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UNRWA’s Expanding Mandates

Executive Summary

UNRWA is the organization charged with supporting Palestinian refugees. Incorporated under Article 22 of the United Nations Charter by the General Assembly, the organization has, over the course of more than 60 years, unilaterally expanded its mandates, creating an open-ended rationale for itself and becoming an advocate for Palestinian political positions.

This testimony reviews critical two areas where UNRWA has autonomously expanded its mandate, the question of who is a Palestinian refugee and its legal and political roles in support of Palestinians. By progressively expanding its definition of refugee to include non-refugees, Bedouins and then children and grandchildren of refugees, individuals born long after the British Mandate for Palestine and outside of its borders, the organization has increased in perpetuity the legal and cultural category of “Palestinian refugee.” This is without precedent in any other refugee situation.

Similarly, though charged initially with providing relief and training to refugees, the organization has taken on itself the expansion and defense of political and legal rights for Palestinian refugees. It now acts as an advocate for refugees separate from and sometimes in competition with the Palestinian Authority, doing so without a Palestinian political mandate or United Nations authorization. The political positions it advocates, specifically the “right of return” for Palestinian refugees, plainly takes a side in what should be fair negotiations between Israel and elected Palestinian representatives.

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1. UNRWA (the United Nations Relief and Works Agency for Palestine Refugees in the Near East) operates with unique methods. Of specific interest is the organization’s history of shaping and expanding its own mandates, including defining who is a Palestinian refugee and its mandate. These questions should be of paramount importance as the British Department for International Development reassesses its funding for UNRWA.

2. One significant means of UNRWA’s permanent institutionalization has been the continual expansion of its client base through progressive redefinitions of ‘who is a refugee.’

3. UNRWA’s founding Resolution 302 (IV) used the term refugee without offering any definition. But the language used in 1951 Convention relating to the Status of Refugees which founded the United Nations High Commissioner for Refugees began to set parameters for Palestine Arab refugees and for UNRWA:

   This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection and assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.¹

3. The politics behind this decision were a result of pressure from both Western and Arab states. France, for example, had moved to exclude Palestine Arab refugees from the UNHCR mandate on the grounds that a number of United Nations organizations were already active in that arena. Arab delegates joined in support of the exclusion, arguing that a universal definition of refugees would “submerge in the general mass of refugees certain groups which were the particular concern of the General Assembly and the right of which to repatriation had been recognized by General Assembly resolutions.”²

4. Without a formal definition set by a supervisory body, UNRWA established its own series of operational definitions for who is a refugee. These have gradually enlarged over the decades. In 1950 the following definition was offered:

For working purposes, the Agency has decided that a refugee is a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood. A large measure of flexibility in the interpretation of the above definition is accorded to chief district officers to meet the many border-line cases which inevitably arise. In some circumstances, a family may have lost part or all of its land from which its living was secured, but it may still have a house to live in. Others may have lived on one side of the boundary but worked in what is now Israel most of the year. Others, such as Bedouins, normally moved from one area of the country to another, and some escaped with part or all of their goods but cannot return to the area where they formerly resided the greater part of the time. These examples give an idea of the varying conditions that must be met in administering the relief programme.³

5. In 1954 a temporal qualification was introduced:

The definition of a person eligible for relief, as used by the Agency for some years, is one "whose normal residence was Palestine for a minimum period of two years preceding the outbreak of the conflict in 1948 and who, as a result of this conflict, has lost both his home and means of livelihood."⁴

6. The 1955 report of the Commissioner General introduced an informal rationale for expanding refugee rolls to define “other claimants,” namely Palestine Arabs who were not displaced in 1948 but who lost some or all of their livelihoods:

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It is generally believed that the man who has lost his home as well as his means of livelihood is in a worse position than his compatriot who has lost only his means of livelihood. This is not always true. There is only a difference of degree between, on the one hand, the situation of the man whose home was on the Jordan side of the demarcation line but whose land is now cut off in Israel, or who worked in what is now Israel Jerusalem, or who sold his produce in the coastal towns or exported it through Palestinian ports, and, on the other hand, the situation of the man who has lost his home as well as his means of livelihood. All of these have lost, in varying degrees, a place in which to work and a way of life. They have that in common. Yet in some cases, the family which continues to reside in its former home, but whose nearby fields are no longer in its possession, may be in a more serious plight. The very proximity of its former possessions—the situation in which the original inhabitants must watch newcomers till their former fields and harvest crops from their former groves—increases the tensions and the psychological strain.\(^5\)

7. This decision followed up on observations made since 1948 regarding the impoverished state of those claimants. It also tacitly acknowledged the difficulty of both distinguishing them from true refugees as well as the moral and practical difficulties in refusing them aid. The decision incorporated border villages into UNRWA’s purview, expanding its economic role in Gaza and Jordan in particular. It also articulated the social psychological or therapeutic element that would become an important part of UNRWA’s mission during recent decades.

8. In 1965 the definition was again revised and the Commissioner-General noted:

Recently a new problem of eligibility has arisen with the appearance of a third generation of refugees (i.e., the children of persons who were themselves born after 14 May 1948). On a literal interpretation of the definition of eligibility as it now stands, there may be some doubt whether these persons are eligible for UNRWA assistance. Under the proposals set out… they would clearly be eligible… subject to their being in need, and this would apply to subsequent generations also.\(^6\)

9. The 1965 report also made special note of the condition of “the Azameh tribe of bedouin in Jordan, Gaza and the Sinai Peninsula. The Commissioner-General reiterates the opinion that the


tragic plight of these unfortunate victims of the conflict in Palestine must surely weigh heavily on the conscience of mankind.” This new, expansive definition, which extended UNRWA’s services to a third generation of refugees, was apparently offered as part of a deal between UNRWA director Laurence Michemore and Arab states, in exchange for new refugee surveys that mollified Western pressures.  

10. The Six-Day War, and the influx of more refugees into the UNRWA system from the West Bank, appeared to offer and opportunity to conduct studies and establish a new baseline. Lack of host country cooperation and deteriorating political conditions in Lebanon, culminating in civil war, again made the process impossible.

11. By 1971 the refugee definition was expanded again, with the addition of specifications regarding the heritability of refugee status:

A Palestine refugee, by UNRWA's working definition, is a person whose normal residence was Palestine for a minimum of two years preceding the conflict in 1948 and who, as a result of this conflict, lost both his home and means of livelihood and took refuge, in 1948, in one of the countries where UNRWA provides relief. Refugees within this definition or the children or grandchildren of such refugees are eligible for agency assistance if they are (a) registered with UNRWA, (b) living in the area of UNRWA's operations, and (c) in need.  

12. By 1994, this operational definition was extended further:

Under UNRWA's operational definition, Palestine refugees are people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict.  

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7 B.N. Schiff, Refugees unto the Third Generation: UN Aid to Palestinians, (Syracuse, NY, Syracuse University Press, 1995), 53-54.  
9 See http://www.unrwa.org/etemplate.php?id=86
13. This version is still operative today. There are no qualifications regarding a refugee having been displaced to a country where UNRWA operates or whether they have obtained another nationality. Nor does UNRWA require individual applicants to have either endured all three criteria (residence, loss of livelihood and loss of same, or documentation of these statuses. UNRWA requires only a self-declaration from applicants. The mandate is effectively global and the organization views itself as the “global advocate for the protection and care of Palestine refugees.” This generates a total client base of almost 5 million.

14. Concurrent with the expansion of ‘who is a refugee’ has been the vast enlargement of the organization’s mandate. From its original, concise role, to “direct relief and works programmes,” UNRWA’s mission is defined today as:

to contribute to the human development of Palestine refugees in the Gaza Strip, the West Bank, Jordan, Lebanon and the Syrian Arab Republic until a durable and just solution is found to the refugee issue. The Agency fulfils this purpose by providing a variety of essential services… The Agency’s vision is for every Palestine refugee to enjoy the best possible standards of human development, including attaining his or her full potential individually and as a family and community member; being an active and productive participant in socio-economic and cultural life; and feeling assured that his or her rights are being defended, protected and preserved.

15. Even UNRWA advocate Rex Brynen concedes that “there is little or no significant difference between the standard of living of refugees and non-refugees in the WBGS [West Bank and Gaza Strip], Jordan, or Syria.” Maintenance of this standard of living has an important impact on the organization’s funding requirements.

16. Another aspect of mission creep that contributes to both the overt politicization of UNRWA has been the use of international law to expand organizational mandates. As Bartholomeusz points out, “UNRWA’s mandate is rarely expressed in terms of what UNRWA may not do.”

One example of this is the protection gap debate.

17. This argument, articulated by Palestinian lawyers and advocacy groups, suggests that UNRWA’s mandate for relief and works was made contingent on the efforts of the United Nations Conciliation Commission for Palestine to find a political solution to the larger conflict and by extension the refugee issue. The obvious failure of the UN’s Palestine Conciliation Commission left the refugees in limbo: UNRWA has a limited mandate, and Palestine Arab refugees were specifically excluded from the 1951 UNHCR convention. The argument suggests that the non-implementation of United Nations resolutions and the failure of various nations to extend protection to refugees resulted in a protection gap.

18. Advocates argue that UNHCR must step in to fill this protection gap, which is interpreted to mean UNHCR representations for repatriation and compensation and only secondarily assistance with resettlement. Others disagree that a protection gap exists or that any reading of Article 1D of the 1951 convention mandates anything more than the extension of refugee status to Palestinians outside of UNRWA jurisdiction.

19. The “rights-based approach” of Palestinian activists takes the “right of return” of Palestine Arab refugees to Israel, rather than a future Palestinian state, as an absolute given. UNRWA’s mandate for “protection” of the Palestinians increasingly follows this lead. Though lip service is
given in some UNRWA sources regarding the two aspects of Resolution 194, repatriation and compensation, these have been overshadowed by the implicit emphasis on the former.

20. Former legal advisor to UNRWA Scott Custer has noted the expansion of UNRWA’s own protections for Palestine Arab refugees’ legal and human rights.\textsuperscript{18} Specifically, he points to the 1982 request from the Secretary-General to UNRWA to consult regarding “measures to guarantee the safety and security and the legal and human rights of the Palestine refugees in all the territories under Israeli occupation.”\textsuperscript{19} Later, on the basis of the report by Under-Secretary-General for Special Political Affairs Marrack Goulding, the Secretary-General in 1988 explicitly articulated and expanded these guarantees:

(a) ‘Protection’ can mean physical protection, i.e. the provision of armed forces to deter, and if necessary fight, any threats to the safety of the protected persons;

(b) ‘Protection’ can mean legal protection, i.e. intervention with the security and judicial authorities, as well as the political instances, of the occupying Power, by an outside agency, in order to ensure just treatment of an individual or group of individuals;

(c) ‘Protection’ can also take a less well-defined form, called in this report 'general assistance', in which an outside agency intervenes with the authorities of the occupying Power to help individuals or groups of individuals to resist violations of their rights (e.g. land confiscations) and to cope with the day-to-day difficulties of life under occupation, such as security restrictions, curfews, harassment, bureaucratic difficulties and so on;

(d) Finally, there is the somewhat intangible 'protection' afforded by outside agencies, including especially the international media, whose mere presence and readiness to publish what they observe may have a beneficial effect for all concerned; in this report this type of protection is called 'protection by publicity'.\textsuperscript{20}

21. UNRWA International Law Division chief, Lance Bartholomeusz notes that UNRWA now engages in “education, health and relief and social services, microfinance, infrastructure and


camp improvement, and emergency assistance including food aid.” Since these activities are listed in General Assembly resolutions and budget approvals he implies that they have the strength of organizational mandates. 21 He also notes that UNRWA has a ‘human development’ mandate, the definition of which derives from the UN Development Programme and includes “a decent standard of living,” “political, economic and social freedom to opportunities for being creative and productive, and enjoying personal self-respect and guaranteed human rights… the formation of human capabilities – such as improved health, knowledge and skills – and the use people make of their acquired abilities – for leisure, productive purposes or being active in cultural, social and political affairs.”22

22. In practical terms some UNRWA officials see the organization’s development agenda as a requirement to enable “refugee self-sufficiency,” which is “a basis to prepare for any durable solution.”23 Superficially this resembles UNRWA’s original rehabilitation mandate. The “rights based approach” of Palestinian intellectuals makes the assumption that a “one state solution” will prevail. But as part of the Madrid conference and Oslo Accords, the Canadian-led Refugee Working Group gave considerable thought to the issue of resettling Palestine Arab refugees in a new Palestinian state.24 UNRWA was a major part of these deliberations and since the 1990s a considerable body of work has been generated inside and outside UNRWA that argues for its long-term maintenance as an instrument to aid in “post-peace agreement transitional needs.”25 These are arguments to extend the organization’s mandate still further.

23. UNRWA’s protection mandate was also extended in 2007 by the General Assembly, which

24 R. Brynen, The Past as Prelude? Negotiating the Palestinian Refugee Issue. Chatham House, Middle East Programme, June 2008,
stated that it was “Aware of the valuable work done by the Agency in providing protection to the Palestinian people, in particular Palestine refugees.” This was extended further in 2008 with a General Assembly direction to UNRWA regarding the rights of women and children. Also in 2007, the General Assembly approved the Commissioner-General report that included the statement “UNRWA is a global advocate for the protection and care of Palestine refugees,” and the organization established a “Senior Protection Policy Advisor” position. The influential 2008 “Morris report” also recommended UNRWA use the United Nations’ human rights system to expand UNRWA’s protection for refugees and that UNRWA’s Operations Support Officers in the West Bank and Gaza Strip act as “roving international protection officers.”

24. The political implications of “protections” are so far-reaching as to be potentially limitless. Bartholomeusz and UNRWA “Chief Protection Officer“ Mark Brailsford point to a number of statements by UNRWA’s Commissioner-General regarding “a just and durable solution,” where renewed negotiations are demanded, refugees are to be given a voice, and “disproportionate force” is condemned. Indeed, the “Morris report” recommends further that the Commissioner-General “should engage with those drawing up negotiating papers and proposing positions and policies in order to ensure to the extent possible that these take proper account of the rights and interests of the refugees and of UNRWA’s experience and knowledge.”

25. This argument suggests that UNRWA engages directly in the political process as representative of the Palestine Arab refugees, their rights, interests and desires, in direct competition with other Palestinian entities. Indeed, a recent small-scale survey of perceptions among stakeholders, drawn not from the general refugee population but from donor nation

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representatives, NGOs and host governments, judged UNRWA was very strong at “supporting
ter-agency plans and appeals” but only adequate at “contributing to policy dialogue.”

26. Notwithstanding these explicitly political statements, which have become increasingly
common, the overall thrust of UNRWA’s message to the Palestine Arab refugees is also clear.
Commissioner-General Karen AbuZayd’s 2008 statement that “for sixty years, Palestine
refugees have been in exile from their ancestral lands” can only be read as an endorsement of the
“right of return,” whether in a broad or limited sense.

27. UNRWA’s ever-expanding mandate, operations and responsibilities, rhetoric and culture,
inculcate the “right of return” as part of UNRWA’s culture at all levels and has been rationalized
through the “rights-based approach.” UNRWA can be expected to oppose any negotiated
settlement that does not contain the “right of return” in some explicit form.

28. It must be emphasized, UNRWA is ultimately an instrument of the General Assembly, which
alone has “a permanent responsibility towards the question of Palestine until the question is
resolved in all its aspects in a satisfactory manner in accordance with international legitimacy.”
Pressures for UNRWA reform by contributing governments must ultimately address the issue of
the General Assembly.

31 Multilateral Organisation Performance Assessment Network, Organisational Effectiveness Assessment, United
Nations Relief and Works Agency for Palestine Refugees in the Near East, Volume 1, December 2011, 42-46, Figure