

United Nations Security Council Resolution 1325 on Women, Peace, and Security — Is it Binding?

by Kwadwo Appiagyei-Atua*

“[Security Council] decision[s] may bind all UN Member States, including ‘those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council.’”¹

INTRODUCTION

UN Security Council Resolution 1325 on Women, Peace, and Security (Resolution 1325) passed unanimously on October 31, 2000.² The Preamble to Resolution 1325 recognizes the disparate impact of armed conflict on women and girls. It further notes that understanding this impact informs “effective institutional arrangements to guarantee their protection and full participation in the peace process [which] can significantly contribute to the maintenance and promotion of international peace and security.”³ The Resolution therefore imposes obligations on various actors on the international stage in an effort to promote and protect the rights and dignity of women and children during conflict.⁴

Resolution 1325 places three principle obligations on states and other relevant entities. Firstly, the Resolution seeks to ensure greater representation, participation, and involvement of women in peace-making processes, and

to include a gender perspective in peacekeeping operations.⁵ Secondly, the Resolution calls for respect for humanitarian law with a special emphasis on ensuring better protection of women and girls, such as excluding impunity clauses, in order to better promote justice for female victims of conflict.⁶ The state must also take affirmative action to prevent third parties from abusing the rights of women and girls during armed conflict. Thirdly, it calls for the promotion of the rights of women and girls and their special needs during the process of repatriation, resettlement, reintegration, and reconstruction.⁷ Further, states have the duty not to interfere or act in any way that would compromise women and girls’ enjoyment of fundamental rights.

Even if Resolution 1325 is solely a product of Chapter VI, there is no bright line rule establishing that Security Council resolutions created under Chapter VI are non-binding and that those under Chapter VII are binding.

Since the passage of Resolution 1325, it has been dogged by controversy regarding its binding nature. Some, particularly non-governmental organizations, assert that it has binding force, while others, especially diplomats, argue that it is a series of principles to guide state practice.⁸ This article argues that the Resolution is legally binding because a Security Council resolution may be obligatory regardless of whether it is cre-

ated under Chapter VI or VII. The International Court of Justice (ICJ) has established a series of factors to analyze whether the Security Council intended for a resolution to be legally binding. These factors are: the language used in the resolution; prior reference establishing the importance of the subject matter through discussions, resolutions, or documents; and the binding charter provisions in the resolution.⁹ In addition to these factors, the author adds international law, which includes reference to, or reliance of the resolution on, treaties, *jus cogens* norms, customary law, and other sources of international law. The ultimate purpose of this article is to provide all relevant stakeholders, including civil society organizations, with the tools necessary to ensure that states comply with the binding provisions of Resolution 1325 and thereby ensure better protection of women and girls during and after armed conflict.

* Kwadwo Appiagyei-Atua is currently Senior Lecturer at the Faculty of Law and Legon Centre for International Affairs and Diplomacy (LECIAD), University of Ghana, Legon. He teaches Public International Law, International Human Rights Law, International Environmental Law and the Law of Diplomacy. Mr. Appiagyei-Atua holds a Bachelor of Laws (Honours) from University of Ghana, Legon, a Barrister-at-Law from Ghana School of Law, Accra, a Master of Law from Dalhousie University, Halifax, NS, Canada, and a Doctor of Civil Law from McGill University, Montreal, Quebec, Canada. This paper is dedicated to his sons, Leon Ekow and Yaw Appiagyei-Atua, students of the University of Ghana Basic School, Legon.

IMPACT ON STATUS OF RESOLUTION 1325

The UN Charter does not use the term ‘resolution.’ UN practice places a generic meaning on the word, conveying a decision or a recommendation.¹⁰ Generally, a ‘decision’ is considered binding, while a ‘recommendation’ is deemed non-binding.¹¹ Yet, the meaning of a decision or a recommendation can change depending on context. Therefore, a rigid application of these distinctions leads to confusion, as some decisions are non-binding and some recommendations have the force of law.¹²

Article 25 of the UN Charter is key to understanding the obligatory nature of decisions made by the UN Security Council. It stipulates that, “[m]embers of the United Nations agree to accept and carry out the *decisions* of the Security Council in accordance with the present Charter.”¹³ Article 25 is listed under Chapter V, entitled “The Security Council,” which addresses the composition, functions and powers, voting process, and procedures of the Security Council.¹⁴ Some scholars argue that Article 25 only governs Chapter VII, which addresses coercive measures.¹⁵ In other words, Security Council decisions are only binding when enforcement powers are invoked pursuant to a threat to the peace, a breach of the peace, or an act of aggression.¹⁶ According to this view, the mandate of the Security Council under Chapter VI generally, and under Articles 33, 34 and 36 in particular, is not binding.¹⁷ This argument is anchored in the belief that the Security Council’s Chapter VI role is limited solely to assisting Member States to reach a peaceful agreement with as little intervention as possible.¹⁸ In this capacity, the Security Council could only make non-binding recommendations for peaceful dispute settlement.¹⁹

Some practitioners contend that Resolution 1325 was passed under Chapter VI of the UN Charter and that the provisions of Resolution 1325 are, at best, only morally binding.²⁰ Alain-Guy Tachou-Sipowo, an international law scholar at the Université Laval in Québec, has asserted that “thematic resolutions do not impose the same binding obligations as those of decisions made in response to a threat to peace or international security”²¹ since they are no more than “pale imitations of international conventions.”²² However, this view represents a narrow, restrictive interpretation of UN Security Council resolutions. With the evolution of the concept of security from the traditional state-centric perspective to a broader human-centred approach, the notion of what constitutes a threat to the peace calls for a more liberal interpretation. As noted by Professor Stefan Talmon, of the University of Oxford’s Faculty of Law,

An examination of the Council practice and the common understanding of the United Nations membership in general, shows that “threat to the peace” is a constantly evolving concept. Since the beginning of the 1990s, the understanding of what constitutes a “threat to the peace” has broadened considerably from the narrow concept of the absence of the use of armed force, to the wider concept of situations that may lead to the use of armed force.²³

Thus, the distinction between Chapters VI and VII is becoming blurred, encouraging a more liberal interpretation of Article 25 as applied to resolutions created under non-coercive measures as well.

It is possible that Resolution 1325 was not passed solely under Chapter VI, where some of its articles reflect the influence of Chapter VII. Paragraph 6 of the Resolution, which concerns training for troops prior to deployment in conflict zones and post-conflict situations, is a strong example of Chapter VII influence.²⁴ Deployment of troops normally takes place after the Security Council has determined the existence of a threat to the peace, breach of the peace, or acts of aggression and after the Security Council has taken a decision to deal with the situation.²⁵

CAN RESOLUTIONS PASSED UNDER CHAPTER VI BE BINDING?

Even if Resolution 1325 is solely a product of Chapter VI, there is no bright line rule establishing that Security Council resolutions created under Chapter VI are non-binding and that those under Chapter VII are binding. Rosalyn Higgins, an international law scholar and former President of the ICJ, is a strong proponent of the position that Chapter VI resolutions can be binding. She has noted, for example, that “in certain limited, and perhaps rare cases, a binding decision may be taken under Chapter VI (just as non-binding resolutions may be passed under Chapter VII).”²⁶ This view finds support in the ICJ’s advisory opinion in the *Namibia Case*.²⁷ The *Namibia Case* addressed the legal consequences flowing from a series of UN Security Council resolutions calling on South Africa to cease its occupation of Namibia.²⁸ Ultimately, the ICJ held that South Africa’s actions in Namibia were illegal, found that the Security Council resolutions were binding, and called on all states to refrain from any dealings with South Africa involving Namibia.²⁹ In determining that the Security Council resolutions were binding, the Court held:

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.³⁰

The *Namibia* decision was confirmed in the 2004 *Palestine Wall Case*,³¹ in which the ICJ concluded that the respondent state had “contravened” numerous binding obligations imposed by multiple Security Council resolutions.³² None of the resolutions at issue in these cases were adopted under Chapter VII of the UN Charter.³³

Therefore, if Resolution 1325 was passed under Chapter VI, it is not necessarily non-binding. Rather, to determine the nature of Resolution 1325, a contextual approach is needed. Article 24 grants the Security Council permission to act on behalf of UN member states to maintain international peace and security through the application of the powers covered under Chapters VI, VII, VIII and XII.³⁴ A contextually based reading of Article 25 in light of Article 24 demonstrates that Security Council resolutions can be binding under Chapter VI decisions.

Thus, to determine the intent of the Security Council in creating a resolution, at least three factors need to be assessed: the language used in the resolution, the discussions leading to it, and the Charter provisions invoked.

Looking at the scope of Article 25 application, the Repertory of Practice for the UN Charter has found that:

[t]he Security Council has on no occasion defined the scope of the obligation incurred by Members of the United Nations under Article 25, nor has it expressly indicated on any occasion that a particular decision should or should not be considered as falling under that Article.³⁵

Marko Divac Öberg, a legal officer at the International Criminal Tribunal for the Former Yugoslavia, similarly contends that “the binding effect of Security Council resolutions belongs to the realm of international peace and security and includes enforcement under Chapter VII of the UN Charter, but is not limited to that.”³⁶ Higgins takes this one step further and asserts that the “*travaux [preparatoires]* of the UN Charter provide some evidence that Article 25 was not intended to be limited to Chapter VII, or inapplicable to Chapter VI.”³⁷ This position seems to be confirmed in the *Namibia* case, where it was noted that:

The decisions made by the Security Council . . . were adopted in conformity with the purposes and principles of the Charter and in accordance with its Articles 24 and 25. The decisions are consequently binding on all [Member States] of the United Nations which are thus under obligation to accept and carry them out.³⁸

Accordingly, Article 25 may apply to resolutions passed under Chapters VI, VII, VIII, and XII. Regardless of which chapter of the Charter applies to Resolution 1325, the binding nature of Article 25 should also apply, allowing for a binding obligation on states.³⁹

DOES RESOLUTION 1325 CREATE LEGALLY BINDING OBLIGATIONS?

If Article 25 applies to resolutions under Chapter VI, it is important to determine in which “limited, and perhaps rare, cases a binding decision may be taken under Chapter VI.”⁴⁰ The ICJ factors can help to clarify when the Security Council intended for such a resolution to be binding. The ICJ clearly established these factors in the *Namibia* case:

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 of Article 25, the question 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 provision invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.⁴¹

Thus, to determine the intent of the Security Council in creating a resolution, at least three factors need to be assessed: the language used in the resolution, the discussions leading to it, and the Charter provisions invoked.⁴² This article includes a fourth factor by addressing the invocation of international laws and norms, including the application of treaties, customary law and *jus cogens* norms, among others.

LANGUAGE

The language of resolutions can be categorized as either weak or strong. Weak language can indicate the non-binding nature of the resolution and strong language can indicate binding intent. Words such as “decide,” “declare,” and “call upon” are examples of strong language, while “urge,” “recommend,” and “encourage” are weak.⁴³ Resolution 1325 uses a combination of weak and strong language. The weak language includes “urge” and “encourage.” For example, in Paragraph 2 the resolution “[e]ncourages the Secretary-General to implement his Strategic Plan of Action . . .” while in Paragraph 3, the Secretary-General is urged to appoint more women as special representatives and envoys to pursue good offices on his behalf. On the other hand, among the strong language used is “call upon” and “call on,” which can also denote a binding obligation where the Security Council could use weaker language such as “recommend.” For example, under paragraph 8, the Resolution “[c]alls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective . . .”⁴⁴ Furthermore, paragraph 9 “[c]alls upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls as civilians.”⁴⁵ Higgins notes that by using “call upon,” “the Council is in effect requiring the parties to note an obligation which they have already accepted under Article 33(1).”⁴⁶ Thus, the language used in Resolution 1325 has both strong and weak elements, whereby the assertion that the weak language of the Resolution makes it non-binding is insufficient.⁴⁷

PRIOR DISCUSSIONS AND RESOLUTIONS

The intent of the Security Council can also be determined by looking at the frequency of prior discussions and/or resolutions that ultimately led to the passage of the new resolution. In the *Nuclear Weapons Case*⁴⁸ the ICJ noted that “a series of resolutions may show the gradual evolution of the *opinio juris* required

for the establishment of a new rule.”⁴⁹ Sir Michael Wood, a member of the International Law Commission, is also of the view that one can seek the intent of the Security Council by reference to its *travaux préparatoires*, which do not differ from a contextual, or an object and purpose, approach to interpretation.⁵⁰ The *travaux préparatoires* are embedded in previous discussions and documents made in connection with the resolution in question. The Preamble to Resolution 1325 recalls a number of UN-based documents that support the provision’s focus on women and girls.⁵¹ The Security Council’s prior engagement with the effects of conflict on children (Resolution 1261 and Resolution 1314) and civilians generally (Resolution 1265 and Resolution 1296) demonstrates a growing awareness in the global community of the impacts of conflict on vulnerable groups.⁵² Further, the Beijing Declaration,⁵³ which addressed the importance of raising women’s status generally and engaging them in all areas of society, as well as the Outcome Document of the 2000 General Assembly Special Session convey the growing focus on women as the recipients of human rights.⁵⁴ The prevalence of these documents help to form a strong foundation for Resolution 1325 by demonstrating that the international community has been interested in and concerned about women and conflict issues for some time. Resolution 1325, therefore, is the product of multiple forums from which the importance of the legal status of women and girls in post conflict situations can be clearly demonstrated.

INVOCATION OF UN CHARTER PROVISIONS

Another factor to be considered when determining the intent of the Security Council is the invocation of Charter provisions. In essence, this conveys the idea that the resolution is deriving its force and legal validity from the Charter, the mother document or constitution of the UN.⁵⁵ One argument in favour of this proposition is the supranational status that the UN enjoys, which is derived from the Charter and permits authoritative decision-making without requiring continuous consent to affirm its validity or binding nature.⁵⁶ While Resolution 1325 does not contain a direct reference to a particular UN Charter provision, the Preamble “[b]ear[s] in mind the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,”⁵⁷ A preamble serves as an interpretive guide to the intention of the Security Council in the creation of a resolution.⁵⁸ The Preamble also references the Secretary-General’s Strategic Plan of Action, which in turn references the Charter.⁵⁹

INVOCATION OF INTERNATIONAL NORMS

In the *Namibia* case, the ICJ also noted that recourse should be “in general, [to] all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.”⁶⁰ Among these surrounding circumstances are the existing principal sources of international law, such as treaties, customary law, and *jus cogens* norms, which can provide guidance as to whether the Security Council intended a resolution to be binding.⁶¹ Resolution 1325 evolved from, and builds on, previous treaty law commitments to protect and promote the rights of civilians in war zones and post-conflict contexts around the world. They include the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the UN Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999, the UN

Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 2000, and the Rome Statute of the International Criminal Court.⁶² Many of the state duties that Resolution 1325 establishes are derived from these binding sources, and support their imple-

mentation with regard to women. Due to the binding nature of treaties on states parties, many of which have ratified these obligations, Resolution 1325 simply reinforces already binding obligations.

Resolution 1325 also reflects and partly codifies customary international law and *jus cogens* norms. Paragraph 9 of Resolution 1325 specifically refers to international laws governing conflict, and codifies prohibitions of certain war crimes, while Paragraph 10 references sex and gender-based crimes, and codifies international law prohibitions of genocide, crimes against humanity, and war crimes. By incorporating *jus cogens* norms into a resolution, the Security Council reaffirms a commitment to accomplishing international peace and security through the furtherance of customary international law. Including these norms in Resolution 1325 may show that the Security Council believes that peace and security cannot be achieved where the interests and wellbeing of women and children are not mainstreamed in the conflict prevention and resolution efforts.

APPLICATION OF RESOLUTION 1325 BY STATES AND OTHER ACTORS

The African Union both directly and indirectly endorses Resolution 1325 in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, thereby indicating a regional commitment to the binding status of the Resolution.⁶³ Moreover, since the passage of Resolution 1325, the Security Council has taken concrete steps towards

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integrating women's roles in implementing peace and security into its deliberations, as well as to adopt other resolutions that emphasize particular aspects of Resolution 1325.⁶⁴ Cora True-Frost, a legal scholar at Harvard Law School, asserts that "[r]esolution 1325 has had important impacts on behaviour at both the international and national levels."⁶⁵ She notes that between 1994 and the adoption of Resolution 1325 in 2000, a paltry four percent of Security Council resolutions mentioned women, girls, or gender.⁶⁶ This figure, however, increased to over 25 percent in recent years.⁶⁷ In addition, the Security Council has invoked Resolution 1325 in over twenty-five binding Chapter VII situation-specific resolutions, including those on Iraq, Cote d'Ivoire, Haiti, Democratic Republic of Congo, Burundi, and Sudan.⁶⁸

Several countries have taken action to affirm Resolution 1325.⁶⁹ A number of countries have adopted Resolution 1325 into national laws or Action Plans.⁷⁰ The Knesset (Israeli Parliament), for instance, in July 2005, passed an amendment to the Women's Equal Rights Law, in the spirit of Resolution 1325, authorizing the representation of women on public committees and 'national policy shaping teams.' The application of Resolution 1325 by a critical mass of actors supports the

legally binding nature of the resolution because it demonstrates state and Security Council willingness to invoke and apply its provisions.

CONCLUSION

It is possible to infer the intent of the Security Council by relying on the language used, the discussions informing the formulation of a resolution, reference to Charter provisions, and international laws invoked and relied upon. Resolution 1325 contains strong language in many of its provisions.⁷¹ The Resolution seeks to support women's roles in promoting peace and security, objectives shared by the UN Charter. Additionally, Resolution 1325 is firmly grounded in, and reflects, several major treaties, customary law and *jus cogens* norms that regulate peace, security, conduct of war, and women and children's rights. In sum, Resolution 1325 is binding because it authorizes acts that are *intra vires* the UN Charter and other international laws. Therefore, as we celebrate the 10th anniversary of the adoption of Resolution 1325, it is important to highlight the positive achievements of resolution and the obligations on all relevant stakeholders to uphold and promote the rights of women and girls during armed conflict.

ENDNOTES: United Nations Security Council Resolution 1325 on Women, Peace and Security — Is it Binding?

¹ Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16 EUR. J. INT'L L. 879, 885 (2005).

² S.C. Res. 1325, U.N. Doc. S/Res/1325 (Oct. 31, 2000).

³ *Id.*

⁴ These include Member States of the UN, the Secretary-General, all parties involved in armed conflict and those involved in post-conflict peace making and peace-keeping, including the Security Council itself.

⁵ S.C. Res. 1325, *supra* note 2, ¶¶ 1-7.

⁶ *Id.* ¶¶ 8, 11, 13.

⁷ *Id.* ¶¶ 9, 10, 12.

⁸ Torunn L. Tryggestad, *Trick or Treat? The UN and Implementation of Security Council Resolution 1325 on Women, Peace, and Security*, 15 GLOBAL GOVERNANCE: A REVIEW OF MULTILATERALISM AND INT'L ORGANIZATIONS 539 (2009). Also, see letter addressed to then Secretary-General of the Council of the European Union and High Representative for the Common Foreign and Security Policy Mr. Javier Solana by Gitti Hentschel, representative of the German Women's Security Council following the latter's Berlin conference on "Roadmap to 1325 — Gender in the EU's Peace and Security Policy" of 2007.

⁹ Öberg, *supra* note 1, at 880-81.

¹⁰ *Id.* 880.

¹¹ In the view of Marko Öberg, for example, this position reflects that of the International Court of Justice (ICJ). Öberg, *supra* note 1 at 880.

¹² Michael Wood, *The Interpretation of UN Security Council Resolutions*, 2 Max Planck Yearbook of United Nations Law 73 (1998); see also Alexander Orakhelashvili, *The Acts of the Security Council: Meaning and Standards of Review*, 11 Max Planck Yearbook of United Nations Law 143 (2007).

¹³ U.N. Charter art. 25. Emphasis added.

¹⁴ *Id.* art.s 23-32.

¹⁵ The Chapter itself touches on "Action with respect to threats to the peace, breaches of the peace, and acts of aggression." U.N. Charter, *supra* note 13, art. 34-51.

¹⁶ See Eugene V. Rostow, *The Illegality of the Arab Attack on Israel of October 6, 1973*, 69 AM. J. INT'L L. 272 (1975); Gerald M. Adler, *Israel and Iraq: United Nations Double Standards — UN Charter Article 25 and Chapters VI and VII*, Middle-East-Info.org, 1 (Aug. 20, 2003), available at <http://www.middle-east-info.org/gateway/unitednations/index.htm>.

¹⁷ Article 33 imposes on parties to a dispute the primary responsibility to reach their own resolution. See Adler, *supra* note 16, at 5. Article 34 permits the Security Council to investigate disputes. Article 35 allows states to bring disputes to the attention of the Security Council or the General Assembly. See U.N. Charter, *supra* note 13.

¹⁸ Adler, *supra* note 16, at 4.

¹⁹ *Id.*

²⁰ See, e.g., Medica Mondiale, *Women, Peace and Security in Afghanistan, Implementation of UN Security Council Resolution 1325 Five Years On: Post-Bonn Gains and Gaps* (Jan. 2007), available at http://www.peacewomen.org/portal_resources_resource.php?id=846; See also, Alain-Guy Tachou-Sipowo, *The Security Council on Women in War: Between Peacebuilding and Humanitarian Protection*, 92 INT'L REV. RED CROSS NO. 877, 1 (2010).

²¹ Tachou-Sipowo, *supra* note 20, at 217.

²² *Id.* at 213.

²³ Stefan Talmon, *The Security Council as World Legislature*, 99 AM. J. INT'L L. 175, 180 (2005).

²⁴ S.C. Res. 1325, *supra* note 2, ¶ 6; U.N. Charter, Chapter VII.

²⁵ See Adler, *supra* note 16 at 4.

²⁶ 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, 282 (1976).