

AFRICAN STATES' PRIORITIES FOR INTERNATIONAL ECONOMIC LAW AND SOCIO- ECONOMIC PROSPERITY ON THE CONTINENT IN THIS ERA OF MULTIPLE CRISES:

Reflections on Some of the Themes in Prof. Richard Oppong's Keynote Address

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Prof. Oppong's keynote¹ is well-conceptualized, articulated and relevant to Africa's current international economic law challenges. To my mind, his paper makes eight key points, as follows:

- Fundamental shifts are occurring in the global economy that have already had, and will continue to have, serious consequences for the health of the economies and societies of almost all African countries;
- Yet, it is “not all doom and gloom” for the continent – for example, the African Continental Free Trade Agreement (AfCFTA) and the new Pan-African Payment and Settlement System (PAPSS) are key innovations that have shown significant promise in recent years;
- There is, however, a need to be more wary of overestimating the promise of regional integration in Africa;
- Scholars of African international economic law must contest the legal and other principles and bases that undergird and propel the current international economic order;
- It is imperative that regional integration projects and institutions in Africa be brought much closer to African people by ensuring much more grassroots participation [I would reframe this as “participation”];

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1 Richard Frimpong Oppong, *International Economic Law in an Era of Multiple Crises: Opportunities and Challenges for Africa*, (2025) 5 AFRICAN INTERNATIONAL ECONOMIC LAW JOURNAL.

- There is also a need to facilitate more effective implementation of the AfCFTA and other regional integration schemes in Africa by ensuring that the treaties that create them are enacted into domestic law in all their various states parties;
- If the AfCFTA is to reach its full potential to contribute to Africa's socio-economic renaissance, it will be important as well to significantly improve the trade environment on the continent (including its transport and telecommunications infrastructure); and
- Much greater effort must be made to ensure that the implementation of the AfCFTA and other regional integration schemes do not perpetuate [and I would add exacerbate] the wide inequalities that all-too-often exist within the various states and societies on the continent.

There is very little, if anything, to disagree with in this set of arguments. However, the rest of my commentary on the paper will focus on only some of the themes engaged by these points.

As a preliminary point, since many countries on the African continent face serious economic shocks (a kind of crisis), and as we are (mostly) a gathering of international lawyers we should recall that there are at least two senses in which both international law has tended to be a "discipline of crisis." This is true in at least two senses: First, in the sense of its substance and orientation being historically shaped to an extent by "crises" (e.g. World Wars 1 and 2; 9/11; underdevelopment; colonialism, etc). And second, in the sense that as its students and practitioners, we (quite understandably) love to focus on "crises".²

I should, of course, also note that what the dominant section of society characterizes as a crisis, and how important we think a crisis is, tends to be the product of certain biases, shaped as they almost always are by the circulation and operation of a mix of material and ideational power. Overall, the point is that we have a long tradition in our discipline of thinking about, and through, crises. And we have also honed the skills to do so well.

It is, however, important to note that although we are indeed in an era of multiple global crisis, I am hard put to think of an earlier era that was not as beset by multiple crises. Indeed, very little in history has ever been totally new, or has presented as

2 See, Hilary Charlesworth, *International Law: A Discipline of Crisis*, (2002) 65 MODERN LAW REVIEW 377, arguing that "International lawyers revel in a good crisis. A crisis provides a focus for the development of the discipline, and it also allows international lawyers the sense that their work is of immediate, intense relevance."

a sudden volcanic eruption. History hardly ever ruptures (or sharply divides) into two, and the “new” is almost always just “seemingly new”.³ Continuity is often more present than discontinuity.⁴ And so we must endeavor to treat the current set of crises as deeply embedded in a longstanding and much broader context; as closely connected to the historically tragic continuities of everyday life in almost all of the world (e.g. great power jostling for advantage and accumulation, the subordination of “the rest”, mass poverty, malnourishment, lack of sanitation, lack of adequate healthcare, unfair terms of trade, huge infrastructural deficits in Africa, inability to move around the world freely, etc). If we treat the crises that afflict the continent in this way, what we will generally see are heightened, renewed or exacerbated, rather than mostly new, challenges.

It is against this background that we must view some of the multiple crises that African states now confront and will likely face into the future. These include the negative economic impacts of the COVID-19 pandemic; gross/mass poverty; under-development; Russia’s invasion of Ukraine; the emergent USA/China “cold peace”; the stranglehold that one or a handful of states have over certain critical gridworks of the global economy; global governance; and a crisis of state legitimacy in Africa [and there are many others]

Concomitantly, in my view, some African states’ priorities for international economic law and socio-economic prosperity in this era, and regarding each of these crises, must certainly include how to effectively tackle the negative economic impacts of the Russia-Ukraine war, the COVID-19 pandemic and the next pandemic. Some suggestions are to pool together to significantly advance our vaccine-making capacities; and ramp-up pressure at the WTO to sustain the gains made re TRIPs flexibilities to produce generic vaccines and produce cheaper treatments. Other African priorities ought to be how to ramp up efforts to eliminate intra-African trade barriers; increase pressure at the IMF/World Bank for more debt relief; and levy even more pressure from civil society on our governments for more responsible debt accumulation practices.

As importantly, regarding the imperative of much more effectively addressing the challenge of gross and mass poverty on the continent, I would argue that: despite the Global North’s strong resistance, African states must push even harder than they have in the past for the required deeper structural reforms of the global economy.

3 See, Joanne Meyerowitz, *Introduction* in JOANNE MEYEROWITZ, ED., *HISTORY AND SEPTEMBER 11TH* (PHILADELPHIA: TEMPLE UNIVERSITY PRESS, 2003), at 1.

4 O.C. Okafor, *Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective*, (2005) 43 OSGOOD HALL LAW JOURNAL 171, at 180-182

This is in addition to taking certain local measures that will also be important in this respect. More specifically, a more favorable re-orientation of some other aspects of the global trade regime would also be significantly helpful to the vast majority of African countries. For example, the internationalization, streamlining and simplification of global non-tariff barrier regimes in the area of textiles, would be a step in the right direction. Another focus of such renewed African efforts could be toward the full elimination of the Global North agricultural subsidies that significantly hamper wealth generation among African agriculturists. So, despite the 1995 WTO Agreement on Agriculture, and a subsequent 2015 Agreement to end the export subsidies that are mainly used by rich countries, important barriers to fair trade do remain in this area. These challenges are very well known. And so the point here is not to simply rehash them here, but to argue that they are areas in which African countries must intensify their efforts to get better results if their economies and societies are to fare better in the near to medium term.

The massive infrastructure deficits that afflict almost all African states and also hinder inter-African commerce and interaction also needs urgent attention in our time. For example, for inter-African trade to become optimal, a massive amount of critical transportation infrastructure must be rapidly built both within and between African countries. Significant Chinese inroads and accomplishments in this area have now prompted the USA to create its own parallel scheme (with some G7 support). Japan also runs an infrastructure fund and has ramped up its funding capacity (though the program is still mostly Asia-focused). Access to funding and other support from the New Development Bank (the so-called BRICS Bank) is also important if African states are to close their huge infrastructural deficits.

With regard to the implications for Africans of Russia's invasion of Ukraine, it is obvious that African states and peoples are more or less now caught in the middle of great power contestation over values and geo-political advantage. This conflict has exposed the over-dependence of all-to-many African countries on the import of grains from sources outside the continent and our deep and embarrassing vulnerability in the agricultural field. An integrating Africa should therefore highly prioritize agricultural production to a much greater extent than is currently the case.

There is also no doubt that the emergent USA/China "superpower cold peace" has posed, and will for some time continue to pose, a serious challenge to African statecraft and international economic policy/law-making and implementation. It should be noted that the expression "superpower cold peace (a spin on "cold war") is taken from

Ming Wan's creative thought in this area.⁵ Thus, as Prof. Oppong suggests, a changing world is upon us, for sure! What to do? Is Africa to simply recycle its cold war strategies and experience? What lessons have Africans learnt from its international economic law praxis from the previous superpower cold war/peace? To what extent precisely is this new kind of cold war really new? What continuities meet the eye as between the defunct cold war and the seemingly new cold peace? And are there any marked discontinuities between the two?

More specifically on the question of African and other Global South peoples being "caught in the middle" of this emergent cold peace, what is the exact character of this predicament? What, if any lessons, can Africans learn from the relevant historical record – especially their own cold war histories? Could what I have referred to elsewhere as "the Bandung ethic" come to the rescue, constituted as it is by the imperative, and ways and means, of solidarity?⁶ Thus far, what has this long-touted ethic of solidarity been good for, and not good for? Under what conditions can we optimize its promise and benefits? It is remarkable that non-alignment and the Non-Aligned Movement (NAM) are still alive today even decades after the Soviet-USA cold war and the fall of the Berlin wall. As Africans tackle their current international economic law challenges, are there any lessons for them from this persistence?

Similarly, the persistence to this day of the "G77 + China" formation, despite China's great rise, may also be instructive to Africans – but what precisely are the lessons to be learnt therefrom. What lessons can African states and peoples also learn from their earlier struggles for a new international economic order (NIEO); the adoption of the Charter of Economic Rights and Duties of States; the creation of UNCTAD; the influence that the principles of common but differentiated responsibilities and the common heritage of humankind have exerted at the United Nations; and the survival of the right to development in global praxis? What is living and dead in each of these patterns of consciousness and institutions?

5 See, Ming Wan, *Japan-China Relations: Politics of Great Powers and Great Power Politics* in R.J. PEKKANEN AND S.M. PEKKANEN, EDs., *THE OXFORD HANDBOOK OF JAPANESE POLITICS* (OXFORD: OXFORD UNIVERSITY PRESS, 2021) at 843.

6 See O.C. Okafor, *The Bandung Ethic and International Human Rights Praxis: Yesterday, Today and Tomorrow* in V. NESIAH, ET AL, EDs., *BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW: CRITICAL PASTS AND PENDING FUTURES* (CAMBRIDGE: CAMBRIDGE UNIVERSITY PRESS, 2017).

These are numerous and weighty issues and questions that cannot but occupy the minds of African leaders and peoples over the next several years and perhaps even decades. There is no easy solution in sight, no ready liturgy to dictate a common direction toward the greatest possible success. Yet, one thing that can be said with a high degree of confidence, even now, is that regarding all of these challenges, heightened levels of inter- and intra-African solidarity remain key for the success of the struggle to achieve sustainable socio-economic progress on the continent.