The Implementation of International Law in South Africa – Strengthening the Rule of Law by Following the German Model?

16-17 May 2014

Background Information

Both the developed and developing world are striving to create an effective and just international order. That order is directed at facilitating peaceful co-existence of nations and at cooperation to find and implement solutions to challenges that know no boundaries, including issues as diverse as international peace and security, climate change, the commercial use of outer space and organized crime, to name but a few. Given the scope of these challenges and the need for international cooperation, compliance with international law has become a vital component of the rule of law.

Non-compliance with international law can have grave consequences, not only because of the risk of countermeasures by other States, but also because of its impact on global cooperation, as well as the message it sends concerning (the lack of relevance of) law as a framework for ordering society. As an integral player of the world community as well as of regional and sub-regional organizations, South Africa, the power house of the African continent, is faced with an intricate maze of international obligations, whether related to the United Nations (UN), the World Trade Organization (WTO), the African Union (AU), international human rights law, international humanitarian law, or any other sub-regime of international law.

The challenges involved in implementing international law in South Africa are revealed e.g. by the fact that a number of important international treaties which South Africa has ratified have remained unimplemented. For example, despite the fact that South Africa was a founding member of the UN, no statute has ever been adopted to facilitate domestic implementation of UN Security Council decisions in South Africa. As a result, South Africa has to implement every Security Council decision on an *ad hoc* basis, which can lead to great delays in implementation or even non-implementation. Moreover, the absence of a domestic regulatory framework that guides the government on the execution of Security Council resolutions aggravates the lack of clear direction in South Africa's foreign policy, reflected in its ambivalent relationship towards the economic and military measures against Libya.

This discrepancy between South Africa's formal commitment to international law and the implementation of that law is a direct result of scarce capacity in the field of international law and the manner in which it interacts with regional and domestic legal orders. South African universities after the adoption of the Constitution in 1996 have emphasized – for understandable reasons in light

of its history – the development of capacity in the area of human rights. An unintended but nonetheless very real result of this development was a neglect of other sub-areas of international law, as well as the inter-action between these sub-regimes and the domestic legal order – despite the prominent role attributed to international law in the Constitution.

The challenges South Africa faces and its meagre record of compliance with international law stand in stark contrast to the German experience. When the *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* (MPI), one of the project partners of this proposal, was founded in 1924, it was meant to compensate a perceived lack of knowledge in the field in the German research community. Nowadays, comparatively well-funded institutes of international law and a well-trained academic community have ensured successful implementation of much of international law. The European experience, ranging from a string of decisions of the *Bundesverfassungsgericht* related to the European Union, to a number of cases clarifying the relationship of the European human rights system to German law, has led to an intense discussion of how to implement the relevant regional obligations. While the German case is not without its own complexities and pitfalls, it can serve as a valuable example for South Africa in trying to improve its record of implementation of international obligations. This in turn could also serve as a useful point of departure for other countries in the region that face similar challenges in relation to implementation.

The current workshop is aimed at identifying suitable techniques of implementation of international law, by comparing South Africa with Germany. It will commence with a general introduction regarding the status of international law within Germany and South Africa respectively. Thereafter the workshop will devote thematic sessions focussing on the status and implementation of international instruments pertaining to key sub-areas of international law in the two countries.

The outcomes of the workshop will be published in a book by Pretoria University Law Press (http://www.pulp.up.ac.za/) in early 2015. The workshop is organized in the context of a three year collaborative partnership between the Institute for International and Comparative Law in Africa in the Faculty of Law of the University of Pretoria and the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. This collaborative partnership is sponsored by the *Alexander von Humboldt-Foundation* and the workshop is also sponsored by the *Konrad-Adenauer-Stiftung*.

Registration

Please confirm attendance with Ms Rufaro Mavunga at Rufaro.Mavunga@up.ac.za at your earliest convenience (space is limited).

There are no costs attached to registration or attendance.