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Introduction

The article aims to examine what a United Nation Security Council (UNSC) resolution is, when and how it can be issued, its legal status and the practical implications of this UNSC's instrument. It will also address the outcome of the resolutions that have been adopted in the context of the recent Israeli-Palestinian conflict.

1. The Context

In the aftermath of the Hamas attack on 7 October 2023, the Israeli-Palestinian conflict is still in a state of major escalation. Hamas and other armed groups from Gaza conducted a missile attack against Israel, firing barrages of rockets towards the southern and central regions of the country. The armed groups crossed the Gaza border fence into Israeli territory by land, air, and sea, where they injured, and killed both Israeli forces, and Israeli and foreign civilians. Overall, more than 1,200 Israeli and foreign nationals were killed, and around 5,400 injured (OCHA, 2024).

During the first attack, around 200 Israeli citizens were taken hostage (Dettmer, 2023). In response, the Israel Defence Force (IDF) carried out a large-scale military operation in the Gaza Strip, which has resulted in the death of thousands of civilians and the destruction of vital infrastructures. The demolition of houses, shortage of water, food, electricity, and fuel, as well as the threat of near-constant heavy bombardment has led to the displacement of an estimated 1.9 million Palestinians in Gaza, many of whom are sheltering in United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) facilities (Diakonia, 2023).

As of 7 January 2024, at least 22,835 Palestinians in Gaza have been killed, around 70% of whom were women and children, while around 58,416 others have been injured. It is estimated that as of 5 January, 1,876 families have lost multiple family members (OCHA, 2024). The World Health Organization (WHO) stated that 93% of the population in Gaza is facing crisis levels of hunger, with insufficient food and high levels of malnutrition, while communicable diseases, including diarrhoeal and respiratory infections are spreading rapidly (WHO, 2024).

The military operation of the IDF and its conduct has been subject to criticism by the international community. On 6 December, United Nation Secretary-General (UNSG) Guterres sent a letter to the President of the Security Council invoking Article 99 of the UN Charter. This authorizes the Secretary-General to *"bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security"*. Guterres wrote that there is *"a severe risk of collapse of the humanitarian system"* in Gaza, and that *"[t]he situation is fast deteriorating into a catastrophe with potentially irreversible implications for Palestinians as a whole and for peace and security in the region"*, which *"must be avoided at all cost"* (OCHA, 2023). One key tool at the disposal of the United Nations Security Council (UNSC) to de-escalate tensions and foster agreement between the parties involved is the adoption of a resolution (United Nations, 2023).

2. The Legal Value of United Nations Resolutions in International Law

In the UN system, resolutions can be issued by both the General Assembly (UNGA) and the Security Council, yet it's crucial to recognize that they carry different legal weight.

Established after World War II to end the "*scourge of war and restore faith in fundamental human rights*" (UN Charter, Preamble), the United Nation General Assembly is the principal deliberative, policy-making and representative organ of the United Nations (TRT, 2017). The UNGA offers a platform for leaders from its 193 member states to discuss and make recommendations on topics crucial to global peace and security, such as development, disarmament, human rights, and international law. Every member nation has an equal voice in the Assembly and each country has one vote. Resolutions adopted in the General Assembly carry political weight, but are not binding, unlike Security Council resolutions (TRT, 2017).

The United Nations Security Council has 15 members, five of which are permanent members. Those five were key allies and victors in World War II, out of the ashes of which the United Nation was born. The five permanent members are Britain, China, France, Russia (originally the Soviet Union), and the USA. Although all 15 members have a vote, the five permanent members have veto power. Any resolution presented to the Council can be blocked by a veto from any one of the five states (TRT, 2017).

One common critique is that the UNSC does not adequately represent the diversity of the global community. The Council's five permanent members hold veto power, which some argue can lead to decisions that reflect the interests of these powerful nations rather than the broader international community (Tanzi, 2022).

It is widely acknowledged that the resolutions adopted by the UNGA are considered to be 'soft law' instruments. The term soft law is used to denote agreements, principles and declarations that are not legally binding. Instead, the resolutions adopted by the UNSC are considered 'hard law', since it refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court (ECCHR, 2022). Under Article 25 of the UN Charter, the "*Members of the United Nations agree to accept and carry out the decisions of the Security Council*".

3. Is it possible for a resolution to hold legal weight even in cases where the term "decide" is not overtly stated?

There is debate as to whether all resolutions adopted by the UNSC are binding. The crucial word of the matter is 'decision': if the Security Council uses hortatory language, such as 'recommending measures', no legal obligation arises. In addition, the Security Council routinely uses the phrase "*acting under Chapter VII*" when it e.g. establishes peacekeeping missions or authorizes the use of force. But is this phrase necessary for legal validity? The answer is in the negative (Birkenkötter, 2024).

It is not necessary to adopt a resolution under Chapter VII for it to be legally binding. It has been established for several decades that resolutions not explicitly adopted under Chapter VII can also contain legally binding obligations (Birkenkötter, 2024). There is both a textual and a systematic argument to be made that Article 25 UN Charter extends to all decisions of the Security Council.

The International Court of Justice (ICJ) addressed this question beyond doubt in the Namibia Advisory Opinion. The Court considered Security Council resolution 276 ordering South Africa to withdraw from Namibia, after the UN determined in 1966 that the South African administration in what had formerly been known as South West Africa was illegal (ICJ, 1971).

The Court declared that article 25 is not confined within decisions regarding enforcement action under chapter VII, but applies to *"the decisions of the Security Council adopted in accordance with the Charter"* (ICJ, 1971). It also stated that all member states must comply with such decisions, including members which voted against it and members of the UN who are not members of the Council. (Cahill-Ripley, 2024).

The ICJ opinion also has discussed the difference between what it calls *"exhortatory rather than mandatory language"*. Specifically, it notes that: *"The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect"* (ICJ, 1971).

4. Resolutions on the Israeli - Palestinian conflict adopted by the United Nations Security Council

The first two resolutions, adopted by the Security Council, referred to the Israeli - Palestinian War were resolution 2712 (2023) and resolution 2720 (2023). The UNSC has been divided over the subject since the 7 October attacks, only approving two of eight resolutions proposal, which both mainly dealt with humanitarian aid. Those resolutions seem to have had little effect on the ground, where UN personnel state Israel continues to block aid convoys as experts warn of looming famine (Le Monde, 2024).

RESOLUTION 2712 (2023)

The Security Council approved resolution 2712 on 15 November 2023, calling for *"urgent and extended humanitarian pauses and corridors throughout the Gaza Strip,"* marking the first time a resolution on the issue has passed since the start of the Israel-Hamas war on 7 October (UNSC, 2023).

It demands that all parties comply with their obligations under international law, including international humanitarian law, notably regarding the protection of civilians, especially children and for the immediate and unconditional release of all hostages held by Hamas and other groups, especially children.

It calls on all parties to refrain from depriving the civilian population in Gaza of basic services and humanitarian assistance indispensable to their survival. However, notably absent from the resolution was a mention of a ceasefire, and it did not explicitly reference the initial Hamas attack on Israel on 7 October. The resolution also did not address Israel's subsequent air strikes and ground offensive in Gaza, which have resulted in significant casualties, as reported by the Ministry of Health (OCHA,2024).

RESOLUTION 2720(2023).

Resolution 2720 was adopted on 22 December 2023. After days of negotiations and delay, the UNSC adopted a resolution demanding that the parties to the conflict allow and facilitate safe and unhindered humanitarian access at scale to Palestinian civilians in Gaza. The final resolution is a watered-down version of the original draft, containing only a vague call for steps to be taken to create the conditions for a sustainable cessation of hostilities. The resolution also requests the UNSG to appoint a coordinator to facilitate the flow of aid into Gaza (Benoît, 2023).

The resolution was passed with a weakened language that did not call for a ceasefire in the Israeli-Palestinian conflict, prompting a backlash with some describing it as *"woefully insufficient"* and *"nearly meaningless"* (Al Jazeera, 2023).

It came after several postponements and difficult closed-door negotiations to compromise on language that would not be rejected by Washington, which vetoed another previous resolution proposal calling for an immediate ceasefire in early December (Al Jazeera, 2023).

RESOLUTION 2728 (2024)

On 25 March, the UNSC adopted resolution 2728 (2024). This is the third resolution adopted, regarding the conflict. After more than five months of war in Gaza, the Security Council, for the first time, demanded an immediate ceasefire after the United States vetoed previous draft resolutions, abstained. Drawing unusual applause in the Security Council, all 14 other members voted in favour of the resolution which demands an immediate ceasefire for the ongoing Islamic holy month of Ramadan. The resolution also calls for the truce to lead to a *"lasting, sustainable ceasefire"* and demands that Hamas and other militants' free hostages seized on 7 October (Le Monde, 2024).

The US put forward a resolution that would have included a call for an immediate ceasefire but linked it more explicitly to the hostage release. Russia and China vetoed it, calling the language too vague. Russia introduced an amendment to add a call for a *"permanent"* rather than *"lasting"* ceasefire, but the vote failed (Le Monde, 2024).

In terms of impact on the ground in Gaza, the resolution has had no real immediate effect. Israeli Foreign Minister Israel Katz quickly took to social media to say that *"Israel will not cease fire."* Rather, United Nations resolutions are often more significant as *"weathervanes"* a means of telling where the political winds are blowing (Barron, 2024).

5. On the binding nature of the resolution and on the possibility of enforcement

As previously discussed, resolution 2728 (2024) is legally binding and, in conjunction with Article 103 of the UN Charter, takes precedence over any other treaty obligation a member state might incur. Nevertheless, the legally binding nature of the resolution has been questioned by the US. The US Representative to the UN stated explicitly that they did not agree with everything in the resolution and could not therefore vote in favour of it. But they did support, she added, *"some of the critical objectives in this non-binding resolution"* (Cahill-Ripley, 2024).

We had previously seen how the ICJ opinion also has discussed the difference between what it calls *"exhortatory rather than mandatory language"*. It notes that: *"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 the case of resolution 2728 the mandatory language is clear: the security Council *"demands"* a ceasefire (Cahill-Ripley, 2024).

There is no uncertainty in the language: what weight should a demand carry, if not that of a legal obligation? In the abovementioned Namibia Advisory Opinion, the Court found (at para. 115) that inter alia the following requests were legally binding: *"Calls upon the Government of South Africa to withdraw its administration from the Territory immediately"* (S/Res/269 (1969), para 5) and *"Calls upon all States...to refrain from any dealing with the Government of South Africa which are inconsistent with paragraph 2 of the present resolution [declaring the continued presence of South Africa in Namibia illegal]"* (S/Res/276 (1970), para 5). It is not clear on which basis there should be a difference between the words *"calls upon"* and *"demands"*. If anything, the latter has a stronger connotation (Birkenkötter, 2024).

There is no question whether the resolution 2728 is binding upon all UN member states from the wording of Article 25 (*"all members"*), which includes the state of Israel as well. But what about Hamas?

In the Kosovo Advisory Opinion, the ICJ observed that the Security Council had made requests to specific actors and that it was in a position to do so. It then stated: *"When interpreting Security Council resolutions, the Court must establish, on a case-by-case basis, considering all relevant circumstances, for whom the Security Council intended to create binding legal obligations."* (at para. 117). The demand for an immediate ceasefire, and specifically the demand of *"the immediate and unconditional release of all hostages"* can only be understood as referring directly to Hamas as well, especially considering the further calls on *"all parties"* in the same paragraph (Birkenkötter, 2024).

In consideration of this, what can be done to enforce this legally binding resolution, if one or more of the parties refuses to comply with it?

The UNSC possesses tools for enforcement as outlined in Chapter VII of the UN Charter. Article 41 allows for measures that don't involve military force, such as economic sanctions or the severing of diplomatic relations. Should these measures prove insufficient, and the Security Council deems the situation a significant threat to peace, Article 42 empowers the Council to authorize the use of military force by air, sea, or land to restore international peace and security.

The adoption of resolution 2728 regarding Gaza carries significant symbolic weight, particularly considering the US's decision not to veto it. This marks a crucial development on the international stage and could potentially exert considerable pressure on Israel. However, the issue of enforceability remains a concern, especially considering Israel's past disregard for an ICJ ruling urging them to take steps to prevent genocide (Cahill-Ripley, 2024).

Israel has repeatedly gotten away with flouting UN resolutions in the past. In December 2016, during the last days of Barack Obama's presidential term in the US, the UNSC passed a resolution deeming Israel's settlements in Palestine illegal and a violation of international law, but Israel ignored this resolution (Al Jazeera, 2024).

Ultimately, the effectiveness of this resolution hinges on the political will of member states. While its passage opens doors for further action under international law, it relies heavily on the willingness of powerful nations like the US to take a more active role (Al Jazeera, 2024).

Conclusions

This article provides a concise exploration of the mechanisms governing United Nations resolutions, delineating their legal framework and enforcement mechanisms. By scrutinizing their historical application, it becomes evident that these resolutions have increasingly functioned as political instruments, deviating from their original intended purpose. This evolution can be attributed to a confluence of factors that have emerged over time, altering the efficacy and impact of these resolutions within the international community.

Critics often point out that the UNSC's decisions regarding intervention or sanctions can be inconsistent and influenced by political considerations rather than principles of justice or international law. This inconsistency can undermine the Council's legitimacy and effectiveness.

Even when the UNSC passes resolutions, objections often highlight challenges related to their implementation and enforcement. This can include difficulties in securing compliance from relevant parties, lack of resources for peacekeeping operations, or inadequate follow-up mechanisms to ensure that resolutions are effectively implemented.

Tamer Qarmout, assistant professor in public policy at the Doha Institute for Graduate Studies, said that the vote showed how the UN has become “irrelevant” to resolving the war. *“When the UN was formed after World War II, it was supposed to tackle, to prevent similar conflicts such as the one happening in Gaza,”* he said. *“But it’s a political organization that is controlled by powerful countries, especially those with veto power at the UN Security Council. So politics is there in every policy and little detail of the UN work.”*

In conclusion, the Israeli-Palestinian conflict remains a significant challenge for the international community, with UNSC resolutions playing a crucial role in addressing its complexities. However, despite numerous resolutions aimed at promoting peace, security, and a two-state solution, the conflict persists, marked by ongoing violence, political impasse, and humanitarian crises.

The effectiveness of UNSC resolutions in this context is hindered by various factors, including geopolitical interests, lack of compliance from relevant parties, and the absence of meaningful dialogue and negotiation. Moving forward, it is imperative for the international community to reaffirm its commitment to the principles of international law, human rights, and the peaceful resolution of conflicts. This requires renewed efforts to ensure the implementation of existing resolutions, promote dialogue and reconciliation, and address the root causes of the conflict, with the ultimate goal of achieving a just and lasting peace.

Moreover, resolutions should be judged not only by their adoption but also by their implementation on the ground and their impact on the lives of those involved in conflicts. Addressing the challenges and criticisms surrounding Security Council resolutions requires ongoing commitment to strengthening the legitimacy, transparency, and effectiveness of decisions made, in order to promote peace, security, and human rights worldwide.

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