

Editors' Introduction: John Dugard and the Protection of the Individual in International Law

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This special issue of the *Leiden Journal of International Law* is presented as a tribute to John Dugard, a grand international lawyer of our time. It is a collection of essays written by former students, colleagues, and friends, who have had the privilege of working with him over the years.

The issue has two objectives. First, it is to celebrate the outstanding achievement of John Dugard throughout his career. The scope of his contribution to international law is, indeed, nothing short of remarkable. John's scholarship has covered vast ground, with more than 150 publications and reports, ranging from the South African context to the Occupied Palestinian Territory, from apartheid and human rights to terrorism and international criminal law, from diplomatic protection to the International Court of Justice (ICJ) and its decisions, from jurisprudence to legal education and the role of African nations in the global community, from specialized articles to a classic textbook – the list is endless. The diversity of his functions – as teacher, advocate, functionary, judge, Special Rapporteur – simply cannot be captured in just a few lines. Indeed, the sheer breadth of his career posed a tremendous challenge to the editors in deciding what to include and what to exclude in this volume. We have finally opted for the theme of the protection of the individual in international law as the rubric under which the various essays of this volume are presented. The protection of the individual is much more than a catchphrase. In the view of the editors it captures the essence and sensibility of John's international law work, namely a stance of professional engagement, personal responsibility, and courage, which seeks to transform international law into a tool for the protection of the individual. Along these lines, one can quickly discern at least five broad fields or directions in his work, namely his fight against South Africa's apartheid, the international protection of human rights, his reports on the Occupied Palestinian Territory, diplomatic protection, and international criminal law. The essays that comprise this volume, which are presented below, address each of these areas in turn.

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The second objective of this book is simply to say an enormous ‘thank you’ to John for the benevolent impact that he has had on our lives, on international law, and on the world at large. This book is only a small token of our esteem and profound gratitude. The contributors to this volume represent only a small segment of the many people who have benefited from working with him. Besides being a great international jurist, John has been an outstanding mentor, colleague, and friend. His students are grateful for his true faith in younger scholars and his prescient, constructive criticism whose effect has been liberating rather than limiting. His own staff at Leiden University know him for his compassion and understanding, and his emphasis on substance as opposed to form, working *with* him instead of *for* him. John’s magnanimous and unassuming nature, which always underplays his own role and contribution to great developments for which he has been chiefly responsible, is a lesson that most of us still need to learn.

This collection of essays in honour of John Dugard aims to cover the aforementioned themes present in his scholarship and in an order that to a certain extent reflects the chronological order in which these themes were most important in John’s life. The first group of eight contributions is generally devoted to human rights law, highlighting John’s early engagement with the topic. The contributions of Judge Higgins, Larissa van den Herik, and Nico Schrijver are based on their presentations at the Seminar Organised in Honour of John Dugard at Leiden University, on 20 April 2007. Judge Higgins explains the ever increasing importance of human rights in the case law of the International Court of Justice. John’s criticism of the ICJ decision in the *South West Africa* cases is well known (for nearly a decade he debated every aspect, from the legal to the political). The same holds for his satisfaction with the Court’s recent and explicit recognition of the existence of *ius cogens* norms. Arnold Pronto elaborates on the relation between human rights and general international law, and argues that human rights principles are progressively becoming part of ‘general international law’. In doing so, Pronto pays tribute to John Dugard, who once wrote that ‘[t]oday, one of the principal aims of international law is the protection of the human rights of the individual’.¹ This is followed by a contribution by Theo van Boven, who discusses and appraises the function of a High Commissioner for Human Rights and the role of this post within the UN human rights machinery. Antoine Buyse and Rick Lawson take their turn to address a rarely touched-on aspect of human rights enforcement, namely the doctrine of recognition of states, another topic central to John’s legal scholarship. This was the subject of his 1986 Hersch Lauterpacht Memorial Lectures, where John called for a responsible use of the law of recognition, in particular one that addresses violations of peremptory norms effectively by collective non-recognition. Buyse and Lawson use John’s work as a lens for the review of recent practice in the area. They conclude that John’s argument in favour of the responsible use of the instrument of recognition is still valid and persuasive today. The penultimate contribution in this first group of essays, by Larissa van den Herik, discusses an institutionalized response to violations of international law, namely

1. *International Law, a South African Perspective* (2005), at 308.

the sanctions regime. Although designed to address violations of international law, sanctions often contribute to such violations as well. Van den Herik's paper shows the extent to which recent developments in the practice of UN sanctions have tried to address this issue. Finally, Nico Schrijver writes on the UN Human Rights Council. As successor to the Commission on Human Rights, the Council needs to address in its structure and mandate the important failures of its predecessor, and Schrijver discusses the extent to which the UN member states have been successful in this respect.

The next contribution shifts focus from general human rights issues to a specific area of John Dugard's human rights work, namely the situation in the Occupied Palestinian Territory. Despite other changes in the UN human rights machinery, the institution of special rapporteurs (both the thematic rapporteurs and the country rapporteurs) has remained in place. As Special Rapporteur on the situation in the Occupied Palestinian Territory, John Dugard draws, among other things, an analogy between the Israeli Wall and the South African apartheid regime. John repeatedly calls for appropriate concern over the situation, most recently in his valedictory lecture of 20 April 2007, which is included in this volume. Dugard's approach to the Palestinian situation is the subject of the insightful contribution of Paul de Waart, himself a renowned expert in the field.

In the next section the volume turns to another crucial theme in John Dugard's work, namely the protection of the individual by means of international criminal law. Three authors write masterfully on the crime of aggression, namely Antonio Cassese, Claus Kress, and Niels Blokker. Related to this question is the question of universal jurisdiction, which was addressed by John Dugard in his expert opinion on the *Bouterse* case before the Dutch courts. This issue is taken up in a fourth contribution, by Elies van Sliedregt, who sharply discusses the way in which the Dutch courts have dealt with cases concerning international crimes. Bridging the gap between international criminal law and diplomatic protection, the essay by Zsuzsanna Deen-Racsmány introduces us to one of John's most recent activities, namely his tenure as Special Rapporteur of the International Law Commission (ILC) on the topic. Here John once more approaches his material from the perspective of providing protection for the individual. He urges states to consider the exercise of diplomatic protection in the interest of their nationals, especially in situations of serious violations of human rights. His approach to diplomatic protection is examined in four expert essays. As has been mentioned, Deen-Racsmány writes about the relation between the law of diplomatic protection and international criminal law. This is followed by the contributions of James Kateka and Paula Escarameia, who also participated in the ILC debates. Both authors explain the manner in which John Dugard influenced the creation and subsequent adoption of the Draft Articles. The topic is concluded by Annemarieke Vermeer-Künzli's contribution, which addresses the way in which the ICJ in turn applied and interpreted the Draft Articles in its *Diallo* case.

This collection of essays is rightly concluded by the contributions of Max du Plessis and Jackie Dugard, who write on John's life and work within the complex setting of South Africa during and after the turbulent apartheid years. If nothing else,

by tracing John's work these essays depict in bright colours his central conviction that a jurist must use the law with a deep sense of responsibility and, consequently, prevent its abuse. For Dugard, the legal profession has an onerous task in this respect, which it must perform at all times, especially when confronted with the situation of the South African apartheid regime. John's advocacy, teaching, and writing at those difficult times points to individual responsibility to make the right choices, with courage and full knowledge of the power and duty that the legal profession entails. Perhaps this is the most important message of John's legacy.

Before concluding this brief introductory note, we should like to thank the many people who made this project a reality. Our gratitude goes to Ietje Barbas, whose affectionate guidance and encouragement has been instrumental. Next, we should like to thank warmly Cambridge University Press for enthusiastically embracing the project; Campus Den Haag and the Meijers Institute of Leiden University, for their financial support; the staff of the Department of Public International Law of the Faculty of Law of Leiden University, and in particular Nico Schrijver and Larissa van den Herik; the managing editor, Douwe Sikkema, the assistant editors, Andreas Schueller, Ashleigh Barnes, Matthias Vanhullebusch, and Vid Prislán, Philippa Youngman, and John Gaunt, all of the *Leiden Journal*, for their editorial work. Most importantly, however, we should like to thank all the contributors for helping to create a publication of heart and intellect.