The issue of the structural reforms of the Security Council

What is a resolution?

United Nations resolutions are formal expressions of the opinion or will of United Nations organs.

The nature of the resolution determines if it is considered binding on States.

Introduction

The UN Charter establishes the UN's six principal organs: the General Assembly (GA), the Security Council (SC), the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice (ICJ), and the UN Secretariat.

 Many types of resolutions on a broad range of topics have been adopted by the principal organs and their subsidiaries since the establishment of the organization in 1945.

In general, resolutions adopted by the Security Council acting under Chapter VII of the Charter, are considered binding, in accordance with Article 25 of the Charter.

**Article 25 The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.**

Resolution 2728 (2024)

There has been controversy over whether the UN Security Council [resolution 2728](https://digitallibrary.un.org/record/4042189?v=pdf) (2024) on the Palestinian question is legally binding or not.

Resolution 2728 (2024), which states:

*(1) Demands an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire, and also demands the immediate and unconditional release of all hostages, as well as ensuring humanitarian access to address their medical and other humanitarian needs, and further demands that the parties comply with their obligations under international law in relation to all persons they detain;*

Immediately after the resolution had passed, [US Spokesperson Matthew Miller stated](https://www.state.gov/briefings/department-press-briefing-march-25-2024/) that “the resolution today is a non-binding resolution”. A similar view was expressed by Linda Thomas-Greenfield, the US Permanent Representative to the United Nations, who stated that the United States fully “support[s] some of the critical objectives in this non-binding resolution”

In a press meeting held by the E10 afterwards, the South Korean representative questioned the legal validity of the resolution on the basis that it does not contain the word “decide” and was not adopted under Chapter VII.

United Nations Charter, Chapter VII:Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression [UN charter chapter VII](https://www.un.org/en/about-us/un-charter/chapter-7)

The crucial word of the provision 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, as claimed by the South Korean representative? The answer is in the negative.

But what about resolutions that are not acting under Chapter VII of the Charter?

It has been established for several decades that resolutions not explicitly adopted under Chapter VII can just as well contain legally binding obligations.The International Court of Justice [famously stated in its Namibia Advisory Opinion](https://www.icj-cij.org/index.php/case/53/advisory-opinions):

“It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to ‘the decisions of the Security Council’ adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter which deals with the functions and powers of the Security Council.”

However this is not made very clear as proven by the questioning of the South Korean representative.

**The ICJ states:** *“The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect.”*.

 Here, the South Korean representative suggests that because the Security Council did not use the word “decides”, there is no legal bindingness. However, the Security Council does not typically decide that a ceasefire exists – it cannot will a ceasefire into existence through a decision.

 The resolution is – despite statements to the contrary – legally binding and creates a legally binding request for an immediate ceasefire during Ramadan and a legally binding request to immediately release all hostages.

Can non-State actors be bound by Council resolutions?

Apart from the legal basis under the UN Charter, the question of why non-State actors that do not give consent to the UN Charter can be bound by Council resolutions is not an easy one. The Council intended to bind 'all parties', but it lacks the power to do so. The resolution is binding only on State actors, not on non-State actors in States that are not members of the UN.