Chapter 12

The Dynamic Interplay between the Interpreters of Security Council Resolutions*

1. In the advisory opinion on *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (the “Kosovo advisory opinion”), the International Court of Justice described in general terms its approach to the interpretation of UN Security Council resolutions as follows:

94. Before continuing further, the Court must recall several factors relevant in the interpretation of resolutions of the Security Council. While the rules on treaty interpretation embodied in Articles 31 and 32 of the Vienna Convention on the Law of Treaties may provide guidance, differences between Security Council resolutions and treaties mean that the interpretation of Security Council resolutions also require that other factors be taken into account. Security Council resolutions are issued by a single, collective body and are drafted through a very different process than that used for the conclusion of a treaty. Security Council resolutions

* First published in 11 Chinese Journal of International Law (2012), 613-622. I realize that it might be better to limit the consideration here to only the major interpreters of Security Council resolutions but that classification can be difficult. I am content that the readers will understand that we are dealing with interpreters of some importance. This comment was completed on 15 December 2012 and the websites cited were current as of this date.

The original version contains this abstract: “This editorial comment calls for (1) greater attention to the dynamic interplay between the interpreters of a Security Council resolution and those of a possible future resolution and its negative effect on the ground in peacekeeping operations, (2) abandoning the expansionist interpretation of Security Council resolutions, and (3) putting on hold any political or ideological differences and favoring the inclusion in a resolution of language that would tend to promote the protection of civilians.”
are the product of a voting process as provided for in Article 27 of the Charter, and the final text of such resolutions represents the view of the Security Council as a body. Moreover, Security Council resolutions can be binding on all Member States (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 54, para. 116), irrespective of whether they played any part in their formulation. The interpretation of Security Council resolutions may require the Court to analyse statements by representatives of members of the Security Council made at the time of their adoption, other resolutions of the Security Council on the same issue, as well as the subsequent practice of relevant United Nations organs and of States affected by those given resolutions.¹

2. In an earlier commentary in December 2010 on the Kosovo advisory opinion,² I observed that the Court’s approach was propounded in majestic generality and is destined to be cited frequently but argued that the interpretive operation in that advisory opinion itself may have over-played the autonomous or self-contained nature of the resolution and paid insufficient attention to its context and the understandings of the other parties which may have informed the intent of the Council. I claimed that these factors were particularly important when a resolution also may function as a sort of agreement or incorporate one, settling a dispute or bringing peace with a party involved, which in my view was the case with resolution 1244. In the Kosovo advisory opinion, the intent of the Federal Republic of Yugoslavia (“FRY”), now Serbia, whose acceptance of the

¹ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, 404, 442. The Court further recalled its previous statement in Namibia: “The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.” Ibid., para. 117, quoting from ICJ Reports 1971, 53, para. 114.

² Siennho Yee, Notes on the International Court of Justice (Part 4): The Kosovo Advisory Opinion, 9 Chinese JIL (2010), 763, 772-773 (Chapter 3 above).