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Legal Effect of United Nations Resolutions Under International and Domestic Law

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SUMMARY The United Nations General Assembly and Security Council issue a wide variety of resolutions, which have varying legal effects on member countries. Some types of resolutions, such as those imposing sanctions, are usually binding under international law. Several principles have been identified for interpreting the legal effect of resolutions. The legal effects under international law differ from the legal effects under domestic law.

I. Introduction

The General Assembly and Security Council of the United Nations (UN) issue a wide variety of resolutions. The legal effect of a UN resolution on a UN member country depends on the nature and language of the resolution. Furthermore, the legal effect of a resolution under international law is separate from the legal effect of the resolution under a country's domestic law.

This report discusses provisions of the UN Charter relevant to the character of UN resolutions, the significance of resolutions to UN member states under international law, and their significance under member states' domestic law.

II. Relevant Provisions of the UN Charter

The UN is governed by its Charter.¹ The Charter provides that members of the UN accede to its terms by becoming members.² The acts of an international organization or its organs are legally binding on the members of the organization only if the organization's constitution so provides.³ Consideration of the provisions in the UN Charter relating to the making of resolutions is thus warranted.

Chapter IV of the Charter concerns the General Assembly. With respect to resolutions, article 10 provides for the General Assembly to discuss any matters within the scope of the Charter, subject

¹ U.N. Charter, <http://www.un.org/en/documents/charter/index.shtml>.

² *Id.* art. 2(2) (“All members . . . shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”).

³ C.F. AMERASINGHE, PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS 172 (2d rev. ed. 2005) (“[A]s a general principle, . . . unless there is specific and express provision in the constitutional instruments or an ineluctable implication arises from the provisions of such instruments, acts of organs [of international organizations] do not have binding or similar effect in the operational field.”).

to article 12, and to make recommendations to UN members or to the Security Council.⁴ Article 11(1) specifically provides for the General Assembly to make recommendations concerning “general principles of co-operation in the maintenance of international peace and security,” including disarmament.⁵ Article 11(2) states that the General Assembly may discuss and make recommendations relating to maintaining international peace and security, subject to article 12, and with the proviso that questions on which “action is necessary” must be referred to the Security Council.⁶ Article 12 provides that the General Assembly should avoid making recommendations on situations the Security Council is addressing.⁷

Chapter V includes general provisions on the functions and powers of the Security Council. Article 24(1) gives the Security Council the “primary responsibility” within the UN for maintaining international peace and security.⁸ Article 25 provides that “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”⁹

Chapter VI concerns the peaceful settlement of disputes. Article 33(1) states that the parties to an international dispute should seek to resolve their differences through negotiation, judicial settlement, or other peaceful means.¹⁰ Article 33(2) provides for the Security Council to “call upon” the parties to settle their dispute by peaceful means.¹¹ Article 36(1) states that the Security Council may “recommend appropriate procedures or methods of adjustment” with

⁴ U.N. Charter art. 10 (“The General Assembly may discuss any questions or any matters within the scope of the present Charter . . . and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.”).

⁵ *Id.* art. 11(1) (“The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.”).

⁶ *Id.* art. 11(2) (“The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it . . . , and, except as provided in Article 12, may make recommendations to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council.”)

⁷ *Id.* art. 12 (“While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.”).

⁸ *Id.* art. 24(1) (“In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”).

⁹ *Id.* art. 25.

¹⁰ *Id.* art. 33(1) (“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”)

¹¹ *Id.* art. 33(2) (“The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such [peaceful] means.”)

respect to such disputes.¹² Article 37(2) allows the Security Council, with respect to disputes that threaten international peace and security, to “recommend such terms of settlement as it may consider appropriate.”¹³

Chapter VII gives the Security Council the authority to address threats to the peace, breaches of the peace, and acts of aggression. Article 39 provides for the Security Council to determine whether a threat to the peace, breach of the peace, or act of aggression exists, and to either make a recommendation or to take measures under other articles of chapter VII.¹⁴ Article 40 provides for the Security Council to call upon the parties to comply with provisional measures to prevent aggravation of a situation involving a threat to or breach of the peace.¹⁵ Article 41 provides for the Security Council to call upon members to apply economic or diplomatic sanctions.¹⁶ Article 42 provides for the Security Council, when measures under article 41 would be inadequate, to engage in military action to maintain or restore international peace or security.¹⁷

Lastly, article 103, in chapter XVI on “miscellaneous provisions,” renders obligations of members under the Charter superior to obligations under other international agreements.¹⁸

III. UN Resolutions Under International Law

A. General Assembly Resolutions

The UN Charter permits the General Assembly to issue resolutions making “recommendations” regarding matters within the scope of the Charter, and on general principles of maintaining peace

¹² *Id.* art. 36(1) (“The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.”)

¹³ *Id.* art. 37(2) (“If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.”)

¹⁴ *Id.* art. 39 (“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”).

¹⁵ *Id.* art. 40 (“In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable.”).

¹⁶ *Id.* art. 41 (“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”)

¹⁷ *Id.* art. 42 (“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”).

¹⁸ *Id.* art. 103 (“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”).

and security.¹⁹ General Assembly “recommendations” are, as the word implies, primarily hortatory rather than legally binding. While resolutions employing hortatory language do not create legal requirements, they may give rise to certain duties or obligations on the part of member states.²⁰ For example, member states may have a duty to consider a recommendation in good faith and, if requested, explain their action or inaction in response.²¹ Moreover, because membership in an international organization entails an obligation to cooperate in achieving the organization’s objectives, and recommendations reflect organizational objectives, a recommendation may create a duty of member states to cooperate in promoting the recommended action.²² Aside from the duty to consider recommendations in good faith and the organizational duty to cooperate in promoting recommended actions, however, there generally is no duty to comply with recommendations as such.²³

The General Assembly has also adopted resolutions in the nature not of recommendations, but of declarations or determinations of general international law principles. While the text of the Charter does not provide for such declarations, it has become an established practice over the course of several decades, premised on the inherent powers of the General Assembly. Where adopted by a unanimous or nearly unanimous vote, such declaratory resolutions are deemed by some commentators to create a presumption that the principles stated in the declaration constitute customary international law, which presumption can be overcome by evidence of substantial conflicting practice or contrary international law principles.²⁴

B. Security Council Resolutions

Chapters V, VI, and VII of the UN Charter address the powers of the Security Council. Chapter V sets forth general provisions regarding the Security Council. Chapter VI, on the peaceful resolution of disputes, provides for the Security Council to “call upon” parties to resolve disputes peacefully²⁵ and to recommend means by which to settle disputes.²⁶ Chapter VII empowers the Security Council to take action to maintain or restore international peace and security, including making recommendations,²⁷ establishing sanctions,²⁸ or taking military action.²⁹

¹⁹ *Id.* arts. 10, 11.

²⁰ C.F. AMERASINGHE, *supra* note 3, at 177.

²¹ *Id.*

²² *Id.* at 179.

²³ *Id.* at 180. Some have argued that there are circumstances where the duty to cooperate in good faith has been ignored to the point of becoming an abuse of right, and at some point compliance will be required in order to avoid such abuse of right. In addition, a duty to comply with a recommendation may also arise from elements extraneous to the recommendation. *Id.* at 180–83.

²⁴ *Id.* at 187–89. For example, General Assembly resolutions declaring the principles of nonintervention and the obligation to refrain from the threat or use of force have been deemed to elevate these principles to the status of customary international law. *Id.* at 189–90.

²⁵ *Id.* art. 33(2).

²⁶ *Id.* arts. 36(1), 37(2).

²⁷ *Id.* art. 39.

²⁸ *Id.* art. 41.

Chapter V gives the Security Council the “primary responsibility” for maintaining international peace and security.³⁰ It also provides, in article 25, that UN members “agree to accept and carry out the *decisions* of the Security Council in accordance with the present Charter.”³¹ While this provision suggests that Security Council actions under any provision might bind all UN members, because some decisions of the Security Council are of a recommendatory nature while others of an obligatory nature, the legal force of any given decision is subject to interpretation.³²

One reading of chapters VI and VII suggests that resolutions under chapter VII may be binding while those under chapter VI may not be. That view was presented in a matter that came before the International Court of Justice (ICJ) in 1970,³³ when the Security Council asked the ICJ to render an advisory opinion on Security Council Resolution 276 (1970).³⁴ Resolution 276 condemned South Africa for failing to comply with prior Security Council resolutions regarding the situation in Namibia, and called upon member states to refrain from dealings with the government of South Africa with respect to Namibia. The Resolution did not specify the Charter provisions providing its authority and it appeared not to be based on chapter VII, therefore some argued that it was not binding.³⁵ The ICJ rejected that view, noting that article 25 appears in chapter V rather than chapter VII, and the text of article 25 does not confine it to enforcement actions specifically, but Security Council decisions generally.³⁶

The advisory opinion also laid down principles for determining when Security Council resolutions are binding:

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

²⁹ *Id.* art. 42.

³⁰ *Id.* art. 24(1).

³¹ *Id.* art. 25 (emphasis added).

³² HANS KELSEN, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* 740 (1951) (“Whether the ‘call’ [in a resolution] is an act constituting an obligation of the parties concerned or a simple ‘recommendation’ depends on the intention of the Security Council and especially on the consequences which it attaches to a failure to comply with the call.”); HITOSHI NASU, *INTERNATIONAL LAW ON PEACEKEEPING: A STUDY OF ARTICLE 40 OF THE UN CHARTER* 109 (2009) (“the legal force of peacekeeping measures [has] to be ascertained by interpretation of each resolution, rather than that of the Charter’s provisions in general terms.”).

³³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, 1971 ICJ REP. 16, <http://www.icj-cij.org/docket/files/53/5595.pdf>.

³⁴ S.C. Res. 276, U.N. Doc. S/RES/276 (Jan. 30, 1970), [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/276\(1970\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/276(1970)).

³⁵ See Rosalyn Higgins, *The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under Article 25 of the Charter?*, 21 INT’L & COMP. L.Q. 270, 275–77 (1972) (describing arguments before the ICJ regarding source of authority for Resolution 276).

³⁶ 1971 ICJ REP. 16, para. 113.

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.³⁷

This brief statement by the ICJ has been called the “principal judicial authority” on the interpretation of Security Council resolutions.³⁸

While the Namibia case involved a resolution involving sanctions outside chapter VII, in the post-1990 era there have been many sanctions regimes, some comprehensive and some targeted,³⁹ and in most cases the Security Council has expressly invoked article 41.⁴⁰ There is general agreement that sanctions resolutions in which article 41 is specifically referenced are binding on member states.⁴¹

Outside the context of article 41 sanctions, commentators have identified several principles in interpreting Security Council resolutions and evaluating whether a given resolution should be considered binding:

- While there are substantial differences between Security Council resolutions and treaties, a general rule of interpretation for all international instruments, derived from the interpretive principles for treaties found in the Vienna Convention on the Law of Treaties,⁴² is that they should be “interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.”⁴³
- The preambles to resolutions sometimes may give guidance as to their general purpose, but it is the operative paragraphs that govern the legal effect of a resolution, so preamble language should be used with caution in interpretation.⁴⁴
- Security Council resolutions are often part of a series, and they should be understood and interpreted as such.⁴⁵
- Because Security Council resolutions are essentially political in nature, the circumstances of their adoption and available information on their negotiating history may be particularly valuable in interpretation.⁴⁶

³⁷ *Id.* para. 114.

³⁸ Michael C. Wood, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK Y.B. U.N. L. 73, 75 (1998).

³⁹ Vera Gowlland-Debbas, *Sanctions Regimes Under Article 41 of the Charter*, in NATIONAL IMPLEMENTATION OF UNITED NATIONS SANCTIONS: A COMPARATIVE SUMMARY 8–18 (Vera Gowlland-Debbas ed., 2004).

⁴⁰ *Id.* at 19.

⁴¹ *Id.*

⁴² Vienna Convention on the Law of Treaties arts. 31–33, May 23, 1969, 1155 U.N.T.S. 331, 340, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

⁴³ Wood, *supra* note 38, at 88–91.

⁴⁴ *Id.* at 86–87.

⁴⁵ *Id.* at 87.

⁴⁶ *Id.* at 93–94.

- Not all resolutions invoking chapter VII are necessarily binding, because recommendations are one option within chapter VII and the Security Council sometimes adopts non-binding language in resolutions explicitly invoking chapter VII.⁴⁷
- Where the Security Council begins a paragraph indicating it “urges” or “invites,” rather than “decides,” the provision is likely intended to be exhortatory and not binding.⁴⁸
- When the Security Council begins a paragraph saying it “calls upon” or “endorses,” the paragraph is ambiguous as to whether it is intended to be binding.⁴⁹
- There are instances where “the circumstances and positions of members are so ambiguous and divided that it is difficult to ascertain a coherent, unified will.”⁵⁰ In such cases it may be necessary to consult subsequent Council discussions to determine the significance of a Security Council resolution.⁵¹

IV. UN Resolutions Under Domestic Law

The foregoing discussion concerned the legal effect of Security Council resolutions from the standpoint of international law. The treatment of Security Council resolutions in the domestic law of member states is a separate issue, however.

International law leaves for each country’s domestic law the mechanisms by which states incorporate international law into their legal systems.⁵² In many countries, treaties that are deemed “self-executing” automatically become effective law domestically, while non-self-executing treaties, while creating binding obligations under international law, require implementing legislation to become effective domestically.⁵³ In such countries, Security Council resolutions that are binding as a matter of international law, such as article 41 sanctions resolutions, are generally considered non-self-executing, and therefore considered not binding as a matter of domestic law unless domestic implementing legislation is enacted.⁵⁴

⁴⁷ SECURITY COUNCIL REPORT, SPECIAL RESEARCH REPORT 2008 No. 1, SECURITY COUNCIL ACTION UNDER CHAPTER VII: MYTHS AND REALITIES 9 (2008), <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Research%20Report%20Chapter%20VII%2023%20June%2008.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.* at 9, 11.

⁵⁰ *Id.* at 11.

⁵¹ *Id.* at 11-12.

⁵² Vera Gowlland-Debbas, *Implementing Sanctions Resolutions in Domestic Law*, in NATIONAL IMPLEMENTATION OF UNITED NATIONS SANCTIONS: A COMPARATIVE SUMMARY 33, 35 (Vera Gowlland-Debbas, ed., 2004).

⁵³ *Id.* at 39. One such country is the United States. See, e.g., *Medellin v. Texas*, 552 U.S. 491, 509–16 (2008), <http://www.supremecourt.gov/opinions/07pdf/06-984.pdf>, in which the Supreme Court ruled that treaties at issue in that case, the Vienna Convention of Consular Relations Optional Protocol, the ICJ statute, and relevant portions of the UN Charter, were non-self-executing and could not be given effect as federal law absent implementing legislation.

⁵⁴ Gowlland-Debbas, *supra* note 52, at 40. For example, in a US case in which private parties sought to enforce Resolution 276 on Namibia by enjoining the Secretary of Commerce from violating it, the US District Court for the District of Columbia ruled that the provisions of the UN Charter pursuant to which the resolution was passed were

Apart from the question of whether Security Council resolutions are self-executing, even where a Security Council resolution has been made effective domestically, some countries put treaties and binding international obligations at the same level of legal significance as national legislation, and as a result subsequent legislation can abrogate conflicting prior international obligations.⁵⁵

non-self-executing, and therefore the resolution could not be enforced by the court. *Diggs v. Dent*, 14 I.L.M. 797, 804 (1975), available in JSTOR database, <http://www.jstor.org/stable/20691442> (subscription required).

⁵⁵ Gowlland-Debbas, *supra* note 52, at 56. The United States is one such country that applies the “last in time” rule, which allows subsequent legislation to abrogate a conflicting prior international obligation. For example, in a 1972 decision, the U.S. Court of Appeals for the District of Columbia Circuit ruled that Security Council Resolution 232 (1966), which imposed a trade embargo on Southern Rhodesia, and which President Johnson made domestically effective through executive orders, was abrogated by the subsequently enacted “Byrd Amendment,” which precluded the President from prohibiting the importation of strategic materials from non-communist countries if it was not prohibited from communist countries. *Diggs v. Schultz*, 470 F.2d 461, 466 (D.C. Cir. 1972), cert. denied, 411 U.S. 931 (1973), available at <http://openjurist.org/470/f2d/461/diggs-v-p-shultz> (“the purpose and effect of the Byrd Amendment . . . was to detach this country from the U.N. boycott of Southern Rhodesia in blatant disregard of our treaty undertakings. . . . Under our constitutional scheme, Congress can denounce treaties if it sees fit to do so, and there is nothing the other branches of government can do about it.”).