CLOSURE

Max du Plessis SC*

It is an honour to have been invited to close this evening's inaugural lecture: and what an honour indeed, to have Professor Crawford deliver the inaugural John Dugard Lecture. I can think of few people better suited to give the lecture than Professor Crawford.

As South Africans, we know that John was an international law trailblazer. The lecture this evening, in John's honour, by one of the world's greatest international lawyers, confirms that. So too, does the fact that this evening was hosted by Professor Hennie Strydom who holds the Research Chair on International Law at the University of Johannesburg.

There were others, of course, but John stood out as single-handedly fighting for international law's right of place. During the apartheid years, he did so first through his teachings and practice of international law, using its ideals and principles as a reminder of how low the racist regime had stooped by comparison. And he did so latterly, when democracy came in 1994, by championing international law as part of our Constitution's make-up, as an inspiration for how high we should aim.

As a more senior advocate at the Bar once put it to me: John was affectionately seen as a 'one-man international law band'. Today, the music John played, largely alone, has moved from the periphery to the mainstream. International law has become an integral part of South Africa's domestic and constitutional law. Not only is it domestically binding, it is justiciable before South African courts. The arc of South African law now bends towards international law – or, to keep with the image of John and his band, it beats to an international law drum. It does so in three ways.

First, all domestic statutes must be interpreted, as far as possible, so as to comply with, give effect to and be in accordance with international law.

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This is an express constitutional obligation, and according to the Constitutional Court's judgment in *S v Okah*,[1] must be the starting point for interpretation.

It is a rather revelationary position, which deserves underlining: if international law (treaty or customary) deals with a particular subject area that is also governed by legislation (which is increasingly likely), then, as a starting point, the court must determine what the position is in international law, and then interpret the legislation to comply with it if the language is capable of that.

Second, customary law is given full and direct force in South Africa by the Constitution. It must be complied with and must be applied directly (unless in conflict with the Constitution and legislation). This, too, is revelationary: it extends so far as to automatically domesticate all international crimes (for instance torture, as the Constitutional Court made clear in the *Torture Docket* case[2]).

Third, and finally, it is a violation of the rule of law, and the principle of legality, for public officials to act (or take decisions) in violation of international law, whether inside or outside South Africa. All public officials are required by the Constitution to act in accordance with international law binding on South Africa, and their decisions, including on the international plane, can be set aside by domestic courts if they violate international law. That has now been made abundantly clear by the Constitutional Court in the SADC Tribunal matter.[3]

John, as a one-man international law band, started this process. Through his persuasion and example, he inspired lawyers, judges and constitutional drafters to sing along. The result is nothing short of remarkable. John's one-man band is no more. We are all international lawyers now.

[1] *S v Okah* 2018 (1) SACR 492 (CC).

[2] See *National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another* 2015 (1) SA 315 (CC); 2015 (1) SACR 255 (CC).

[3] *Law Society of South Africa and Others v President of the Republic of South Africa and Others* 2019 (3) SA 30 (CC).