

CASCADING CRISES CALL FOR A CONCERTED AND INCLUSIVE GONTINENTAL RESPONSE:

Reflections on Prof. Richard Oppong's Keynote

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Professor Oppong's Keynote, delivered on 21 June 2023 at the African International Economic Law Network's 6th Biennial Conference, was both timely and well-placed.¹ It was both an honour and a privilege to be invited to participate in the Roundtable Discussion following the keynote speech. This brief note reprises comments I made on that occasion. In the first response, Professor Okafor aptly reflected on how International Economic Law debate and scholarship tends to coalesce around crises-prompted reforms.² I followed, true to the mold, by recounting the contemporary crises which the keynote address and many of the conference thematic tracks discussed.

The last three years (2020 – 2023) have seen the world confronted by a staggering health crisis (COVID-19), continuing political strife accompanied by war, inexorably rising levels of poverty and inequality amidst a climate change crisis. These crises cascade into each other, thereby amplifying their negative impact. Therefore, Professor Oppong spoke to the moment and the timeliness of his remarks cannot be overstated. The conference was held in Accra, the locale of the African Continental Free Trade Area (AfCFTA) Secretariat and the site of many pan-African initiatives, which was abuzz (as usual) with innumerable conferences and meetings. This allowed all at the conference to experience the vibrancy and hope that the continent shares and provided fertile soil for Professor Oppong's remarks.

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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.

2 Obiora C. Okafor, *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*, (2025) 5 AFRICAN INTERNATIONAL ECONOMIC LAW JOURNAL.

The keynote address was both comprehensive and inspiring, covering fundamental shifts in the global economy and the promise of the AfCFTA, whilst soberly interrogating the applicable legal framework.³ Specifically, Prof Oppong considered public participation, implementation, the contribution of scholarship on how to best undertake legal reforms to ensure that the AfCFTA enable African States to uproot, or at least contain, inequalities. My comments focussed on the latter two aspects.

The COVID-19 pandemic, the first of the cascading crises I listed above, bequeathed important lessons to the African continent and its vision for the AfCFTA. The first of these is that the AfCFTA which carries significant hopes for post-pandemic recovery, being a project wholly within the control of African States. Global solidarity to counter the pandemic was very quickly knocked off its fragile pedestal by vaccine nationalism. Global South led efforts to secure concessionary reforms at the WTO through their proposal for a waiver under the Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS) were thwarted and delayed meaning that the eventual solution was both too late and woefully inadequate. That's the first lesson: seek timely solutions locally and do not rely on global solutions.⁴ Since TRIPS reform was inadequate and delayed, the AfCFTA Agreement offers a platform to drive reform and introduce the needed norms on health emergencies. Admittedly, it is one thing to have norms in place and quite another to implement them, but the implementation journey must start with norms. This is the second lesson then: establish norms and implement them.

The Russia-Ukraine war, an instance of the second type of crisis, has taught that strife and war on another continent, even though appearing distant, inevitably have an impact on Africa. In this case, one of these effects was to further jeopardise food security, which partially prompted the peace-brokering efforts of some African Presidents. Perhaps the lesson here is that continental adjustments will be required to adjust to 'global shocks', to borrow Professor Oppong's words. For the AfCFTA, this teaches that prioritising food-security related value chains are critical. Further, it goes without saying that strife and war on the continent will hinder trade as it impedes productivity and secure passage which are core elements of trade.

3 For an update on AfCFTA progress, *see generally*, African Union, *Powering Trade through AfCFTA: A People-Driven Wholesome Development Agenda*, 15 February 2023, Online: <https://au.int/en/pressreleases/20230215/powering-trade-through-afcfta-people-driven-wholesome-development-agenda#:~:text=The%20strategy%20focuses%20on%20four,production%20capabilities%20on%20the%20continent>

4 For discussion, see dos Santos, F., Ncube, C. B., & Ouma, M. *Intellectual property framework responses to health emergencies – options for Africa*, (2022) SOUTH AFRICAN JOURNAL OF SCIENCE, 118(5/6).

The AfCFTA presents an opportunity to meet these challenges through legal reforms on the continent. Professor Oppong rightly highlighted Digital Trade and Dispute Resolution as core areas which are worthy of scholarly attention. The AfCFTA Digital Trade Protocol forms part of the current (second) phase of negotiations and several papers were lined-up on the conference programme on this topic. Professor Oppong further challenged us to stop conjuring up the same old rules/norms cast in the perspective of days past but rather to consider current contexts and propose norms that are suitable. I argued that what would distinguish these African-grown norms from previous ones is to centre (1) Human Rights and (2) development through alignment with the Sustainable Development Goals and Agenda 2063. These perspectives should galvanize a framework that is inclusive and adequate to meet the prevailing challenges.

As Professor Oppong said, ‘it is not all doom and gloom’. The early successes of the AfCFTA hold out significant promise for much-needed change. For instance, the speed of ratification of the AfCFTA Agreement indicates the commitment of African States to its vision. The start of trade and its growth, with the support of the Guided Trade Initiative, is also a noteworthy milestone. However, the spectre of inequality is never far behind, and as these successes emerge it is important to build-in mechanisms to cure existing disadvantages. It is well known and accepted that the informal sector, women and youth face significant disadvantages in trade that would be exacerbated in cross-border contexts hence the attention being given to these constituencies is well-placed. From a norm-setting perspective, protocols addressing these issues are welcome, but more than legal frameworks are required so State-State co-operation as well as finance and other resource support is essential. I argued that the litmus test for the success of the AfCFTA will be how inclusive it is. How its promotion, facilitation and support of trade will cater for all players instead of focusing on formal, large and already successful enterprises and entrepreneurs.

In unearthing the key issues at the opening session, Professor Oppong set the pace and tone of the discussions over the following few days. A major theme of Professor Oppong’s remarks was that scholarship should not only critique and identify problems in the existing legal regime but also offer solutions. The conference rallied to this call as its sessions aimed to do precisely that.