



GLOBAL LAW UPDATE

UN Security Council's Gaza ceasefire appeal

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Following months of deliberation, the UN Security Council successfully adopted a resolution on 25 March 2024 calling for an "immediate ceasefire for the month of Ramadan" and emphasising the urgent need for increased humanitarian aid to enter Gaza. In practical terms, this resolution, in accordance with international law, is legally binding on all UN member states, including Israel and Palestine, the latter holding observer status.

The Palestinian National Authority and Hamas have expressed support for the ceasefire resolution. However, Israel expressed dissatisfaction with the US abstention from the vote, suggesting that the wording of the resolution favours Hamas.

In practice, the resolution is unlikely to significantly improve the situation for the millions of Palestinians in Gaza, as the Security Council lacks effective means of enforcing its resolutions. Israel has previously even disregarded directives from the International Court of Justice (ICJ) to facilitate the urgent provision of basic services and humanitarian aid.

Although military intervention to enforce the resolution against Israel is improbable, other states could resort to economic and diplomatic measures to pressure Israel into compliance. These actions might involve imposing sanctions, suspending arms sales, or withdrawing diplomatic missions and support. Furthermore, the resolution primarily stresses the need to increase humanitarian aid flow to Gaza. However, this wording provides Israel with leeway to continue denying access to aid convoys at border crossings like Rafah and Kerem Shalom, citing security concerns.

Even before the conflict had commenced, and particularly following the Hamas attack on 7 October, Israel had been creating hindrances for humanitarian aid to enter Gaza, often rejecting supplies such as oxygen cylinders, ventilators, sleeping bags, dates, and maternity kits.

The decision by the US to abstain from the vote signifies a significant departure in its diplomatic backing for its primary ally in the Middle East. This resolution serves a clear signal to the Israeli government that the US has drawn a boundary in terms of what it is and is not willing to endorse and support. Moreover, the Security Council resolution is likely to intensify pressure on both parties to reach a consensus through negotiations facilitated by Qatar and Egypt.



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Hamas' recent proposal comprises four key points- implementation of a comprehensive ceasefire, withdrawal of Israeli forces from the Gaza Strip, repatriation of forcibly displaced Palestinians, exchange of Palestinian prisoners for Israeli hostages. As per media reports, Israeli government has agreed to an American-mediated compromise regarding the number of Palestinian prisoners to be released in exchange for Israeli hostages. But it appears that Israel is currently hesitant to commit to a permanent ceasefire.

Should this agreement materialise, it is expected to entail detailed arrangements for its implementation, like the temporary truce negotiated in November. This prior agreement involved a coordinated exchange of Israeli hostages for Palestinian prisoners, alongside the delivery of humanitarian aid. The number of prisoners sought by Hamas in exchange for hostages has been a point of contention. In 2011, Israel agreed to release over 1,000 Palestinian prisoners in exchange for one Israeli soldier, Gilad Shalit. In anticipation of a similar scenario, Israel has detained thousands of Palestinians in both Gaza and the occupied West Bank for minor offenses in recent months. Currently, Hamas retains approximately 100 hostages, primarily men, including many reservists in the Israeli military.

The Security Council's resolution passed, although characterised by vague terms and limited incentives for compliance, currently presents at least an option for encouraging a cessation of violence and facilitating aid delivery of humanitarian aid to Gaza. Efforts toward achieving a potentially more meaningful and practical ceasefire should and will persist. With the recent developments, heightened attention should now be directed towards the people of Gaza, who are the worst victims.

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LAW OPINION

Burden sharing in the context of refugee crisis

SAKHAWAT SAJJAT SEJAN

The UN Refugee Convention 1951 was crafted to support the refugees legally and morally. Many European states benefitted from the convention after World War II. However, it is a matter of irony that many of these same states are in favour of close borders now, whenever people are seeking refuge as the victims of war, ethnic cleansing, political or communal clashes, etc.

The refusal to allow the refugees to enter revictimises the refugees, which goes against many principles of international human rights and refugee law. To stop such revictimisation, the burden or responsibility-sharing principle emerged. This is disguisedly mentioned in articles 1(3), 55, 56 of the UN Charter, several UNHCR ExCom Conclusions (89, 22, 55, etc.), the preamble of the UN Refugee Convention 1951, and some UNGA resolutions. However, many states seem reluctant to bring responsibility sharing into actual practice claiming that the same would cause a financial, social, political, or communal imbalance in their country.

Global Compact on Refugees (GCR) 2018 came out as a response to promote equitable burden-sharing during mass displacements following the international principle of responsibility sharing. The principle focuses on providing protection, giving assistance, and pursuing solutions to refugee crises. These three aims are incorporated in the GCR in the form of four objectives, i.e., a) alleviate pressure on the host countries, b) enhance self-reliance of the refugees, c) expand third-country solutions, and d) improve conditions in the origin country to ensure safe and dignified return. These objectives must be fulfilled to respect, protect, and fulfill the human rights obligations toward the refugees.

Unfortunately, many states tend to avoid sharing the burdens of sheltering the refugees and opt for providing financial assistance to the host countries only. They often say that the refugees might pose a risk to the national security. But they often ignore the fact that the same risk is now being incurred by the current host country alone. Hence, giving financial assistance does not serve the true purposes of the GCR.

From a critical perspective, it is not a long haul to differentiate between the refugees posing security threats and refugees needing international protection. A mere protection-sensitive border reception procedure following the 10-Point Plan of Action by UNHCR would have helped in the process. We may call it a lack of will or a prisoner's dilemma (both parties endeavor to protect themselves via unilateral action rather than carrying the costs that also have the benefits of cooperation) instead. The phrase prisoner's dilemma rightly portrays the current stances of refugee protection and a global norm of non-compliance with international treaty obligations for refugees.

Such non-compliance is creating huge complications for the middle-income and least developed host countries. Only financial aid is not helping these countries, as the refugees are incessantly using the scarce resources and physical spaces. At a certain point, financial burden sharing starts decreasing, but the host countries' sufferings of carrying the burden continue. This has happened in the case of the Rohingyas as well, as the whole situation has experienced major fund cuts. Presumably, the fund will start decreasing even more in the forthcoming days.

A similar future waits for other refugees

in some other host countries. However, this is not what the Refugee Convention 1951 preaches or the Global Compacts on Refugees 2018 aspires to achieve. A common approach by all concerned states is necessary to utilise the burden-sharing mechanism as a distributive device. However, it should not resemble the Intergovernmental Consultations on Asylum and Immigration 1992 which promotes sharing based on fixed quotas of refugees in low numbers. Rather, it may take inspirations from the ad hoc instrumental-communitarian model followed by the European states to protect the victims of war after World War II.

In this model, the participating states shared a common sense of values and obligation towards the refugees in solidarity. This may turn into an institutionalised practice in the upcoming days, as it happened in the context of the European Union. Initially, they adopted a resolution on 'Burden sharing with regard to the admission and residence of displaced persons on a temporary basis' in 1995. Later, the resolution was adopted as 'Temporary Protection Directive 2001'. This directive promotes a balance of efforts among member states through solidarity, equity of distribution, and harmonisation of responses during mass influxes of refugees. The member states, international agencies, partners, civil society, and the Global Refugee Forum formed under the Global Compact on Refugees need to come up with such iconic and dynamic solutions to handle current and forthcoming refugee crises. Only, this whole of society approach can potentially ensure a better future for refugees and their protection.

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YOUR ADVOCATE

On second marriage by husband

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, Legal Counsel, which has expertise mainly in commercial law, family law, labour law, land law, constitutional law, criminal law, and IPR.

Query

I am a 32-year-old Muslim woman in 4 years of my marriage. My husband and I agreed in our Kabin Nama that he would not marry any other wife.

Your husband has to obtain permission from the Arbitration Council of the local authority if he wants to contract another marriage under the Muslim Family Laws Ordinance. The application for obtaining such permission has to state reasons for the second marriage sought by him and whether the consent of you (i.e., the existing wife), has been obtained thereto.



However, now he insists on marrying another woman despite my objections. Is there any remedy to this?

Response

Thank you for your query.

It is understood that you are a married Muslim woman and during your solemnisation of marriage, you and your husband agreed in your Kabin Nama or Nikah Nama that he would not marry another woman, or go for a second marriage. However, he now wishes to marry another woman while you are married. It should be noted that matters

related to family are governed by the personal laws of the religious community the individual belongs to. Thus, marriage, divorce, adoption, etc. are governed by Islamic law for Muslims. Therefore, in your case, Islamic law is applicable.

Under the Muslim Family Laws Ordinance and Muslim Marriages and Divorces Registration Act, there is no such direct clause in the Nikah Nama whereby the husband can agree to not marry another woman, except for a special condition clause. I assume that the same has been stated as a special condition in the Nikah Nama. Most

importantly, clause 21 of Nikah Nama states that if a man wants to remarry whilst his first wife is alive and living with him, he needs to get her consent.

Moreover, your husband has to obtain permission from the Arbitration Council of the local authority if he wants to contract another marriage under the Muslim Family Laws Ordinance. The application for obtaining such permission has to state reasons for the second marriage sought by him and whether the consent of you (i.e., the existing wife), has been obtained thereto. If your husband, without permission from the Arbitration Council, gets married to another woman, and is convicted to do so, he shall have to pay the entire amount of the dower immediately, whether prompt or deferred, due to you (such amount, if not paid, shall be recoverable as arrears of land revenue) and shall be punishable with simple imprisonment which may extend to one year, or with fine which may extend to ten thousand Taka, or with both.

On the other hand, if you and your husband get divorced, there is no legal bar on you or on him in getting remarried.

I hope my answer will provide a solution to your problem.

Send us your law related queries to dslawdesk@yahoo.co.uk