

KOSOVO SYMPOSIUM

Symposium: The ICJ Advisory Opinion on the Unilateral Declaration of Independence of Kosovo Editors' Introduction

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The present symposium follows on from a workshop held at the University of Cambridge on 2 September 2010 by the Interest Group on Peace and Security (IGPS) of the European Society of International Law,¹ in collaboration with the Centre for International Security and European Studies (CESICE) of the University of Grenoble II² and the International Law Centre of the Université Libre de Bruxelles.³

The contributors to this symposium are all academics, well known for their works in the fields of self-determination, secession, ethno-political conflicts, and international administration of territories. In the following pages, they extensively explore the many facets of the advisory opinion delivered by the International Court of Justice on 22 July 2010 on the 'Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self Government of Kosovo'.⁴ Despite the narrow approach of the Court, which has been recognized by all contributors, it is remarkable to realize how many important issues are raised in the seven commentaries of the opinion published in this symposium – issues that do not only concern Kosovo, but also deal with fundamental questions of international law, such as: the creation of states, external self-determination and secession, the use of force, the 'Lotus freedom principle' and the theory of the 'completeness' of the international legal order, the interpretation of unilateral acts of international

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1 See <http://igps.wordpress.com>. This is the second big event organized by the ESIL Interest Group on Peace and Security after the Symposium on 'Insurgency and International Law' organized at the Max Planck Institute in Heidelberg on 4 September 2008 and published in the *Revue Belge de droit international* (2008) 1/2, at 353–458.

2 See <http://cesice.upmf-grenoble.fr>.

3 See www.ulb.ac.be/droit/cdi.

4 Hereafter in the contributions, *Kosovo* AO.

organizations, the rights and obligations of non-state actors and the problem of attribution; and international responsibility.

The seven articles offer different viewpoints on these and other aspects of the opinion and are very complementary in such a way that it is useful to read them all for a full insight into the whole mosaic of the advisory opinion.

The first three articles focus on the ‘general international law’ part of the opinion. The first, by T. Christakis, undertakes a detailed and broad-spectrum analysis of this ‘general international law’ part of the opinion in order to examine how the Court has dealt with existing general international law governing secession. It proceeds to evaluate the effects that this opinion could have on future developments in this field. The second article, by O. Corten, discusses *in extenso* the affirmation of the Court according to which ‘the scope of the principle of territorial integrity is confined to the sphere of relations between states’ and evaluates the consequences of this approach. The third article, by Anne Peters, focuses on some particular aspects which underpin the opinion such as the temporal (purely *ex post*) perspective, the Court’s equation of legal conformity and non-prohibition, and the idea of a deliberate silence of international law and the applicability of the *Lotus* principle.

The two following articles offer a diametrically opposite approach to the advisory opinion, focusing on the analysis by the ICJ of the *lex specialis*. M. Kohen and K. Del Mar, who served as counsel and adviser to Serbia during the ICJ proceedings, heavily criticize the conclusion of the majority of the Court that the unilateral declaration of independence did not violate Security Council Resolution 1244 and international law and they go as far as to qualify the opinion as ‘a declaration of “independence from international law”’ (emphasis added). On the contrary, M. Weller, who served as a legal adviser for Kosovo in the various status negotiations, hails the opinion as an exercise of ‘virtuous judicial economy’. While Kohen and Del Mar argue that Resolution 1244 continues to apply as such to Kosovo, Weller considers that its implementation ‘is being gradually adjusted to meet the new realities’.

The symposium ends with two shorter opinion pieces about the direction that should be taken to follow on from the Court’s opinion.⁵ In the first, R. Wilde analyses the consequences that certain aspects of the opinion could have for other disputes, and especially the finding that sub-state groups are free to unilaterally terminate a Security Council-imposed process aimed at enabling the resolution of a dispute. In the second, H. Hannum argues that neither supporters nor opponents of Kosovo’s independence gained much from the opinion, that no definitive conclusion about Kosovo’s status can be drawn without agreement between Pristina and Belgrade, and, finally, that outsiders should avoid making prejudgements or interfering in this outcome.

5 As of 22 September 2010, 70 out of 192 (36%) United Nations member states have formally recognized the Republic of Kosovo as an independent state. Honduras is the only country that recognized Kosovo in the two months between the release of the ICJ advisory opinion and the publication of the symposium. For updates, see www.kosovothanksyou.com/.