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The interpretation, application and incorporation of international law into South Africa's domestic law by South African courts, within the framework of the South African Constitution

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Propositions relating to the dissertation

THE INTERPRETATION, APPLICATION AND INCORPORATION
OF INTERNATIONAL LAW INTO SOUTH AFRICA'S DOMESTIC
LAW BY SOUTH AFRICAN COURTS, WITHIN THE FRAMEWORK
OF THE SOUTH AFRICAN CONSTITUTION

by Andreas Coutsooudis

1. While South Africa's Constitution embraces international law in various ways, its courts' approach to international law has generally lacked consistency and methodological rigour.
2. South African courts have begun to facilitate an embrace of international law that ensures that its government is held to its international law obligations, thereby giving effect to the transformative agenda and international law integration required by the Constitution.
3. While the Constitution makes customary international law, law in South Africa, its courts have failed to adopt and clearly articulate a rigorous approach to the identification and application of customary international law within the range of what is necessary, legally appropriate, and practically possible.
4. While South African courts regularly find it necessary to apply treaties both directly and indirectly, they often fail to have regard to or properly apply international law's own rules for treaty interpretation.
5. While South African courts' approach to the application of unincorporated treaties has evolved over the last three decades, they have yet to fully, clearly, or consistently articulate when and how such treaties should be applied in accordance with the Constitution.
6. The South African Constitution, as a function and consequence of its history, has a particular integrative approach to international law that is both manifest and diverse.
7. The application, determination, and enforcement of international law often occur in and through domestic legal systems.
8. Domestic courts play a central role in mediating the interaction and application of international law in the domestic sphere, as well as in holding their own governments accountable for failures to comply with international law.
9. Categorising domestic legal systems as either 'monist' or 'dualist' may obscure more than clarify.

10. Fidelity to international law requires respect for international law's own secondary rules of determination.
11. While attention to detail is crucial, it is important not to miss the wood for the trees.
12. Injustice is easily recognised, though less easily corrected, but let us be those who strive to do so.