
Letters to the Editors

Dear Editors,

Jan Klabbers' essay 'The Cheshire Cat That Is International Law' (EJIL 31:1) responds, *inter alia*, to my article "'Codification by Interpretation": The International Law Commission as an Interpreter of International Law' (also EJIL 31:1). Klabbers attributes to me the position that the ILC is an 'authoritative interpreter' in the sense of a 'legislator, without there being the intermediary step of the diplomatic conference to reconsider the work of the ILC' (Klabbers, at 278). It is not, and I have not claimed so. The ILC's interpretations are *not* 'authentic or authoritative' interpretations, in the sense of conclusive or binding; and they cannot be taken into account on the basis of the rule set forth in Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties (VCLT) (Azaria, at 189–190). Rather, the ILC's pronouncements can be seen as an '*offer of interpretation*' to states whose reactions to the ILC's interpretations may give rise to the means of interpretation set forth in Article 31(3)(a) and (b) of the VCLT. The silence of states vis-à-vis the ILC's pronouncements – within and outside the Sixth Committee of the United Nations General Assembly – *cannot* be taken outright as acceptance of the ILC's interpretations as the correct interpretations. My understanding of Klabbers' use of the word 'authoritative' is that the ILC's interpretations exercise influence as persuasive determinations of the law. Indeed, the ILC's (interpretative) pronouncements may attract such attention by states and others (Azaria, at 190). However, as I argue, each interpretative pronouncement of the ILC has to be assessed on its own merit, *and* by reference to the reaction of States. The ILC's interpretations – despite the fact that they are influential – cannot replace, and are tamed by, states' reaction.

Klabbers also suggests that I consider the ILC to be 'a-political' (Klabbers, at 279). Yet, because he chose a direct method to critique the politics surrounding the ILC, he perhaps lost sight of the fact that my analysis emphasizes the *process character* of the ILC's working and its relationship with the Sixth Committee *because* I am well aware of the politics within and surrounding the ILC and *because* I do *not* consider the ILC to be 'a-political'. Positive law scholarship is essential for our common understanding about what the law is (or is not) and what the different legal arguments entail *in order to* be able to have a *meaningful* discussion about 'political theory staples'. And, as academics, we may choose particular tools – in the case of my article, positive law – in order to trigger a reaction from other scholarship

(positivist or other), and in this regard I am grateful to Klabbers for engaging with my work.

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A substantive response to Jan Klabbers' arguments can be found on EJIL:Talk! here: <https://bit.ly/3rSLiwL>.