

# Seminar

## The Kosovo Declaration of Independence of 17th February 2008 and the Advisory Opinion of the International Court of Justice of 22 July 2010.

Tony Carty

Sir Y K Pao Chair in Public Law,  
University of Hong Kong  
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LG103, LG1 Floor, KK Leung Building  
The University of Hong Kong



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The Declaration of Independence by Kosovo led to Serbia launching a major diplomatic initiative to drive the UN General Assembly to request the International Court of Justice to declare the Declaration contrary to international law. It had the support of Russia, China, Spain and other countries which continue to refuse to recognize Kosovo's independence. The Court has returned an Advisory Opinion which categorically supports Kosovo. The arguments of Serbia and its allies were that the political institutions of Kosovo were those of an autonomous region and that the principle of territorial integrity of existing states always took precedence over the principle of the self-determination of peoples. The Court rejected the first argument and ignored the second. It said simply that the representatives of the people of Kosovo had, through their parliamentary Assembly, declared their independence as a people and not merely as the members of the Provisional Assembly set up under Security Council Resolution 1244 (1999). The Court did not enter into the debate about the relationship between the principles of territorial sovereignty and self-determination. It said that there was no general rule of customary law that could be read out of the practice of states, to the effect that states considered unilateral declarations of independence illegal. The Court has been criticized for not dealing in depth and systematically with all the issue of the Kosovo case, but it appears, nonetheless, to have issued quite a radical judgment on a major issue regularly facing the international community, and after the intervention of most states - including China for the first time - in the arguments before it. Will the Advisory Opinion have consequences in the foreseeable future? Should it be accepted as a sound contribution to the development of international law or rejected as one more example of the failure of the Court to shoulder the responsibility that the United Nations and the peoples of the world look to it to bear?

Tony Carty is the Sir Y K Pao Chair of Public Law at the University of Hong Kong. He was born in the "autonomous region" of Northern Ireland within the United Kingdom and has lived most of his professional life in Scotland, which has now, since 1999, its own autonomous Parliament. He is the author of various works on the theory, philosophy and history of international law, most recently *The Philosophy of International Law* (2007). He authored some years ago a book on the history of Ireland and international law, *Was Ireland Conquered?* (1996, Pluto Press), a study of the context of the Anglo-Irish Treaty of December 1921, which led to the setting up of the Irish Free State. He is engaged on a joint research project with the Center for International Law of the University of Amsterdam on the implications of the construction of the modern European State in the 16th and 17th centuries for the rule of law in international society.

Please email Flora Leung at [fkleung@hku.hk](mailto:fkleung@hku.hk) to reserve a place.