

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

OC - (ILA-14182) - STATING THE OBVIOUS: THE CONTRIBUTION OF INTERNATIONAL COURTS AND TRIBUNALS TO THE METHODOLOGY OF DETERMINING STATEHOOD UNDER INTERNATIONAL LAW

Stephen Harsley (United Kingdom)¹

1 - UN Women

Stephen Harsley

EDUCATION

Master of Laws (LL.M.) cum laude - Maastricht University (Maastricht, The Netherlands)
Specialisation in Human Rights

Bachelor of Laws (LL.B.) - Maastricht University (Maastricht, The Netherlands)
Specialisation in European Law

EXPERIENCE

UN Women - Programme Officer - Parliament and Justice
Dar es Salaam, Tanzania (03/18 - Present)

IPPF European Network - Advocacy Intern - European Engagement
Brussels, Belgium (03/17 - 12/17)

European Parliament - Schuman Graduate Trainee - citizens' Rights and Constitutional Affairs Policy Department
Brussels, Belgium (10/16 - 02/17)

Abstract

Even as international law has evolved to offer limited forms of international legal personality to non-state actors, it remains a primarily state-centric system. Whether it is determining if an armed conflict is international or non-international or establishing if the ratification of a treaty is legally possible, determining whether or not an entity is a state remains key to the proper application of international law. International courts and tribunals, among them the ICC, ICTY and ICJ have all encountered this issue in different forms and have all approached their respective problems in different ways. The ICC when confronted with the issue of Palestinian acceptance of its jurisdiction approached the issue from a recognition based standpoint, accepting the vote of the UN General Assembly to recognise Palestinian Statehood. The ICTY, in its Rules of Procedure set out a more functional approach, including what could be described as 'de facto states' within its possible definition of statehood. The ICJ also re-shaped the approach to statehood through unilateral declarations of independence through its Kosovo opinion. These three methodologies have provided a potential path to a more 'functional' approach to statehood under international law that may well come to be more and more influential in the future, particularly when applied to international criminal and humanitarian law and may help to find a more unified path through the issue of political recognition and its complex relationship with the law.

Palavras-chave : Statehood, ICTY, International Criminal Court