# Why Today's UN Security Council Resolution Demanding an Immediate Ceasefire Is Legally Binding

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Today, the Security Council adopted a resolution calling for an immediate ceasefire in Gaza during Ramadan as a first step to a "lasting sustainable ceasefire". This comes after a months-long impasse and a total of five vetoes on the matter (three vetoes from the United States and two vetoes from China and Russia, with the latest vetoes cast just last week).

Resolution 2728 (2024) (full text here, the official text should be up here within the next few days) was introduced by the ten non-permanent members (E10) under the leadership of Mozambique. It "*[d]emands* an immediate ceasefire for the month of Ramadan…leading to a lasting sustainable ceasefire". It also "*demands* the immediate and unconditional release of all hostages, as well as ensuring humanitarian access to address their medical and other humanitarian needs". Lastly, and more broadly, the same paragraph demands "that the parties comply with their obligations under international law in relation to all persons they detain". This is the first time since October 2023 that the Security Council has called for a ceasefire in Gaza. The resolution was adopted with 14 votes in favor. The United States abstained.

## Is the resolution legally binding?

Immediately after the resolution had passed, US Spokesperson Matthew Miller stated 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" (here, at minute 26:00). In a press meeting held by the E10 afterwards (here, starting at minute 3:00), 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. Is there any substance to this claim?

As is well established, the Security Council can adopt legally binding resolutions. 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". 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.

## 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 just as well contain legally binding obligations. The International Court of Justice famously stated in its *Namibia* Advisory Opinion:

> *"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." (para. 113)*

There is thus both a textual and a systematic argument to be made that Article 25 UN Charter extends to *all* decisions of the Security Council.

## It is not necessary to explicitly use the word "decide" for a resolution to be legally binding

Whether or not a resolution contains a decision is thus to be evaluated based on the text in question, not whether the resolution was adopted under Chapter VII or Chapter VI. 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." (*Namibia Advisory Opinion*, para. 114). 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. Rather, it uses this language to, e.g., decide to establish a peacekeeping mission or decide to deploy observers. The text of the resolution adopted today is unequivocal and strong: it explicitly **demands** an immediate ceasefire for the month of Ramadan as well as the immediate and unconditional release of all hostages. There is no uncertainty in the language: what weight should a demand carry, if not that of a legal obligation? To compare, in the above-mentioned *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.

## Resolution 2728 (2024) is legally binding - but for whom?

Security Council Resolution 2728 (2024) is thus legally binding and, in conjunction with Article 103 UN Charter, takes precedence over any other treaty obligation a UN member state might incur. There is no question that the resolution is binding upon all UN member states from the wording of Article 25 ("all members"), which includes the state of Israel. But what about Hamas? Again, the International Court of Justice has made relevant findings. In the *Kosovo Advisory Opinion*, the Court 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 to refer directly to Hamas as well, especially in light of the further calls on "all parties" in the same paragraph.

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In conclusion, 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. The obvious elephant in the room is enforcement: who is to enforce the Security Council resolution in the current situation? It ultimately falls to the parties of the conflict to heed the Security Council's call, and to the Council itself to enforce its requests. Given the experience of the past months, this is no cause for enthusiasm. Yet, the fact that the Council could agree on the text, after five vetoes on the matter, is, perhaps, a shred of hope.

## ABOUT THE AUTHOR

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