

## **The contribution of international courts and tribunals to the methodology of international law**

### **OC - (ILA-14107) - SUBSIDIARY REVERSED: THE PRIMARY ROLE OF INTERNATIONAL HUMAN RIGHTS COURTS IN EXTRATERRITORIALITY CASES**

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Qualifications: B.Sc.(Econ.) International Relations (LSE), 1995; Diploma in Law, City University, 1996, converted into an MA (Law), 2002 (City Foundation Scholarship); Diploma in European Human Rights Law (cum laude), European University Institute, Florence, 1998; LLM (first class), Cambridge University, 1999 (Clive Parry Prize, College Prize, UK Arts and Humanities Research Board Scholarship, Whewell Scholarship); winner, UK Foreign and Commonwealth International Law Essay Prize, 1999; Ph.D. (distinction), Cambridge University, 2003 (Academic Council on the United Nations System Dissertation Award, UK Arts and Humanities Research Board Scholarship, Cambridge University Yorke Prize). Called to the Bar (Middle Temple, as a Diplock Scholar) in 1997 (non-practising).

Academic employment: Full-time, tenured member of the Faculty of Laws, University College London, University of London, since 2002: Lecturer 2002-2005, Associate Professor from 2005; Vice Dean for Research, 2007-2009. More information at <https://www.ucl.ac.uk/laws/people/dr-ralph-wilde>. Previously, taught part-time at Cambridge University and LSE; Henry Fellow and a Visiting Scholar at Yale Law School; worked as research assistant on international law to Professor Michael Reisman at Yale Law School and Professor James Crawford SC at Cambridge University. Visiting Professor at the University of Texas School of Law (2004); Adjunct Professor at Georgetown University Law Center (2005-9); Senior Global Research Fellow, New York School of Law (2010-11); Visiting Faculty Member, Legal Studies Department, Central European University, Budapest (2011); Senior Fellow, Melbourne University Law School (2011 and 2013); Visiting Professor, UCLA School of Law (2012 and 2019); Senior Visiting Research Fellow, Fundação Casa Rui Barbosa, Rio de Janeiro (2012-4); Visiting Professor at the Federal University of Paraíba, João Pessoa, Brazil (2015); Senior Visiting Fellow at Al Quds University, Palestine (2015); Visiting Research Professor at Tel Aviv University, Israel (2015); Visiting Fellow at the British School in Athens (2017); Visiting Professor at the Fundação Getúlio Vargas in Rio de Janeiro (2017); Visiting Fellow at PUC-Rio de Janeiro (2018 and 2019); Visiting Fellow, Harvard Law School (2019).

Prizes: Book, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press, 2008), won the Certificate of Merit (book prize) of the American Society of International Law in 2009. In 2010 awarded a Philip Leverhulme Prize by the Leverhulme Trust. The Prizes are awarded annually to individuals under 40 based at UK institutions who are judged to be 'outstanding scholars who have made a substantial and recognized contribution to their particular field of study, recognized at an international level.'

Teaching and enabling: Undergraduate and master's degree courses on general international law, the law on the use of force and the law of armed conflict, United Nations law and international human rights law, including international refugee law. At various times served as convenor of each of these courses, as well as acting as principal supervisor for nine doctoral students and research assistants/fellows. Enabling responsibilities at UCL have included appraisals, recruitment, the UK Research Assessment Exercise and Research Excellence Framework, management, student careers, finances, external relations, admissions and research funding. As Vice Dean for Research was responsible for research strategy internally and represented the Faculty both at college level and externally, both in the UK and internationally. Served as an external examiner for master's and doctoral degrees at Oxford, Cambridge, King's College London, LSE and Tel Aviv Universities, and reviewed manuscripts and article proposals for a range of publishers and journals, including Oxford University Press and Cambridge University Press.

Appointments: Member of the Advisory Panel on Public International Law of the British Institute for International and Comparative Law, the Equality and Diversity Advisory Panel of the UK government Research Excellence Framework (REF) assessment exercise, a Panellist for the UK Higher Education Equality Charter (Athena SWAN and Race Equality)

assessments, and an Evaluator (of research grant proposals) for the European Commission Research Executive Agency. Previously served as Academic Secretary of the British Branch of the International Law Association, 2004-11, promoting the Branch as a forum for collaboration on international law in the UK, via a seminar series run at UCL weekly during term time drawing practitioners, academics and students from across London and beyond to hear leading experts present on a range of international law topics. Also during the same period served as one of the two UK representatives on the international ILA Executive Council. Formerly a Trustee and member of the Board of Directors of the AIRE (Advice on Individual Rights in Europe) Centre in London (human rights NGO which brings test cases to the European Court of Human Rights in Strasbourg, and trains judges from central Europe and the Balkans in human rights law), and a member of the Advisory Board of the UCL Centre for International Courts and Tribunals, the Steering Committee of the UCL Institute for Human Rights, the UK Lawyers' Committee of Peace Brigades International (NGO providing volunteer support to human rights defenders in developing countries), the governing boards of the LSE and the University of London, the Executive Council of the American Society of International Law, the Executive Board of the European Society of International Law, the executive Committee of the UK Human Rights Lawyers' Association, and the Advisory Committee of International Lawyers for Africa. Member of the editorial advisory boards of the Cambridge International Law Journal and the London Review of International Law. Formerly member of the editorial advisory boards of Current Legal Problems, the International Journal of Statebuilding, the journal Global Change, Peace & Security, the Yale Journal of International Law and the Yale Human Rights and Development Law Journal. Formerly joint book review editor of the International and Comparative Law Quarterly. Formerly a member of the Peer Review Council of the Arts and Humanities Research Council

Research: General international law; international human rights law; the law and practice of colonialism, occupation, international territorial administration, the League of Nations Mandate System and the United Nations Trusteeship System, 'state-building' and 'post-conflict reconstruction'; the concept of trusteeship over people in international law and public policy; the extraterritorial activities of states, and the application of international law, including human rights law and refugee law, to this activity; the law and policy relating to forced migration, including refugees and internally displaced people; the administration of camps housing refugees and internally displaced people by the Office of the UN High Commissioner for Refugees (UNHCR); international organizations, including the United Nations, notably issues of legal responsibility (including that of member states), applicable law, immunities and reform; human rights law and overseas aid policy; the relationship between different areas of international law; international legal theory; state immunity and its interface with international criminal law and international human rights law; the jurisdiction of the International Criminal Court; human rights law in wartime and occupation situations, and its relationship to the law of armed conflict, occupation law, rights/obligations emanating from UN Security Council Resolutions, and transitional justice; the law and practice of statehood and recognition of statehood, in general and in relation to the territories of the former Yugoslavia, notably Kosovo, in particular; international interventions (past/present/proposed) in the following places: the territories of the former Yugoslavia, especially Bosnia and Herzegovina, Eastern Slavonia (Croatia) and Kosovo; East Timor; Western Sahara; the Palestinian Territories; Jerusalem; West Irian/Irian Jaya; Leticia (Colombia) in the 1920s; Danzig and the Saar in the 1920s and 1930s; the Congo in the 1960s; South West Africa/Namibia before independence.

Collaborative research projects: Previously involved in the following cross-disciplinary international research projects: (1) United Nations University-funded project on legitimacy and international law; (2) Oxford University/Folke Bernadotte Foundation, Sweden-funded project on comparative approaches to exit strategies in the context of occupation, peacekeeping and colonialism; (3) Rapporteur of the international ILA Study Group on Reform of the United Nations, leading a study by experts from around the world, which concluded its work in 2011; (4) Co-Rapporteur of the International Law Association (ILA) International Committee on Human Rights Law, an international grouping of human rights experts engaged in collaborative research on human rights law. Also a member of the London Transitional Justice Network and the Consortium on Extraterritorial Obligations in relation to Economic, Social and Cultural Rights (ETO-Consortium).

Publications and research grants: Author one book, fifteen sole-authored and one joint-authored book chapters, fourteen sole-authored and one joint-authored major-length articles, and nineteen shorter book chapters and journal articles, in peer-review academic publications across several disciplines, including in the American Journal of International Law and the European Journal of International Law. Publication list accessible at <http://www.laws.ucl.ac.uk/people/ralph-wilde/>. Grants awarded as P.I. (totalling over £1million): Starting Grant (in the 'Consolidator' category) from the European Research Council; Research Fellowship from the UK Leverhulme Trust; major Project Grant from the AHRB; Small Grants from the UK Nuffield Foundation and the British Academy. AHRB project assessed on its completion by the Council to be 'outstanding.'

Consultancy on international law and international public policy: To governments, international organizations, NGOs, individuals and other private clients. Member of the legal team in the Quark case before the English Court of Appeal and the House of Lords (as it was); advisor to the NGO CARE on the application of human rights law to UK overseas aid policy; co-author of a legal opinion with Professor James Crawford SC and Professor Philippe Sands QC for the US human rights organization Human Rights First on the US position relating to the International Criminal Court; advisor to a group of UK and European parliamentarians in connection with the amicus curiae brief submitted to the US Supreme Court in the Hamdan case concerning detainees in Guantánamo Bay; lead UK representative at a diplomatic meeting with the Chinese government in Beijing on China's possible ratification of the International Covenant on Civil and Political Rights; legal advisor to the Chagos Islanders in their legal actions against the UK in relation to their removal from (what is now called) the British Indian Ocean Territory (BIOT); legal advisor to the Negotiation Support Unit on the range of options for internationalization and shared sovereignty of Jerusalem; legal advisor to the applicant, Peter Tatchell, in an attempt to have an international arrest warrant for torture issued against Robert Mugabe in the English courts.

Conference organization: Involved in the organization of, chairing panels at and serving as Rapporteur for a range of international conferences. Rapporteur for the 7th Bi-annual Conference of the interdisciplinary International Association for the Study of Forced Migration, in South Africa, 2001; member of the Program (organizing) committee for the American Society of International Law (ASIL) Annual Meeting, 2007; representative of the ASIL on the organizing committee of a joint conference with the Dutch societies of international law, 2005; Chair of the Organizing Committee of the British Branch of the International Law Association Annual Conference in London, 2006.

## **Abstract**

Reflecting a common trope in international dispute settlement generally, the conventional wisdom in human rights law is that reparations provided by domestic judicial remedies are the ideal/norm/default. The provision of such reparations by international judicial remedies is a subsidiary, exceptional corrective of last resort, if the domestic option is absent or deficient. The merits of this general approach are placed into question when the focus is on the situation of the rights of people affected by the actions of foreign, non-sovereign states. The profoundly different political relationship between people and a foreign state, when compared to people and the state in whose territory they reside, places into question commonplace ideas about the dialectical relationship between the normative character of domestic versus international remedies, and so, in consequence, such ideas about the public good served by reparations provided by international judicial remedies. The legitimacy of reparations provided through domestic human rights review, and their position as the ideal when compared to reparations through international human rights review, is rooted in part in the role national courts play within the domestic polity. This creates the potential for tensions to arise when such courts are called up on to adjudicate conformity to human rights standards by the executive branch of their state when it is acting abroad, affecting people who do not form part of the national polity. Equally, the mismatch between the identity of the polity national courts are affiliated to, and the identity of a foreign state acting in the territory of that national state polity, places into question the validity of such courts exercising jurisdiction over the foreign state. The present paper will explore these and other tensions, considering the thesis that in the case of extraterritorial state action, the exact opposite of the commonplace assumption about the dialectic between national and international remedies should prevail: reparations provided through international human rights adjudication should be regarded as serving a different public good, not as a secondary last resort, but as the primary means of ensuring that remedies are provided in a manner that sits above and thereby transcends the irreconcilable political tensions manifest in domestic human rights remedies.

**Palavras-chave : extraterritoriality, subsidiarity, international dispute settlement**