***African Yearbook of International Law***

**Volume 25 (2021)**

**Call for papers**

The Editors of the African Yearbook of International law are making preparation for volume 25 of the Yearbook (2021) and would like to invite scholarly contributions in the form of an article, note, commentary (on recent developments in Africa or outside events of particular relevance to Africa), or a short digest of State practice or judicial decisions in African countries.

The structure of volume 25 will be more or less the same as the previous volumes and will consist of the following: articles on the special theme; general articles; notes and commentaries; book reviews; and basic documents (mainly African Union resolutions and African Conventions); and a section on State practice on matters of international law.

The special theme for volume 25 will be on **“*The African Continental Free Trade Area***”. The concept note on this thematic issue is attached to the present call for papers.

As regards the general articles, contributions relating, *inter alia*, to issues of civil conflicts in Africa, humanitarian Law, human rights, international criminal law, development and international cooperation, environment protection, peaceful settlement of disputes, the evolution of African regional and sub regional organizations, or other specific issues of general international law, will be welcome.

Under the section on State practice, short analytical pieces on regional or sub regional agreements of integration or cooperation, diplomatic practice and pronouncements, judicial and arbitral decisions, and emerging or unresolved disputes will be appreciated.

The length of articles should not exceed forty double-spaced pages. Longer articles will be exceptionally accepted if the length is justified by the subject- matter. All articles shall be submitted, in an electronic version [preferably in Word], to the Editors **not later than 30th September 2021**, at the following addresses:

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**Call for Papers on:**

***The African Continental Free Trade Area (AfCFTA)***

*Guest Editor: Prof. Ousseni Illy*

“The entry into force of the African Continental Free Trade Area is the most crucial event in the annals of our continent since the creation of the Organization of African Unity in 1963 and its transformation to African Union”[[1]](#footnote-1). These were the words of the former President of Niger, Mahamadou Issoufou, on the occasion of the official launch of the AfCFTA in Niamey on 7 July 2019.

Signed on 21 March 2018 in Kigali, Rwanda, the AfCFTA Agreement entered into force on 30 May 2019[[2]](#footnote-2). Comprising the Agreement establishing the AfCFTA (that could be described as the AfCFTA “Charter” and three separate protocols, namely: the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Disputes Settlement[[3]](#footnote-3), all these governed by the principle of single undertaking[[4]](#footnote-4), the AfCFTA is the product of long-drawn negotiations, the recent history of which dates back to 2012. It was indeed at the Eighteenth Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU) held on 29 and 30 January 2012 in Addis Ababa, Ethiopia, that the decision was taken to establish the AfCFTA, with the ultimate goal of creating a single market bringing together the 55 countries of the African continent.

A free trade area (FTA) may be defined as a group of two or more countries among which tariff and non-tariffs barriers to trade are eliminated on products originating in the constituent members of the area[[5]](#footnote-5). FTAs are among the various early instruments conceived by States to integrate their economies and speed up the development process[[6]](#footnote-6). Indeed, the first FTAs date back to the mid XIXth century. In 1850, Ontario, Quebec, Nova Scotia and New-Brunswick, signed an agreement abolishing customs duties on food products and raw materials among these constituent territories. This group, considered as the first FTA in the world, in turn signed a free trade treaty on natural products with the United States of America in 1854.[[7]](#footnote-7)

FTAs with customs union form part of the two types of integration expressly admitted by the World Trade Organization (WTO) as an exception to the most-favored-nation treatment clause. Article XXIV: 5 of the GATT 1994 provides in effect that “the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free- trade area”.

Free trade agreements are today the most widely used form of integration in the world and by WTO members in particular. They account for nearly 80% of the so-called regional trade agreements (RTAs) notified to this organization[[8]](#footnote-8). This attraction is easily explained, in as much as the FTA does not imply harmonization of trade and economic policies, as is the case, for example, for customs union and other more advanced forms of economic integration (common market, economic union); which pose fewer constraints for the acceding States.

The AfCFTA is imbedded in the Pan-Africanist ideal, the origins of which date back to the 18th century. Pan-Africanism, as an expression of solidarity among the peoples of Africa and peoples of African descent, was born in the context of the struggle against slavery, forced labour and colonial domination. Indeed, it was in rejecting the slavery system that Africans in Africa and Africans in the diaspora organized themselves to press for the equality of peoples and the right of Black People to live in freedom and dignity, like other peoples[[9]](#footnote-9). This spirit of solidarity marked the starting point of the Pan-Africanist movement, which enriched and consolidated itself throughout the 19th century and the early 20th century, notably through the denunciation of colonialism and the struggle for African emancipation. In the aftermath of general independence in the 1960s, the Pan-Africanist ideal re-emerged with vigour. Its content was, however, the subject of differing concerns. For some, Pan-Africanism ushered in a demand for immediate political unity in Africa; for others, it was simply the harbinger of solidarity among sovereign states; and for others still, Pan-Africanism bore the torch of long-term and phased project of unity among African states[[10]](#footnote-10).

The most ardent proponent of immediate “pan-Africanism-federation” was the illustrious Ghanaian Head of State, Doctor Kwame N'krumah, who at the time of the creation of the Organization of African Unity (OAU) in 1963, championed the cause of United States of Africa. Speaking from the perspective of the economic, political and diplomatic weakness of most of the young independent states, he held that it was urgent to achieve political unity, because this was a necessary prerequisite for any further progress on the continent. He therefore rejected approaches that preferred the gradualist and sectoral approach, while proposing an immediate federal form of organization with a government, parliament, a defense, diplomacy and citizenship outfit, a bank and a common African currency[[11]](#footnote-11). This maximalist project, supported by very few African States at the Addis Ababa Assembly which gave birth to the OAU, was deemed not only too ambitious but also dangerous by the "sovereigntists", led by the Senegalese President Léopold Sédar Senghor. These latter States therefore had no difficulty in defeating the project and in adopting an OAU of cooperation rather than an OAU of integration desired by N’krumah[[12]](#footnote-12).

About thirty years later, however, history apparently turned around and somehow - at least on paper - vindicated the champion of federalism. Faced with a continent of which the economic situation had hardly improved since its political liberation, and in a global context marked by the contraction of official development aid and the failure of a more just and more balanced “New International Economic Order”, African States decided on 3 June 1991 in Abuja, Nigeria, to create the African Economic Community (AEC), with the ultimate aim of merging all the economic spaces of the continent into an economic union, in the hope that Africa’s situation in the world would in the end improve[[13]](#footnote-13).

Although ambitious and imbued with enthusiasm, the AEC did not deliver on all the promises expected. In fact, its process had registered a huge delay twenty years after its launch, and this led the Heads of State to initiate a parallel project in 2012, a project that would give birth to the AfCFTA on 21 March 2018.

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In light of the foregoing, this special edition of the African Yearbook of International Law is driven by a central objective, that is, undertake a systemic and analytical study of the new AfCFTA. This study will cover the Agreement Establishing the AfCFTA and its protocols, annexes and appendices. Thus, the various inputs will focus on the norms and institutions governing inter-African trade as reflected in the new AfCFTA. In this regard, the AfCFTA broadly covers the main aspects of inter-African trade, especially trade in goods, including rules on non-tariff barriers, technical barriers to trade and rules of origin; trade in services; trade defense mechanisms; as well as dispute settlement within the AfCFTA. Without being directly annexed to the Agreement, the protocol on the free movement of persons will also be analyzed, given its importance as the bulwark for the optimal functioning of the AfCFTA.

This study therefore aims to clarify the content of the new rules governing African trade. Since this is also subject to other treaty regimes to which African States are parties, some inputs may further focus on the normative and institutional interactions between the AfCFTA and other norms and institutions governing African trade, particularly WTO Agreements, the Economic Partnership Agreements (EPAs) with the European Union, as well as the agreements establishing African regional economic communities (RECs).

The ultimate goal of this volume of the Yearbook is to take stock of the rules governing African trade following the entry into force of AfCFTA. By so doing, it will pave the way for assessment of how far the legal rules of the AfCFTA are able to participate in the building of the pan-Africanist ideal mentioned earlier and thus contribute to the economic development of the continent.

The various inputs could, without limitation, focus on:

## The origins and major stages of the AfCFTA establishment project

## The economic stakes of the AfCFTA

## The political and geostrategic stakes of the AfCFTA

## The legal and institutional framework of the AfCFTA

## The AfCFTA Trade in Goods Protocol

## The Protocol on Trade in Services

## The Dispute Settlement Protocol

## Rules of origin

## Trade defense mechanisms

## The Protocol on the Free Movement of Persons

- The AfCFTA and other international norms and institutions governing African trade

- Etc.

1. See *Jeune Afrique*, 7 July 2019 ([www.jeuneafrique.com](http://www.jeuneafrique.com)). [↑](#footnote-ref-1)
2. Although in force since that date, the operational phase of the AfCFTA, that is, the commencement of implementation, took off only on 1 January 2021. [↑](#footnote-ref-2)
3. These protocols have annexes and appendices of their own. [↑](#footnote-ref-3)
4. The principle of single undertaking means that the AfCFTA Agreement and its protocols form an integral whole and States must accept them all. In other words, the signing and ratification of the AfCFTA Agreement takes precedence over the protocols. See Art. 8.2 of the Agreement Establishing the AfCFTA. A protocol on the free movement of persons was also signed on the same day in Kigali, but it is separate from the AfCFTA and subject to voluntary acceptance. [↑](#footnote-ref-4)
5. See J. Salmon (dir.), *Dictionnaire de droit international public*, Bruxelles, Bruylant, 2001, p. 1146. [↑](#footnote-ref-5)
6. Other forms of economic integration are: preferential tariff area, customs union, common market and economic union. [↑](#footnote-ref-6)
7. See WTO, *Le régionalisme et le système commercial mondial*, Geneva, 1995, p. 8. [↑](#footnote-ref-7)
8. See O. Illy, *L’OMC et le régionalisme : le régionalisme africain*, Bruxelles, Larcier, 2012, p. 78 [↑](#footnote-ref-8)
9. See Organisation internationale de la francophonie (OIF), *Le mouvement panafricaniste au vingtième siècle : Recueil de textes*, Paris, 2004, p. 26. [↑](#footnote-ref-9)
10. A. MAHIOU, *La Communauté économique africaine*, *AFDI, 1993,* p. 799. [↑](#footnote-ref-10)
11. See K. N’KRUMAH, *L’Afrique doit s’unir* (Africa Must Unite) Paris, Payot, 1964, p. 177 et seq. [↑](#footnote-ref-11)
12. A. MAHIOU, *La Communauté économique africaine* (African Economic Community) *op. cit.*, p. 799. [↑](#footnote-ref-12)
13. See Articles 4 and 6 of the Treaty establishing the AEC; see also M. BEDJAOUI, "The project for the creation of an African Economic Community: Institutional and Legal Problems", *Revue algérienne des relations internationales*, 3rd quarter, 1986, p. 35 et seq. In addition to internal African reasons - disastrous economic situation - which motivated the creation of the ECA, we must also mention an international context marked in the mid-1980s *inter alia* by the success of European integration culminating in the signing of the Single European Act in 1985 and the Common Market in 1992. This European example also played a catalytic role in the launch of the ECA. See C. NG’ONG’OLA, *“Regional Integration and Trade Liberalization in Africa: The Treaty for the Establishment of an African Economic Community Revisited in the Context of the WTO System*”, JWT, vol. 33, No. 1, 1999, p. 146-147 [↑](#footnote-ref-13)