-making and practice. By fostering stronger linkages, academics can work with law/policymakers to translate academic insights into laws, policies and programs.

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22 See e.g., African Sovereign Debt Justice Network, AFRONOMICSLAW, <https://www.afronomicslaw.org/category/afsdjn> (last visited Nov. 10, 2024) (for publications on Afronomicslaw.org and the African Journal of International Economic Law).



Second, multi-stakeholder collaboration can constructively promote opportunities and address challenges in IEL in Africa. Key multilateral institutions, such as the African Development Bank (“AfDB”), African Export-Import Bank (Afreximbank), and the United Nations Development Programme (“UNDP”), for example, play central roles in facilitating the implementation of the AfCFTA Protocols and other Agenda 2063 programmes through financial support, technical assistance, and capacity building initiatives. Simultaneously, the private sector - from multinational corporations to small and medium enterprises - can drive investment and accelerate socio-economic growth. At the same time, civil society organisations can advocate for fair, equitable, and inclusive IEL frameworks, ensuring that marginalised voices and positions are integrated into law/policy-making and practice. Engaging with academics can provide crucial avenues for generating evidence-based and informed recommendations to anchor the activities of these actors. AfIELN remains committed to providing a platform for informed and impactful research that matters to Africa.

## CONTRIBUTORS

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