

The Role of UNRWA in Protecting and Providing Assistance to Palestinian Refugees

S. Hasthisha Desikan

Abstract: *The Palestinian refugee crisis has indeed been considered one of the most complex, as well as a main subject in Israel's confrontation with its Arab neighbours. The first wave of displacement of people took place between December 1947 and September 1949, due to the first Arab - Israeli confrontation amid the partition of Palestine by the United Nations. Around 750, 000 Palestinians are thought to have abandoned their dwellings in the territory of Palestine that would become Israel. The UN in response to this growing humanitarian crisis and endless persecution of a certain set of people established The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to aid Palestinian refugees in their humanitarian and personal development. The mandate of UNRWA includes Palestinians who were exiled as a result of the 1948 Israel - Palestine conflict and succeeding conflicts, as well as their children and their lineage. UNRWA's mandate is subject to regular extension and modification every three years as a subsidiary organization of the UNGA; and the agency has continually been expanding since its inception.*

Keywords: UNRWA, Palestinian Refugees, Refugee Rights, UNRWA Mandate

1. Introduction

In 1949, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was given a mandate to provide assistance and relief for nearly one million migrants and refugees, from what was the British Mandate of Palestine, who had just been forcibly removed and evicted as a result of the Israeli-Palestinian Arab controversy, which had just concluded at the time.¹ Palestinian Arabs made up the majority of the population of the region that now contains the State of Israel and the Occupied Palestinian Territory (OPT) at the turn of the twentieth century. As a result, the vast majority of Palestinians, who are now primarily refugees or undocumented migrants, resided within Palestine's borders at that time. The displacement of Palestinians from their place took part in broadly five phases between 1922 and 1967, although the displacements are still not a thing of the past for the Palestinians, which continues even today. Well over 5.6 million Palestinians are recognized as refugees with UNRWA as of 2019, with over 1.5 million living in UNRWA - run facilities, however, For various reasons, such as having no need for help or having relocated outside of UNRWA's operational regions, not all registered refugees use the services provided by UNRWA.²

Palestinians are currently one of the world's largest populations of asylum seekers. They do not, nevertheless, get even the most basic international security afforded to refugees in many states. Despite the fact that such a lack of protection is largely due to political concerns, the legal discrepancy and inconsistency in this matter cannot be overlooked. The barrier in many countries, particularly

European, is that Palestinians are frequently denied the status of refugee and so are barred from the global refugee protection framework. The Israeli - Palestinian conflict is without a doubt one of the most extensively debated topics today. However, the majority of publications and literature on the subject are concerned with the political aspects of the issue. Even though the Palestinian subject, particularly its legal dimensions, has gotten a lot of attention on the one hand, on the other, there is a paucity of legal literature dealing explicitly with the conflict's humanitarian grounds, namely the refugee crisis.

Alongside all these issues and controversy one other recent development in this regard has been the growing sentiment among a few of the states to dismantle the UNRWA and have called for the United Nations High Commissioner for Refugees (UNHCR) to take control of the Palestinian refugee situation. There have been some experts along with other states opposing this view albeit with a consideration that the UNRWA Mandate needs to be revisited to the nature of the assistance lent by the Agency to the refugees in order to make the relief work more effective.

1.1 International Laws and the Mandate of Unrwa vis - à - vis Palestinian Refugees

The 1951 Refugee Convention, its twin document, the 1967 Refugee Protocol, and the Statute of the United Nations High Commissioner for Refugees (UNHCR) embody the worldwide framework for refugee assistance and the globally accepted understanding of "refugee". These documents serve as the foundation for a complex and interconnected treaties and UN bodies that deal with Palestinian refugees. With the formation of the United Nations Conciliation Commission for Palestine (UNCCP) in 1948, the process of establishing a separate framework for Palestinian refugees had begun. By that time, the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council, had all taken up the issue of Palestinian refugees. No other political issue has ever gotten such serious consideration from an international body in a brief span of time. The UNCCP was established with the primary goal of assisting states and institutions

¹ SCOTT CUSTER JR., UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST (UNRWA): PROTECTION AND ASSISTANCE TO PALESTINE REFUGEES in: S. Akram, et al. INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT, 45 (Routledge, 2011).

² UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST, <https://www.unrwa.org/who-we-are/frequently-asked-questions> (last visited Aug. 18, 2021).

involved in reaching a definitive resolution of any remaining issues between them, as well as to safeguard Palestinian refugees and aid states in reaching a long - term settlement for them. Furthermore, the UNCCP was responsible with safeguarding the refugees' biggest concerns: repatriation and restitution.³ Despite envisaging a wide range of objectives and services, UNCCP's focus was mostly on political intervention with Israel and the right of refugees to return. As a result, the United Nations General Assembly (UNGA) passed multiple resolutions drastically limiting the UNCCP's scope.⁴ By the mid - 1950s, the authorisation had been restricted to acquiring knowledge on Palestinian properties and assets and documentation of the refugees and the same function is still being carried out by UNCCP.

On the 18th of December 1949, after a year of the establishment of UNCCP, UNRWA was created with the goal of complementing the UNCCP. Initially, the Agency's major functions were to offer relief and to develop a "works programme."⁵ In contrast to UNCCP, UNRWA's purpose was limited to only providing assistance, as the stated terms of the mandate reflect. Remarkably, UNRWA only had a short - term objective at first because there was confidence among the members, on passing the UNGA Resolution 194 (III), a long - term resolution to the issue would be reached relatively soon. However, the UNGA has extended the mandate on a regular basis due to the challenges in finding a solution that has existed till now. The last extension was made in 2019, extending the mandate of URWA to 2023.⁶

1.2 International Legal Provisions Relating to Refugees

As far as the international legal frameworks are concerned, definitions of a refugee set out in the 1951 Refugee Convention and UNHCR Statute are the global standards. Article 1A (1) of the 1951 Refugee Convention contains refugee classifications that have previously been defined as such by earlier documents, depending on their nationality, the region they fled, and the absence of legal or diplomatic assistance by their erstwhile home nation. Statutory refugee is the term used to describe such people. By its definition, the safety granted by this article was meant to be restricted to the absence of safeguards of the relevant categories of refugees for a specific period of time.⁷ Under Article 1A (2), a refugee is also a person who is abroad from his place of origin because to a legitimate fear of persecution on grounds of religion, race, ethnicity, participation in a society

or group, or political stance and is unable to live peacefully or lives in a form of threat in that country and such a classification of refugees is referred to as convention refugees.⁸

However, the 1951 Convention's ambit of scope contained geographical limitation provided in Article 1B. It allowed the members to restrict their commitments to happenings of Europe rather than assuming responsibility for all refugees regardless of their nationality. However, the Statute of UNHCR is not subjected to similar restrictions and its scope extends to all refugees irrespective of their nation of origin. Under 6B of the Statute, any individual who fled his or her country of nationality, or if he or she has no nationality, the country of his or her domicile, as he or she has or had a legitimate fear of persecution due to of his or her ethnic background, religious practice, nation of origin, racial identity or political viewpoint and is either unable or afraid to seek protection from the state of his or her country of nationality, or former residence.⁹ The refugees who come under this classification are considered to be mandate refugees. The UNHCR's objectives were envisioned as non - political, with restricted operational capability, and were tasked with ensuring international protection and finding long - term resolutions to the refugee crisis.¹⁰ International protection is a fundamental characteristic of UNHCR's Statute, which is carried out via a variety of activities outlined in the Statute itself, such as guaranteeing refugee admittance into another state and non - refoulement, as well as pursuing long term solutions to refugee situations such as resettlement and repatriation in other states. The UNHCR's supervisory responsibility over the 1951 Convention's implementation, as well as its ability to influence legislation and diplomacy, is a distinct feature within the UN.¹¹

In addition to being refugees, most Palestinians were stateless as a result of Israel's creation in 1948. It was not fear of persecution that kept countless Palestinian refugees out of their homes but it was due to the measures taken by the Israeli state after the displacement.¹² A special regime for the Palestinian refugees due to the actions of the Arab nations, who demanded a special and separate status for these refugees as their present plight was due to the actions of the UN in partitioning Palestine.¹³ The aim of these nations was that by exempting Palestinian refugees out of UNHCR's purview and placing them under the jurisdiction of ad hoc institutions like UNCCP and UNRWA, the UN

³ Reem Salahi, *Reinterpreting Article ID: Seeking Viable Solutions to the Palestinian Refugee Anomaly*, 1 BERKELEY JOURNAL OF MIDDLE EASTERN & ISLAMIC LAW 127, 137 (2008).

⁴ DAVID P.FORSYTHE, UNITED NATIONS PEACEMAKING: THE CONCILIATION COMMISSION FOR PALESTINE, 70 (Jones Hopkins University Press, 1972).

⁵ GA Res 302 (IV), UNGAOR, Fourth Session, UN Doc A/1251 (1949) 7.

⁶ Heaney. C, *Immense Support for the Renewal of the UNRWA Mandate at the UN General Assembly - Press Release*, THE QUESTION OF PALESTINE (Aug. 19, 2021, 3:08 PM), <https://www.unrwa.org/newsroom/press-releases/immense-support-renewal-unrwa-mandate-un-general-assembly>.

⁷ Francisco Orrego Vicuña, *The Status and Rights of Refugees under International Law: New Issues in Light of the Honecker Affair*, 25 INTER-AMERICAN LAW REVIEW 352, 365 (1994).

⁸ *Id.*

⁹ UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, 32.

¹⁰ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V).

¹¹ Michael Staight, *International Laws and Norms Regarding Refugees: A Case Study of the Palestinian Refugee Crisis*, The Hoover Prize 1, 7(2018).

¹² FRANCESCA P. ALBANESE & LEX TAKKENBERG, PALESTINIAN REFUGEES IN INTERNATIONAL LAW, 76 (Oxford University Press, 2020).

¹³ UN Doc. A/C.3/L.128.

will be able to focus its efforts on them and the need to address their unique requirements.¹⁴

1.3 Definition of Palestinian Refugee

A persisting legal controversy regarding the Palestinian refugees has always been their definition. As seen above due to geo - political reasons this group of people were left out of the purview of UNHCR and were not recognised to be refugees under the 1951 Refugee Convention. As far as the 1951 Convention is concerned, the only link to Palestinian refugees to UNHCR and the Convention is put down in the conditional provision of Article 1D in 1951. This provision states that the 1951 Convention will not apply to people receiving assistance from any organ of the UN other than UNHCR and if and when this assistance is discontinued, they automatically come under this Convention.¹⁵ Authorities have frequently construed the 1951 Convention's contingent exemption of Palestinian refugees as though these refugees were completely barred from the 1951 Convention's substantive rights afforded. Consequently, Palestinian refugees are usually regarded as though they do not possess an international legal status and protective measures. However, many scholars have vociferously voiced their criticisms against this interpretation.¹⁶

Even UNRWA has developed a working definition for the identifying refugees in order to make their services available to people who are in dire need of it. It meant to apply only to people who had lived in Mandate Palestine for at least two years leading to the 1948 war and also had ended up losing both their dwellings and their livelihoods as a consequence of it.¹⁷ Those who were in Palestine for far too short a period of time to be deemed natives or locals, such as migratory labourers, were specifically excluded from this classification. It was also designed to keep out persons who had lost their livelihood or a piece of land but still had their existing houses, farmland, or industries to return to. Nonetheless, UNRWA kept a count on the "other claimants" that it had obtained from its previous agencies on its records.¹⁸

What all these multiple views on the question of the refugee status of the Palestinians have done is create a "special regime" for the Palestinian refugees, which has resulted in an alleged "protection gap" wherein instead of getting special attention and speedy resolution to their plight, they are left on flimsy legal grounds for their protection and minimal to no rights which are afforded to other groups of refugees under the 1951 Convention.¹⁹

¹⁴ ALBANESE, *supra* note 12, at 80.

¹⁵ Office of the United Nations High Commissioner for Refugees, *Applicability of Article 1D of the 1951 Refugee Convention to Palestinian Refugees*, THE QUESTION OF PALESTINE, (Aug. 19, 2021, 6:34 PM), <https://www.un.org/unispal/document/auto-insert-197289/>.

¹⁶ See Susan M. Akram, *Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution*, 31 JOURNAL OF PALESTINE STUDIES 36, 40 (2002). Also, SALAHI, *supra* note 3, at 132.

¹⁷ SCOTT CUSTER JR., *supra* note 1, at 49.

¹⁸ *Id.*

¹⁹ AKRAM, *supra* note 16.

1.4 Role Played by Unrwa in the Refugee Crisis

At about the same period that the UNCCP was tasked with protecting the properties and concerns of refugees displaced by the Israeli - Palestinian turmoil, the UNGA passed Resolution 302 (IV) on December 8, 1949, removing the United Nations Relief for Palestine Refugees (UNRPR) with a new agency called the United Nations Relief and Works Agency for Palestine Refugees in the Near East. In its Mandate, UNRWA's basic functions are set out to be which are, to execute the direct relief and works initiatives specified by the Economic Survey Mission in coordination with various authorities and to counsel with involved Near Eastern states on actions to be implemented in preparation for the period when international aid for relief and works initiatives is discontinued or unavailable.²⁰ There is no clarification of the words "refugee," "Palestine refugee," or "Near East" either in Resolution 302 (IV) or Resolution 194 (III). Nonetheless, the Agency's title contains all of these words. UNRWA was not granted a clear mandate in terms of "protection" or "assistance" by Resolution 302 (IV), as UNHCR was eventually given by its Statute.²¹ UNRWA was only given authority to carry out "relief" and "works" programmes, as well as to confer with concerned nations about what they will do if international assistance stopped. The UNGA clearly anticipated that global support will not be provided forever, that UNRWA's role would be transitory, and that concerned nations will shoulder the refugee responsibility in the near future. UNRWA implemented ground operations in Syria, Lebanon, Jordan, the Gaza Strip and the West Bank, where the majority of Palestine refugees fled at the time. There had been additional 10, 000 Palestinian refugees in Egypt, as well as varying numbers in other Arab nations, but UNRWA's efforts were mostly restricted to what is now considered as the Five Fields.²²

The mandate of UNRWA, as indicated both in its title and the framework in which it was established, was to cater for "Palestine" displaced people, which included all refugees from Mandate Palestine, regardless of nationality, and not only for Palestinians.²³ UNRWA's mandate gives it a lot of discretion in terms of providing aid and support to its beneficiaries, who are mostly "Palestine refugees," but the issue of protection hasn't been resolved. Some critics notably made a significant point about the fact that the term "protection" was not included in UNRWA's mandate, but was very specifically in UNHCR's foundation Statute.²⁴

²⁰ *Supra* note 5.

²¹ GA Res. 428(V), UN GAOR, 5th Sess., UN Doc. A/RES/428 (V) (1950).

²² Abbas Shiblak, *Residency Status and Civil Rights of Palestinian Refugees in Arab Countries*, 25 JOURNAL OF PALESTINE STUDIES 36, 37 (1996).

²³ *Supra* note 17.

²⁴ Nicholas Morris, *What protection means for UNRWA in concept and practice*, THE QUESTION OF PALESTINE (Aug. 21, 2021, 9:43 PM), <https://www.un.org/unispal/document/auto-insert-206093/>.

1.5 Criticisms Raised of Unrwa

However, despite this absence of the term, the role UNRWA is playing currently includes protection of the refugees. One can understand this if the scope of protection offered under UNHCR Statute Article 8 is viewed in conjunction with the role played by UNRWA in the Five Fields. Apart from facilitating the completion and implementation of international conventions for the protection of refugees, UNRWA has been involved in all of the functions mentioned in UNHCR's Statute to a certain extent since its inception. For instance, the UNHCR has worked in conjunction with other international organisations and volunteer groups about programs to help Palestine refugees inside its operational area, which is a function of the UNHCR under Article 8.²⁵ Similar instances are can also be shown regarding many other functions.

One of the main criticisms raised against UNRWA has been that UNHCR is much better equipped and has broader powers to tackle this issue and stands a better chance in finding a more long - term solution. This, however, is simply not true. Looking at the reasons for this situation, be it the stance of Israel or the Arab nations; any long term solution that UNHCR could envisage is marred by the lack of political support from a larger international community or by the lack of an amicable agreement between the concerned groups of people. Also, it is important to keep in mind that in cases of displacement of people from an area due to armed conflict, the preferred solution adopted by the UNHCR is still the repatriation of the displaced back to their home country.²⁶ This is also what the refugees themselves want rather than get resettled in a third county. With all this in mind, one can see that UNHCR can perform no better than UNRWA in reaching a solution without any change in the political climate surrounding this issue. Meanwhile, any step towards this change in the organisation could only make the worse for the refugees as they will be left without the long protection being given by the UNRWA without a solution in sight to their plight.

The above considerations were raised in order to indicate the important role played by UNRWA in this refugee crisis, becoming an indispensable organ in this issue. As to the nature of the role played by UNRWA, it can be considered to be dual in nature: protection of the refugees and providing assistance to the refugees.

1.6 Role of Protection by Unrwa

The term "protection" in relation to UNRWA's function as established by the UNGA comes into play initially in the title of General Assembly Resolution 37/120 (J) in December 1982 wherein the Secretary - General was encouraged to take appropriate steps, in cooperation with UNRWA, to ensure the security and safety of Palestinian

refugees in the OPT, as well as their legal and human rights.²⁷ A similar resolution was passed again in 1993.²⁸

UNRWA's justification for their role in protection of refugees is further strengthened by what is called as the Goulding Report.²⁹ The Secretary - General published a report based on Mr. Goulding's observations, which includes an evaluation of the four forms of protection that a UN organ may give to a people under occupation: Physical, Legal, General Assistance and Publicity. Concerning general assistance, the Secretary - General noted that UNRWA does have the primary role and offers a broad array of support and protection to registered refugees.

1.7 Assistance Provided by Unrwa

UNRWA expects that by enabling proper education, primary care services, and economic self - sufficiency tools, the Palestine displaced people it supports will become a valuable and self - sufficient asset rather than a burden, either to their current countries of asylum and to any nation to which they may be repatriated, completely assimilated, or resettled in the future. The Education Programme, which promotes education and other essential academic and social skills necessary for refugee independence and self - sufficiency, accounts for over half of the Agency's personnel and periodic funding. UNRWA now administers approximately 660 schools in its five Fields, educating almost 500, 000 students.³⁰

1.8 Criticisms and Suggestions Regarding Current Regulations

Palestinians have been impacted by the absence of a framework to apply the emerging human rights and refugee standards that the UNHCR and other agencies are enforcing in support of other refugees. Other refugee groupings clearly benefit from UNHCR's "rights enforcement" initiative to day - to - day refugee protection and long - term resolution measures. The most essential is UNHCR protection officials' daily participation in the field, wherein they regularly interact with the states involved. No international agency has tried to fill in this crucial role for Palestinians, and UNRWA's initiatives to do so have been thwarted by its mandate's limitations and persistent Israeli resistance to any enlargement of its function.³¹ Any extension of the functions carried out by the UNRWA despite this resistance has been de facto without much of a legal backing.

No UN body has been granted protective responsibility over Palestinian refugees in any UNRWA region since the UNCCP's protective duty was limited. Several governments have expressly demanded that UNHCR sign into memoranda of understanding stating that it will not operate any mandate against Palestinians resident in their territory

²⁵ Mais Qandeel & Sarah Progin-Theuerkauf, *Legal Implications of Dismantling UNRWA: A European Perspective*, 14 JOURNAL OF POLITICS AND LAW 84, 89 (2021).

²⁶ Kathleen Lawand, *The Right to Return of Palestinians in International Law*, 8 INTERNATIONAL JOURNAL OF REFUGEE LAW 532, 540 (1996).

²⁷ GA Res. 37/120 J, UN GAOR, 37th Sess., UN Doc. A/RES/37/120 (A-K) (1982).

²⁸ GA Res.48/40 (H), UN GAOR, 48th Sess., UN Doc. A/RES/48/40 (A-J) (1993)

²⁹ UN Doc. S/19443.

³⁰ SCOTT CUSTER JR., *supra* note 1, at 62.

³¹ AKRAM, *supra* note 16, at 45.

under any conditions.³² Thus, while UNHCR can formally engage with a state violating the rights of the refugees to preserve their status and rights as refugees in national contexts, or express concerns about a vulnerability via UN institutions and processes, it cannot do so on behalf of Palestinian refugees. Palestinians have been denied of mandatory international involvement due to the lack of a distinct UN agency with a Palestinian refugee protection mission, as could be inferred by the killings of the refugees in their camps.

However, there have been some positive initiatives taken by several organisations to remedy this issue.³³ Despite the fact that these advances have strengthened the legal regulations for Palestinian refugees, there is no implementation system, whether through close engagement with the states involved or at the global arena.

The assurance that the alternatives for long term solutions accessible to refugees shall be governed by individual refugee's voluntary decision is one of the cornerstones of refugee law.³⁴ The UNHCR believes that voluntary repatriation is the most acceptable of the three long - term solutions: voluntary repatriation, host nation integration, and third - country settlement. If neither voluntary repatriation nor local assimilation are feasible, settlement is regarded a final resort. However, since this concept of the voluntary repatriation choice has not been honoured in the issue of Palestinian refugees, no options for returning were included in Palestinian - Israeli discussions. No institution explicitly supporting the rights of Palestinian refugees has really been involved in discussions on their part since there is no international body with a special mission for advocating and implementing lasting resolution principles for Palestinian refugees.

The above criticisms raised could point a number of areas which require special attention if the current regulation is to be made for efficient. However, the most important change must be made in the interpretation of Article 1D of the 1951 Refugee Convention to make sure that all of the protections it provides to refugees apply equally to Palestinian refugees. However, this inclusion of the refugees under the 1951 Convention should not undermine the authority and the work being carried out by UNRWA as it could be detrimental for reasons as previously stated.

Despite Palestinian refugees having all the human rights protections in principle, they cannot be implemented lacking adequate representation and a platform in which to address such rights. This could be a function that is entrusted to UNRWA, but doing so will require certain changes in its mandate. Additionally, UNRWA could also advocate for a suitable means of coping with Palestinian refugee's claims for repatriation and recompense, as well as oppose Israeli legislations that are in breach of human rights and refuse Palestinian refugees the right to return to their dwellings and

regain their belongings. However, as stated earlier, certain changes are required to be made in the UNRWA's mandate for it to be legally granted such powers.

2. Conclusion

The Palestinian refugee crisis is a complicated and an ever changing situation that poses a range of security risks. A robust protective solution should treat the plight of Palestinian refugees as the worldwide issue that it has become. As a result, it should concentrate on fulfilling the entire range of rights that these refugees have under international law. Any solution to this crisis is unimaginable without the active involvement of UNRWA in any of its many programmes of assistance and ad hoc protection.

Obviously, any lasting resolution regarding this issue has a significant political aspects attached to it but the legal ramifications are equally just as influential and important. There is no justification to deny Palestinian refugees humanitarian assistance and international protection on legal, geopolitical, or moral grounds. There would be no long - term fix to the Palestinian refugee crisis without any such promises of international effective enforcement measures, as well as a rights - based foundation for future discussions for the alleviation of the current plight of more than seven million people.

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³² Jalal Al Hussein, *UNRWA and the Refugees: A Difficult but Lasting Marriage*, 40 JOURNAL OF PALESTINE STUDIES 6, 20 (2010).

³³ SHIBLAK, *supra* note 22, at 39.

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