CURRENT ISSUES
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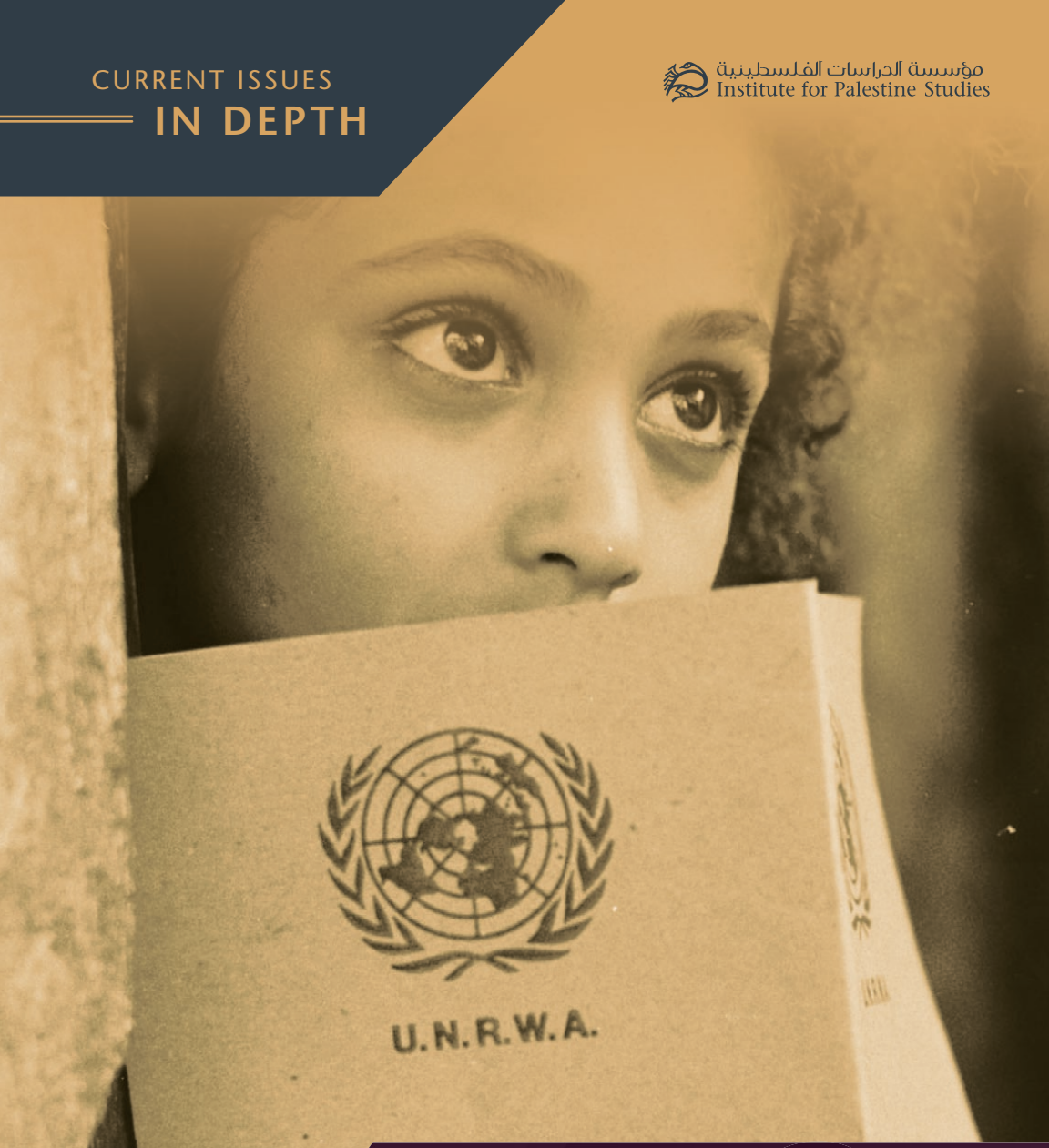

UNRWA AND PALESTINE REFUGEE RIGHTS

NEW ASSAULTS, NEW CHALLENGES

WASHINGTON, DC • FRANCESCA P. ALBANESE

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The author is an Affiliate Researcher with Georgetown University and the American University of Beirut; and co-author, with Lex Takkenberg of The Status of Palestine Refugees in International Law: A Tale of Fragmentation and Opportunity, expected to be published by Oxford University Press (in English) and IPS (in Arabic) in 2019/2020. The paper largely draws on research that the author has carried out in connection with writing the aforementioned book. The views expressed are exclusively those of the author. The author is grateful for comments received on drafts of the paper from Dr Anis Kassim – who was among the first encouraging her to write the paper - Rex Brynen, Terry Rempel, Jo Kelcey, Isabelle Mihoubi Astor, Anne Irfan and several UN officials who have requested not to be named.

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INTRODUCTION

by the Institute for Palestine Studies

THE DEFUNDING OF the UN Relief and Works Agency (UNRWA) by the Trump administration, involving the loss of a third of its budget of about $1.1 billion, has provoked little response in the United States and some other parts of the world. There appears to be minimal concern in the US media and among American politicians for the fate of the over 700,000 Palestinians and their descendants who were made refugees in the ethnic cleansing campaign that produced a large Jewish majority in the state of Israel in 1948. This refugee population has benefited from the Agency's educational, health and other facilities since soon after this nakba, or catastrophe, befell the Palestinian people. All of these vital services are currently jeopardized as a result, as is the security and stability of the countries that host these populations, notably Jordan and Lebanon, which are now hosting additional Palestine refugees who fled the war in Syria.

Given this general lack of concern, there has been insufficient attention to the fact that this decision is an integral part of the Trump administration's wholesale adoption of the most extreme Israeli positions. Indeed, it has been attacking Palestinian refugees on an even more fundamental level than their material conditions. Administration spokespersons, such as the former UN Ambassador Nikki Haley, as well as the President's personal lawyer, Jay Sekulow, have argued that UNRWA has adopted a flawed legal basis for defining Palestinian refugees. In their version of reality, the only "real" Palestinian refugees are those few remaining individuals who actually fled Palestine in 1948. They argue as well that Palestinians who have acquired Jordanian citizenship should not be considered refugees, while the Palestinians' right of return, enshrined in UN General Assembly resolution 181 of 1949, should be abrogated.

The Trump administration has already abandoned the decades-old position of the US government by unilaterally deciding in Israel's favor one of the most sensitive issues in the conflict over Palestine — that of Jerusalem — by moving the US Embassy to Jerusalem and declaring the question of Jerusalem to be "off the table." It is now apparently in the process of doing much the same thing with a second one, that of refugees.

The issue of the expulsion of the Palestinians, their right to return to their homes, and to compensation for their losses, has in many ways been the core of the question of Palestine refugees since 1948, when the dispossession of the Palestinian people was consummated. Since then, there have been various brazen attempts to dodge this issue or ignore its salience by denying that the Palestinians exist, ranging from Israeli Prime Minister Golda Meir's notorious declaration to this effect in 1969, to the current Trump administration's effort to define away the reality of the Palestinian refugees through legal sleight of hand.

In these circumstances, the Institute for Palestine Studies is pleased to present this timely monograph by Francesca Albanese, which marshals various legal arguments to show the baselessness of the claims made by the Trump administration regarding UNRWA and the Palestinian refugees. Albanese shows that the legal basis for UNRWA's definition of refugees, including their descendants, is precisely the same as that employed by the UN High Commission for Refugees with every single other major refugee population. She thereby demonstrates that the arguments employed by US spokespersons have no legal basis, and are no more than political posturing to achieve the administration's political aim of making the Palestinians disappear.

This paper aims to clarify some fundamental legal and historical issues regarding Palestine refugees and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)—in the wake of the current U.S. administration's decision to halt its longstanding partnership with UNRWA and completely defund the Agency. According to the U.S. discourse, this abrupt decision is linked to UNRWA's mismanagement and procedural irregularities, particularly in the way the Agency defines and registers refugees. U.S. critics argue that this system is contrary to international refugee law and the practice of the UN High Commissioner for Refugees (UNHCR). Such claims, however, are contradicted by international law, UN legislation and decades of State practice. Nevertheless, according to the US argument, the problem can only be resolved by the following: (1) redefining Palestine refugees by removing from UNRWA's registration records the descendants of the original Palestine refugees and Palestine refugees who have obtained host country nationality (i.e. Jordanian); (2) "dismantling" UNRWA, via "defunding" of the Agency or obstructing its operations, and attempting to shift responsibility for Palestine refugees to UNHCR.

The "new policy" of the US towards UNRWA and Palestine refugees has cast uncertainty over the future of both the Agency and Palestinian refugees. Because of its possible impact on the stability of the host countries and of the Middle East at large, it has generated confusion, as well as passionate reactions, among regional and international stakeholders alike.

In a region ravaged by conflict and instability, UNRWA's core and emergency programs are vital, especially in the war-torn areas where the Agency operates, where refugee dependency on assistance is particularly high. The Agency, which employs over 30,000 staff in the region, is currently struggling to keep in operation its 711 schools, serving over half a million children, and its 143 health facilities, which receive over 8.5 million visits each year. Pressured by the lack of funds, the Agency had no alternative to suspending its emergency relief programs, including essential food and cash distribution to the poorest of the poor. The possible collapse of UNRWA's system may be felt much further than UNRWA's facilities.

This paper consists of an executive summary; an overview of the main U.S. decisions and pronouncements regarding Palestine refugees and UNRWA; an analysis of the main U.S. arguments against UNRWA and Palestine refugees; and conclusions. Building on a variety of legal sources and UN records, the paper finds that the U.S. policy shift concerning UNRWA and Palestine refugees is ill-informed, based on widely circulated but largely erroneous views regarding Palestine refugees, including the UN system that was set up to serve them and preserve their rights under international law. It explains why Palestine refugees have historically enjoyed a special status and institutional regime; why UNRWA's refugee definition and registration are in line with international law and UNHCR practice; and why the US decisions and pronouncements toward UNRWA have no foundation in international law. The U.S. administration's allegations against UNRWA and the related call to either reform or dismantle the Agency appear to rest on political, rather than legal, grounds. Helping sustain UNRWA in the short term will preserve the welfare of the millions it serves, while concrete ways to solve the Palestine refugee question in a just and durable way continue to be sought through international and regional efforts. Reform of UNRWA merits discussion, but in an open environment free from attacks or threats.


Reading

1

EXECUTIVE **SUMMARY**

1. Between January and August 2018, the U.S. administration ended seven decades of longstanding support for Palestine refugees and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the body that was established by the UN General Assembly in December 1949 to assist them. According to US pronouncements, the reason for the policy change lay in UNRWA's alleged mismanagement and procedural irregularities. In particular, the United States has taken issue with the Agency's system to define and register the refugees which, by extending status to descendants, purportedly perpetuates—instead of resolving—the refugee crisis. This system, critics argue, is contrary to international refugee law and the practice of the UN High Commissioner for Refugees (UNHCR). *[See paras 21-27]*

2. The claims that UNRWA operates outside the realm of the international refugee regime and perpetuates the refugee problem are based on selective use and an erroneous understanding of facts regarding Palestine refugees and UNRWA; misconstrue the international refugee framework, particularly the mandates of UNRWA and UNHCR; and neglect UN norms and procedures regarding cooperation with the UN and among states. *[See paras 28-31 and subsequent]*

3. Under international refugee law, Palestine refugees, including descendants, are legitimately recognized as refugees. They are internationally recognized refugees with a sui generis status under the 1951 Convention on the Status of Refugees (1951RC). Unlike other refugees in the world who derive their status from Article 1A of the 1951RC, the legal status of Palestine refugees under international law is rooted in a combination of provisions including: the 1951RC (article 1D), UNHCR's Statute (paragraph 7), and the refugee definition utilized by UNRWA, as per its Consolidated Eligibility and Registration Instructions, endorsed by the UN General Assembly. *[See paras 29-31, 34, 36-37]*

4. Palestine refugees enjoy a different institutional regime compared with other refugees worldwide, for historical reasons. In 1949, shortly before the drafting of the 1951RC was finalized, the refugees from Palestine had already been afforded both de facto asylum by host countries and a UN regime consisting of: (1) the United Nations Conciliation Commission for Palestine (UNCCP), tasked to help resolve the refugee question as part of the larger objective of peace-making in Palestine; and (2) UNRWA, primarily to provide assistance and relief to the refugees pending a political solution. Such an institutional regime, enshrined by article 1D of the 1951RC, was maintained as Palestine refugees were considered as deserving of special attention by the General Assembly, in connection with the latter's role in the partition of Palestine (UNGA Resolution 181 of November 1947) and the consequences of the disposition of that territory in igniting the hostilities that occurred between 1947-49, resulting in the displacement of most of the Arab inhabitants of Palestine. *[See paras 29-30, 34-36, 77]*

5. The United States played a crucial role within the General Assembly to set up and develop this ad hoc regime, particularly UNRWA and the way the Agency has worked and evolved. *[See paras 40,52,54]*

6. UNRWA was not mandated to achieve peace or promote durable solutions for the refugees; the UNCCP, chaired by the United States, was. As the parties to the conflict failed to reach such a political solution in the years following 1948, by 1952 the UNCCP became de facto inoperative — at least in its peacekeeping functions. Since then, UNRWA has been the principal entity serving Palestine refugees in Jordan, Lebanon, Syria, as well as the West Bank, including East Jerusalem, and the Gaza Strip (i.e. UNRWA's areas of operation). *[See paras 54-55, 57-59]*

7. UNHCR and UNRWA, created by the UNGA only three days apart, have a complementary mandate vis-à-vis Palestine refugees, so as to ensure continuity of protection in the spirit of the 1951RC (article 1D). In practice, UNRWA is responsible for Palestine refugees in its areas of operation and UNHCR is responsible for Palestine refugees when they find themselves outside UNRWA's areas of operation. *[See paras 56, 62-65]*

8. Like UNHCR, UNRWA's mandate has evolved to respond to successive situations of humanitarian necessity and, over time, it has expanded to adapt to growing refugee needs. From the work and relief programs it implemented in the early 1950s, UNRWA has further allowed millions of refugee children to receive quality education, families and individuals to access vital health care, and women and men to access job and development opportunities. Since the late 1980s, UNRWA emergency programs have mitigated the impact of continuous waves of conflict, crisis and poverty on refugees across Lebanon, the West Bank, the Gaza Strip, and Syria. *[See paras 32, 58-59,78]*

9. While attempts to legally define who is a refugee from Palestine for the purpose of UNGA Resolution 194 para. 11 (namely return and compensation) halted with the de facto demise of UNCCP's peace-making activities, UNRWA, at the behest of its major donors (first and foremost the United States), was pressured to operationally define refugees for the purpose of carrying out censuses to delete "ineligibles" from the ration rolls that predated the Agency's setup. Such a definition responded, since the outset, to the intent of putting a ceiling to the number of refugees eligible for assistance (rather than inflating them). *[See paras 40-41]*

10. The operational definition of refugee developed by UNRWA—which provides that "persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict"—has been tacitly endorsed by the UNGA since the early 1950s. It has undergone only minor amendments over time. *[See paras 39, 41-43]*

11. UNRWA's registration of descendants, corresponding with the need to protect family unity, is in line with UNHCR procedures. UNHCR registers, counts, and protects descendants of refugees in similar protracted refugee situations. That includes 13 million refugees worldwide (two-thirds of the whole refugee population), primarily from Afghanistan, Burundi, Sudan, Somalia, Eritrea, DRC, Angola, and Bhutan. The UNGA has supported UNRWA's registration of new births and asked the Agency to deliver services to children (education) across generations of Palestine refugees. *[See paras 48-51]*

12. The registration of Palestine refugees who have been given Jordanian citizenship is rooted in history and has occurred with U.S. acquiescence for political reasons. Nonetheless, the cessation of refugee status under article 1C of the 1951RC is dependent on an end to the need for international protection, and does not equate to relinquishing fundamental rights of the refugee as enshrined by international norms, particularly international human rights law, and UN resolutions. Palestine refugees who have acquired citizenship in a host country continue to have special entitlements until their position is definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations. *[See para 52]*

13. The duration of UNRWA's mandate is contingent upon the parties to the conflict reaching a durable solution, in accordance with relevant international law. UNRWA will no longer have reason to exist once the position of Palestine refugees is "definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations" (1951RC, article 1D(2)). *[See para 52,77]*

14. Although the deprivation of funding to UNRWA may hinder its operational capacity, such deprivation will neither end the Agency's mandate nor vitiate the rights and status of Palestine refugees under international law. This is in line with article 1D(2) of the 1951RC. As a subsidiary organ of the General Assembly, only the latter may extend or alter the Agency's mandate. *[See paras 61]*

15. Should Palestine refugees fall under UNHCR's purview, the relevance of international norms and UN resolutions, such as UNGA Resolution 194, for Palestine refugees, would remain unchanged. Furthermore, consideration of the decisive role of the host countries, in determining both the extent to which UNHCR can operate and the legal status and residency of the refugees, is of primary importance. *[See paras 68-69, 73]*

16. In UNHCR's practice, return—more precisely, voluntary repatriation in "safety and dignity"—as protected by international human rights law, represents the most common and preferred remedy to mass refugee crises. This is confirmed by the numbers of refugees who return to their country compared to those who are resettled (5 million versus 102,800 in 2017). Should Palestine refugees in the various host countries fall within the purview of UNHCR, nothing in the law and practice of UNHCR regarding the preference for voluntary repatriation would change. *[See paras 69-73]*

17. The protracted nature of the Palestine refugee crisis is not caused by UNRWA's procedures and UNRWA's alleged lack of will to either resettle or locally integrate Palestine refugees or promote peace in the region. UNRWA does not possess a comprehensive mandate over durable solutions of the refugee problem (UNCCP did, and it has not achieved this task). The lack of a solution to the Palestine refugee crisis must be examined in connection with the dynamics of the Middle East peace process, or lack thereof, and the lack of observance of international law. *[See paras 56-58,61]*

18. By supporting UNRWA's services to ensure welfare and development of millions of Palestine refugees (particularly through quality education, health care, employment opportunities, relief and social services), the international community—and the United States first and foremost—has not only alleviated the suffering of the refugees, but also fostered stability in the region for decades. *[See paras 59-60, 74, 78]*

19. As a UN member state, the United States has the power to bring any issues for discussion before the UN, including the need to reform a UN agency, its mandate, or operations. The UN system affords means and avenues to pursue such goals. *[See para 80]*

20. However, it is not in the purview of any UN member state to unilaterally negate fundamental human and people's rights as enshrined under international law or the inherent claims stemming from UN resolutions. Pressuring a UN entity to redefine its mandate, align its policies and procedures to the political goals of one or more UN member states, and attempting to disrupt or undermine it by tarnishing its reputation and threatening its existence by abruptly defunding it, runs against the integrity and operational independence that guides the UN. Exerting influence on other UN member states to change their policies vis-à-vis a UN agency and the population it serves sits equally uncomfortably with the overall purposes of the independence of states in their dealings with the UN and their cooperation with the UN for maintenance of peace and stability, an obligation under article 2 of the UN Charter. *[See para 80-81]*

2

SUMMARY OF **MAIN U.S. DECISIONS** AND PRONOUNCEMENTS REGARDING PALESTINE REFUGEES AND UNRWA

21. During a press briefing on 16 January 2018, the U.S. Department of State announced that it was withholding $65 million in a first $125 million tranche of 2018 funding to UNRWA, pending some unspecified "reforms" the U.S. administration would like to see implemented. [The UNRWA Commissioner-General has stated that, at no point from the time of that announcement was the Agency informed as to the specific reforms sought by the US.]

22. Subsequently, On 31 August 2018, the spokesperson of the U.S. Department of State announced that the United States would not make additional contributions beyond the $60 million contribution it made in January:

> *"The Administration has carefully reviewed the issue and determined that the United States will not make additional contributions to UNRWA. When we made a US contribution of $60 million in January, we made it clear that the United States was no longer willing to shoulder the very disproportionate share of the burden of UNRWA's costs that we had assumed for many years. Several countries, including Jordan, Egypt, Sweden, Qatar, and the UAE have shown leadership in addressing this problem, but the overall international response has not been sufficient.*
>
> *Beyond the budget gap itself and failure to mobilize adequate and appropriate burden sharing, the fundamental business model and fiscal practices that have marked UNRWA for years—tied to UNRWA's endlessly and exponentially expanding community of entitled beneficiaries—is simply unsustainable and has been in crisis mode for many years. The United States will no longer commit further funding to this irredeemably flawed operation. We are very mindful of and deeply concerned regarding the impact upon innocent Palestinians, especially school children, of the failure of UNRWA and key members of the regional and international donor community to reform and reset the UNRWA way of doing business. These children are part of the future of the Middle East. Palestinians, wherever they live, deserve better than an endlessly crisis-driven service provision model. They deserve to be able to plan for the future.*
>
> *Accordingly, the United States will intensify dialogue with the United Nations, host governments, and international stakeholders about new models and new approaches, which may include direct bilateral assistance from the United States and other partners, that can provide today's Palestine children with a more durable and dependable path towards a brighter tomorrow."* [1]

23. Meanwhile a number of other relevant and revealing statements by U.S. officials have either been publicly circulated or leaked. For example, in internal emails leaked to Foreign Policy magazine, Jared Kushner, senior advisor to U.S. President Donald Trump, advocated for a "sincere effort to disrupt" UNRWA. "This [agency] perpetuates a status quo, is corrupt, inefficient and doesn't help peace," he wrote. According to the same report, Kushner also pressed Jordan, during a visit to the region in June 2018, to strip its more than two

1. Heather Nauert, "On U.S. Assistance to UNRWA," 31 August 2018, https://www.state.gov/r/pa/prs/ps/2018/08/285648.htm.

million UNRWA-registered Palestinians of their refugee status so that the Agency could no longer operate there. The same report also quoted an email from Victoria Coates, a senior adviser to Jason Greenblatt, Special Representative for International Negotiations: "UNRWA should come up with a plan to unwind itself and become part of the UNHCR by the time its charter comes up again in 2019."

24. On 17 August 2018, President Trump's lawyer Jay Sekulow, in a response to another Foreign Policy article about Palestine refugees, claimed that UNRWA had changed its definition of a "Palestine refugee" in 1965 to include third-generation descendants and again in 1982 "to include all descendants of Palestine refugee males, including legally adopted children, regardless of whether they had been granted citizenship elsewhere." According to Sekulow, "[t]his classification process is inconsistent with how all other refugees in the world are classified, including the definition used by the UNHCR and the laws concerning refugees in the United States." Sekulow asserts that although UNHCR also applies the principle of "family unity," it does so differently from UNRWA:

> *"The 1951 refugee convention has a lengthy definition of refugee that is personal: A refugee is a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.' In registering refugees on this basis, the UNHCR interprets the convention as requiring 'family unity,' and it implements the principle by extending benefits to a refugee's accompanying family, calling such people 'derivative refugees.' Derivative refugees do not have refugee status on their own; it depends on the principal refugee. UNRWA's definition is also personal: Palestine refugees are 'persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means*

of livelihood as a result of the 1948 conflict,' but it also registers 'descendants of Palestine refugee males, including adopted children.' The status for descendants is not dependent upon accompanying the principal refugee. Here is where the sleight of hand comes in: Of course it is possible for there to be multiple generations of refugees, if the multiple generations all fit the primary 1951 definition of a refugee. For example, if the granddaughter of a refugee is also outside the country of her nationality due to a well-founded fear of being persecuted, she too is a primary refugee. But she is not a refugee due to descent, because there is no provision for refugee status based on descent in the 1951 refugee convention or in internationally accepted practices for refugees who are not Palestine refugees."

25. Sekulow also takes aim at the Palestine refugees in Jordan: "many of the UNRWA 'refugees' are not actually refugees at all under the standard international definition of that term. For example, of the 2 million Palestine refugees in Jordan, most have been granted Jordanian citizenship."

26. Also with respect to the approach to durable solutions, Sekulow sees a difference between the two agencies, alleging: "UNRWA, moreover, is the only refugee agency in the world whose purpose is not to resettle refugees and help them go on with their lives. UNRWA spends more to do less, while perpetuating a problem it was created to help solve. This situation, which does little to advance the interests of actual refugees and much to expand a bloated UNRWA bureaucracy, needs to be addressed."

27. Meanwhile the pressure to reconsider (or end) the refugee status of the majority of Palestine refugees is also gaining traction in congress. In July 2018, Rep. Doug Lamborn (R-CO) introduced a bill that would limit the United States to assisting only the "original refugees." Similarly, Sen. James Lankford, (R-OK) has drafted legislation that would redirect U.S. funding away from UNRWA and towards other local and international agencies.

3

REDEFINING **PALESTINE REFUGEES**

28. Through the various U.S. decisions and statements, Palestine refugees have been portrayed as somewhat not "legitimate" refugees, different from other internationally recognized refugees. This is inaccurate and misleading.

Palestine Refugees at a Glance

29. Palestine refugees at large, including descendants, are persons of predominantly Arab origin (holding British Mandate citizenship since 1925 and Ottoman nationality before that) who were displaced from the territory of that part of British Mandate Palestine subsequently designated as Israel, to other parts of Mandate Palestine, namely the West Bank and the Gaza Strip, as well as neighbouring countries, namely Jordan, Lebanon, and Syria, in connection with the creation of the State of Israel (i.e. the 1947-49 Arab-Israeli war). Despite being willing to return to their "homeland" in line with applicable international law, approximately 750,000 Palestine refugees[2] were prevented from doing so by virtue of laws enacted by Israel between 1948-52, which resulted in their denationalization as well as the confiscation and disposition of their properties.[3] After enacting a Law of Return in 1950,[4] which encouraged the immigration of Jews from all over the world to the State of Israel, in 1952 Israel also approved the Nationality Law,[5] which stipulated conditions that Arabs of former Palestine could not fulfil, which de facto barred them from returning to the land as nationals.

30. Further refugee flows from the remainder of British Mandate Palestine territory were generated by subsequent conflicts, such as the 1967 Arab Israeli war, which initiated the Israeli occupation of the West Bank and the Gaza Strip.[6] These refugees are commonly referred to as "persons displaced as a result of the June 1967 and subsequent hostilities,[7]" instead of refugees. This has a historical reason: Jordan—to where the majority of these refugees were displaced—considered them internally displaced since it had annexed the West Bank in the aftermath of the 1948 Arab-Israeli war and considered it as part of its territory.

31. Distinction is often drawn between "Palestine" and "Palestinian" refugee, where the former refers to refugees under UNRWA's mandate (see below, UNRWA definition) and the latter refers to refugees of Palestinian origin—hence the term is both wider and narrower than "Palestine refugees". In UNHCR's interpretation of article 1D of the 1951RC, the term "Palestinian refugee" is used indistinctively to refer to Palestine refugees and 1967 displaced persons.[8]

32. For seventy years, Palestine refugees have not been afforded with concrete options to achieve durable solutions or be compensated for their losses in line with relevant UN resolutions on the matter.[9] At present,

2. See figures provided by the United Nations Economic Survey Mission for the Middle East, Final Report, A/AC.25/6, 28 December 1949.
3. In particular, according to the statement of the Lebanese representative at the UN, "obstacle to their repatriation [was] not dissatisfaction with their homeland", but the fact that they were prevented return by a "Member of the United Nations". GAOR, 5th sess., 3rd comm., 328th mtg., para. 47.
4. *Israel: The Law of Return*, Law No. 5710-1950, 5 July 1950.
5. *Israel: Nationality Law*, 5712-1952, 14 July 1953.
6. UNGA Resolution 2252 (ES-V), 4 July 1967, UN GA Resolution 2452 (XXIII)A, 19 December 1968.
7. For the most recent UN resolution in this respect, UNGA Resolution 72/81, adopted on 7 December 2017.
8. *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees,* December 2017, HCR/GIP/16/12, para. 9.
9. E.g. UNGA Resolutions 194 of 1948, 302 of 1949, 2252 of 1967, and UN Security Council Resolution 237 of 1967.

they account for the largest group of stateless refugees (even if not all of them are stateless) as well as the most protracted refugee situation of modern history.[10] The total number of other refugees stuck in protracted refugee situations, and protected by UNHCR, is 13.4 million.[11]

33. Most of the Palestine refugees (5.5 million) still reside in the territories or countries in which they took refuge in 1947-49 and 1967, namely Jordan (2.2 million), the Gaza Strip (1.4 million), the West Bank (836,000), Syria (550,000), and Lebanon (472,000).[12] However, sizable numbers have progressively fled or migrated to other countries in the Arab region (from North Africa to Gulf countries), and then, facing growing instability, poverty, discrimination, or persecution, to Europe, North America, and more recently, the Asia-Pacific and Africa.

A Distinctive Institutional and Normative Regime

34. Palestine refugees are internationally recognized refugees with a sui generis status under the 1951RC.[13] They are the only refugee group who does not automatically fall under the definition of refugee deserving international protection at article 1A[2],which hinges on "the well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion" in her/his own country, or, if stateless, country of former habitual residence.[14] The reasons for this distinctiveness are rooted in history.

35. In 1949, while the drafting of the 1951RC and UNHCR Statute[15] was still being finalized, the UN had already deliberated how to resolve the Palestine refugee crisis,[16] recommending, first and foremost, the establishment of the United Nations Conciliation Commission for Palestine (UNCCP) with the aim of negotiating a solution to the Israeli-Palestine conflict.[17] The UNCCP's tasks included overseeing the resolution of the refugee problem through the return of those willing to live at peace with their (Jewish) neighbours and the provision of compensation for returnees and those not returning alike.[18] When peace proved unattainable in the short term, mechanisms to provide immediate assistance and relief to the refugees of Palestine were devised: the current and most lasting one is UNRWA.[19] The nature of UNRWA's mandate was constructed specifically to complement that of UNCCP and therefore does not include the pursuit of durable solutions apart from the implementation of technical aspects in support of the UNCCP's work.

36. UN records confirm that, since 1948, Palestine refugees were considered internationally recognized refugees (similar to Statutory Refugees referred to in article 1[A]1 of the 1951RC); because of the UN responsibility in creating (or not preventing) their exodus, they were recognized as deserving both special UN attention[20] and status.[21] The regime devised in the UNHCR Statute,[22] the 1951RC,[23] and the 1954 Convention Relating to the Status of Stateless Persons (hereinafter 1954

10. UNHCR had recognized the situation of Palestine refugees among the most emblematic "protracted situations of mass displacement" as early as 1997. See UNHCR *The State of the World's Refugees: A Humanitarian Agenda*, 1997.
11. See further discussion at para 49.
12. Figures provided by UNRWA in September 2018.
13. UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 1A(2).
14. Ibid.
15. UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V).
16. UN General Assembly, *194 (III). Palestine - Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194.
17. Ibid.
18. Ibid, para.11.
19. UN General Assembly, *302 (IV). Assistance to Palestine Refugees*, 8 December 1949, A/RES/302.
20. Unlike other refugees, Palestine refugees were not "the results of action taken contrary to the principles of the United Nations", but "the direct result of a decision taken by the United Nations itself"; as such, they were a "direct responsibility of the United Nations" and "could not be placed in the general category of refugees without betrayal of that responsibility". See statement of the representative of the government of Lebanon *GAOR*, 5th sess., 3rd comm., 328th mtg., para. 47.
21. See statement of the representative of the Kingdom of Saudi Arabia, General Assembly, Fifth Session, Official Records, Third Committee, 328th Meeting, 27 November 1950, paras. 52, 55 UN doc. A/C.3/SR.328. www.un.org/en/documents/index.html.
22. Paragraph 7 of the UNHCR statute states: "Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person: . . . (c) Who continues to receive from other organs or agencies of the United Nations protection or assistance".
23. 1951 Refugee Convention, Article 1D.

Convention),[24] made them a "*sui generis class of refugees*."[25] This regime, while excluding from the benefits of the two conventions those refugees who are assisted and protected by other UN agencies (ergo, Palestine refugees as they were already served by UNCCP and UNRWA), includes them under the conventions' (and UNHCR's) protection should the alternative UN assistance cease. Under this regime, the 1951 and 1954 Conventions and UNHCR Mandate automatically apply to Palestine refugees when they find themselves outside of the area of operations of UNRWA and are unable or unwilling to re-avail themselves of UNRWA's protection for objective reasons.[26]

37. So, unlike other refugees in the world, who derive their status of protected persons from Article 1A(2) of the 1951RC, the legal status of Palestine refugees under international law is rooted in a combination of provisions including: the 1951RC (article 1D),[27] the UNHCR Statute (paragraph 7), and the refugee definition utilized by UNRWA as per its Consolidated Eligibility and Registration Instructions (CERI).[28] This lays the foundation for Palestine refugees' entitlement to international protection including durable solutions and enjoyment of fundamental rights enshrined in various bodies of international law, including human rights and refugee law.

The UNRWA Definition of a Palestine Refugee

38. Portraying UNRWA's refugee definition as "endlessly and exponentially expand[ing] [the] community of entitled beneficiaries"[29] is plainly wrong, as it is unsubstantiated and also ignores important facts.

39. The majority of Palestine refugees (5.5 million) are registered (as Palestine refugees) with UNRWA, which defines them as *"persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict."*[30]

40. In the absence of any other definition, in the early 1950s, UNRWA was requested to develop an operational definition to determine those entitled to receive humanitarian assistance based on the refugee's material conditions determined by the original loss of home and livelihood. The definition was developed to enable UNRWA to carry out censuses to delete "ineligibles" from the initial ration rolls that UNRWA had

24. UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, Article 1[2].
25. UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestine Refugees*, December 2017, HCR/GIP/16/12, para. 6. [Emphasis added] http://www.refworld.org/docid/5a1836804.html.
26. Ibid., para. 19 and subsequent paras regarding "objective reasons". HCR/GIP/16/12.
27. UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestine Refugees*, December 2017, HCR/GIP/16/12. http://www.refworld.org/docid/5a1836804.html.
28. UNRWA, *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009. www.refworld.org/docid/520cc3634.html.
29. Heather Nauert, "On U.S. Assistance to UNRWA," 31 August 2018, https://www.state.gov/r/pa/prs/ps/2018/08/285648.htm.
30. UNRWA, *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009, Section III A(1). www.refworld.org/docid/520cc3634.html. [emphasis added].

received from the early relief organizations assisting the refugees.[31] The main pressure for UNRWA to craft such definitions emanated from major donors, primarily the United States.[32] In fact, the definition was driven, from the outset, by the goal of reducing the initial number of refugees eligible for assistance, namely from 946,000 to 725,000, rather than inflating it. Host countries opposed the Agency carrying out censuses or headcounts.[33]

41. The UNRWA definition was not created for the purpose of defining entitlement to the right of return or compensation referred to in UNGA Resolution 194, since UNRWA has never had the authority or the intention to do so. Attempts in this direction were carried out by the UNCCP instead.[34] Between June 1949 and May 1951, UNCCP interpreted the term *refugee* in paragraph 11 of UNGA Resolution 194 as applying to all persons, irrespective of race or nationality (Arabs, Jews, and others), who were "displaced" from their homes in Arab Palestine, including Arabs in Israel and Jews in "Arab Palestine."[35] A study prepared by the UNCCP Principal Legal Adviser[36] stressed the need to define the contours of paragraph 11 of Resolution 194(III) so as to differentiate between those entitled to the status of refugees under the resolution (namely to be repatriated) and those only entitled to humanitarian assistance (e.g. some host country nationals were also receiving relief).[37] In the note under Resolution 194, refugees are persons of Arab origin who were Mandate Palestine citizens under the Palestine Citizenship Order of 24 July 1925 and had left Palestine territory, subsequently controlled by Israeli authorities, after 29 November 1947.[38] This definition, though never further developed and formally adopted, speaks to the debate within and intentions of the UNCCP in the early days of its operations. UNHCR expressly refers to it.[39]

42. Over time, UNRWA's operational definition has been slightly adjusted. For example, between 1951 and 1952, UNRWA revised its definition first to try to exclude the seasonal workers who had deep ties in Palestine,[40] then to condition the provision of assistance upon the need for it,[41] followed by the subsequent removal of the "in-need" registration requirement in 1993, finally to establish temporal and physical causality between the condition of refugee and the events which had determined it. The definition was in any event narrowly drawn and excluded some categories of persons who had become refugees as a result of the 1948 conflict.

43. The General Assembly has regularly been informed of this definition and since the 1950s has mandated the Agency to deliver services on the basis of its understanding of who the Agency would serve.[42] This is demonstrated by successive endorsement

31. In November 1948, the General Assembly had set up a UN Relief for Palestine Refugees (UNRPR), a special fund to finance relief activities implemented by relief organization such as the International Committee of the Red Cross (ICRC), the League of Red Cross and Red Crescent Societies (LRCS), and the American Friends Service Committee (AFSC). These are the ones that compiled the earlier rolls that UNRWA inherited.
32. See records of statement of U.S. and British representatives in UN official meetings, UN docs A/AC.80/SR.23,97, UN doc. A/AC.80/SR.15, 57, A/AC.80/SR.19, 75, A/AC.76/SR.32, 145.
33. E.g. UNRWA Memo Ref 1.191, 1 April 1950, on file with the author.
34. The importance of establishing "firm definitions", including of who was a "refugee" under Resolution 194, received significant attention among UNCCP members. See recorded statement of Mr. de la Tour du Pin of France, Chairman, UNCCP, Summary Record of the Seventeenth Meeting, 27 June 1949, UN. Doc A/AC.25/Com.Gen/SR.17.
35. UNCCP, analysis of paragraph 11 of the General Assembly's, Resolution of 11 December 1948, working paper compiled by the secretariat, UN Doc. A/AC.25/W/45 of 15 May 1950. Records indicate that "[t]he above interpretation has not been specifically disputed by the parties directly concerned". ibid.
36. Definition of a refugee under paragraph 11 of the General Assembly's Resolution, 11 December 1948. The note by the Principal Secretary, UN Doc. A/AC.25/W/61, 9 April 1951, must be read in connection with its addendum, 29 May 1951, UN Doc. A/AC.25/W/61/Add.1.
37. Not "all those who are receiving humanitarian assistance are [….][. . .] necessarily refugees", UN Doc. A/AC.25/W/61 of 9 April 1951, "Necessity for a definition" section.
38. Ibid.
39. See Guidelines on International Protection No. 13: Applicability of Article 1D, fn17, http://www.refworld.org/docid/5a1836804.html. http://www.refworld.org/docid/5a1836804.html.
40. UNRWA, *Assistance to Palestine Refugees: Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, GAOR*, 6th sess., suppl. 16, UN doc. A/1905, para. 18.
41. UNRWA, *Annual Report*, 1951-1952, GAOR, 7th sess., supp. 17, UN doc. A/2171, 2, n. 1.
42. See UN Secretary-General Dag Hammarskjöld's reference to "UNRWA's working definition of a person eligible for its services . . . not contained in any resolution of the General Assembly but . . . stated in Annual Reports of the Director and tacitly approved by the Assembly." See: UN Doc. A/4121, 15 June 1959, paras. 4-8.

of UNRWA Annual Reports. Hence the definition is intrinsically connected with the scope of persons to be receiving UNRWA services and hence the mandate given by the General Assembly.

44. Meanwhile it is important to note that UNHCR also cater to "persons of concern,"[43] a category which is broader than the category of refugee as defined by the 1951RC.[44] It includes asylum-seekers, internally displaced persons, and returnees, in addition to stateless persons.[45] Today UNHCR extends its services to persons fleeing generalized violence such as armed conflict, foreign domination, occupation, or colonialism.[46]

UNRWA Registration

45. Like its refugee definition, UNRWA's refugee registration system is decried by critics as inconsistent with the way in which all other refugees in the world are classified, which in turn, allegedly perpetuates the refugee crisis. This is plainly wrong and misconstrues international norms and procedures concerning refugee protection. Recent attempts to force host countries to "change" the status of Palestine refugees in their country or expecting UNRWA to modify its definition or registration system runs against the interests of the refugees UNRWA is mandated to serve, as well as UN rules and international norms and procedures.

46. UNRWA registration procedures are enshrined in the Consolidated Eligibility and Registration Instructions (CERI; last revision 2009).[47] The CERI is part of the Agency's normative framework.

47. According to the CERI, children born to Palestine (male) refugees are also entitled to be registered with UNRWA as Palestine refugees.[48] While refugee women who marry non-refugees (MNRs in UNRWA parlance) can receive the Agency's services for themselves and their children, they cannot register their children as refugees.[49] This patrilineal model of UNRWA registration discriminates against women. Besides this anachronistic gender bias (which is not part of the current criticism by the United States towards UNRWA), UNRWA registration of descendants is in line with international norms and follows international refugee practice in similar situations.

48. By registering descendants, UNRWA responds to the need to protect family unity, which is a general principle of both international[50] and regional law.[51] In accordance with the refugee's right to family unity, dependent children, including all unmarried children under eighteen years of age, can be granted derivative status if they cannot be recognized on their own basis.[52] Under its mandate, UNHCR registers refugee descendants (calling them "dependants") until they gain national protection or some other durable solutions and counts them as part of the world refugee population; UNHCR procedures state that, *"individuals who obtain derivative refugee status enjoy the same rights and entitlements as other recognised refugees and should retain this status notwithstanding the subsequent dissolution of the family through separation, divorce, death, or the fact that the child reaches the age of majority."*[53] In practice, this largely happens in protracted refugee situations, namely those in which "refugees find themselves in a long-lasting

43. UNHCR, Protection of persons of concern to UNHCR who fall outside the 1951 Convention: a discussion note, EC/1992/SCP/CRP.5, 2 April 1992, http://www.unhcr.org/excom/scip/3ae68cc518/protection-persons-concern-unhcr-fall-outside-1951-convention-discussion.html.
44. Article 1[A].
45. UNHCR mandate over stateless persons derive from the *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117.
46. This language is from the Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, and the Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984.
47. UNRWA, *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009, www.refworld.org/docid/520cc3634.html.
48. CERI, Section III.A(1)).
49. CERI, Section III.A (2.4)).
50. The family is universally recognized as the fundamental group unit of society and as entitled to protection and assistance from society and the state. Cf UDHR Article 12, Article 12, Article 16(3), ICCPR, Article 17; Article 23(5) and related Human Rights Committee General Comment No. 19, 1990, CRC, Article 16.
51. American Convention on Human Rights, Article 11(2) and Article 23(1); African Charter on Human and Peoples' Rights, Article 18(1); European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8; European Social Charter, 1996, Article 16.
52. See UNHCR's RSD Procedural Standards - Processing Claims Based on the Right to Family Unity, 2016, http://www.refworld.org/docid/577e17944.html.
53. Procedural Standards for Refugee Status Determination under UNHCR's Mandate, chapter 5, http://www.refworld.org/pdfid/577e17944.pdf.

and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social, and psychological needs remain unfulfilled after years in exile." [54]

49. In 2017, UNHCR estimated that 13.4 million refugees, i.e. two-thirds of the worldwide refugee population, are caught in protracted refugee situations with no solution in sight.[55] This includes primarily refugees from Afghanistan, Burundi, Sudan, Somalia, Eritrea, DRC, Angola, and Bhutan. For example, like the Palestinians, some have lingered in such a situation for decades, like the 2.3 million Afghan refugees stranded for forty years in Iran and Pakistan.[56] The various generations born and raised in exile are registered, counted, and protected as refugees by UNHCR.

50. UNHCR recognizes the registration of Palestine refugee descendants and expressly mentions "descendants" of Palestinian refugees as falling within the scope of Article 1D of the 1951 Convention.[57] Also, as of 1997, UNHCR has cited Palestine refugee population figures in its reports.[58]

51. Concomitantly, the General Assembly, which created UNRWA and oversees its work, approves the practice of registering new births[59] and refers to Palestine refugees in a way that explicitly comprises descendants.[60] It has encouraged the Agency's work in addressing the needs of the children[61] and, since 1982,[62] has recommended the issuance of identity cards to all Palestine refugees (from 1948 and 1967) and their descendants. This support would be void of its meaning if UNRWA deprived refugee children of their entitlement to be registered as refugees.

52. It is claimed that UNRWA registration of Palestine refugees in Jordan, who have been given Jordanian citizenship,[63] runs against Article 1C of the 1951RC, according to which acquisition of nationality and protection of other countries triggers cessation of the 1951RC's protection.[64] In fact, such registration not only has historical reasons, but also has its own legal explanation. First of all, during the Cold War, the United States, along with other Western powers, strongly supported that Palestine refugees in Jordan maintain refugee status; they feared that having the Kingdom of Jordan assume full responsibility for the exiled Palestinians altogether might destabilise it to a point it would fall in the hands of the former USSR.[65] Hence, at the request of the General Assembly, UNRWA has continued to provide assistance to Palestine refugees in Jordan. Second, the cessation of refugee status under article 1C of the 1951RC implies ending the need for international protection and does not equate to relinquishing fundamental rights of the refugee as enshrined by international norms, particularly international human rights law, and UN resolutions (e.g. UNGA Resolution 194 of 1948, Resolution 302 of 1949, Resolution 2252 of 1967, and UNSC Resolution 237 of 1967). As supported by UNHCR, Palestine refugees who have acquired citizenship maintain the entitlements connected to their distinctive status to the extent their position and their historical claims are yet to be definitively settled within the meaning of relevant UNGA and UNSC resolutions.[66]

54. UNHCR ExCom, "Protracted Refugee Situations", 30th meeting of the Standing Committee, EC/54/SC/CRP.14, 10 June 2004, para. 3.
55. UNHCR, Global Trends: Forced Displacement in 2017, 19 June 2017, p. 22.
56. Ibid.
57. UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestine Refugees*, December 2017, HCR/GIP/16/12, para. 8, www.refworld.org/docid/5a1836804.html.
58. See UNHRC, Global Trends: Forced Displacement in 2017, 19 June 2017, p. 2, www.refworld.org/docid/5b2d1a867.html.
59. See *Report of the Director of [UNRWA], 1 Jul. 1953 to 30 Jun. 1954*, UN Doc. A/2717, para. 10, noted by the General Assembly in UNGA Resolution 818 (IX), 4 December 1954; *Report of the Commissioner-General of [UNRWA]*, UN Doc. A/57/13, 27 October 2002, para. 76, considered by the General Assembly in UNGA Resolution 57/121, 11 December 2002.
60. E.g. UNGA Resolution 68/76, 11 December 2013.
61. E.g. UNGA res 68/78, 11 December 2013.
62. UN Doc. A/38/382, Special Identification cards for all Palestine refugees. Report of the Secretary-General, 12 September 1983, para. 9. UNGA Resolution 67/116, 18 December 2012, para. 20.
63. Article 3(2) of *Jordanian Law No. 6 of 1954 on Nationality (last amended 1987)*, 1 January 1954, expressly refers to Palestinians.
64. 1951 refugee Convention, Article 1C.
65. Avi Plascov, *The Palestinian Refugees in Jordan 1948-1957*., (Abingdon, UK: Routledge, 2017); Benjamin N. Schiff, *Refugees unto the Third Generation: UN aid to Palestinians* (Syracuse: Syracuse University Press, 1995,), pp. 8-9; see also Benjamin N. Schiff, "Defunding Aid for Palestinian Refugees is Not a Road to Peace," The Hill, 12 September 2018, https://thehill.com/opinion/international/406306-defunding-aid-for-palestinian-refugees-is-not-a-road-to-peace.
66. *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestine Refugees*, December 2017, HCR/GIP/16/12, para. 32, states, "This interpretation of the 1951 Convention is necessarily without prejudice to the meaning of 'the Palestine people,' as well as to the meaning of the terms 'refugees' and 'displaced persons' as used in various UN General Assembly and UN Security Council Resolutions." http://www.refworld.org/docid/5a1836804.htm.

4

DISMANTLING **UNRWA**

53. The argument that UNRWA is an "irredeemably flawed operation" "perpetuating" the refugee crisis is premised upon the assumption that, by not overtly pursuing local integration or third country resettlement of refugees, UNRWA has "perpetuated" the refugee problem—hence, UNHCR should take over the mandate for Palestine refugees so as to easily resettle them. Such an argument and assumption rests upon a poor understanding of the rules and procedures regulating the mandates of UNRWA and UNHCR, individually and collegially, as well as neglect of the specificity of the Palestine refugee situation and the political commitments reflected in UNGA resolutions on them.

The Genesis of UNRWA and its Mandate

54. In 1949, the establishment of UNRWA, primarily at the initiative of the United States, followed and replaced the UN Disaster and Relief Project and the Special Fund for Relief of Palestine Refugees (1948-50).[67] The Economic Survey Mission, which resulted in UNCCP's recommendation to set up UNRWA, was led by the United States' Department of State, whose aim was to promote small and then large-scale resettlement of Palestine refugees in host countries through an economic development model inspired by the Tennessee Valley Authority, a federally owned corporation created by the U.S. Congress in 1933 to support the Tennessee Valley during the Great Depression.[68]

55. One of the not-so-well-known facts about the UNRWA is that, in addition to the approximately 750,000 uprooted Palestinians, initially the Agency assisted some 17,000 internally displaced Jews in Israel, in addition to displaced nationals of another two dozen countries, including a significant number of Lebanese and smaller numbers of Algerians, Jordanians, and Syrians.[69] This is why UNRWA's name and mandate refers to Palestine refugees, rather than Palestinian refugees. UNRWA continued to assist the Jewish refugees under its mandate until June 1952, when it ceased operations within Israel at the request of the Israeli government.[70]

56. Like UNHCR, UNRWA was established as a subsidiary organ of the General Assembly under Article 22 of the UN Charter.[71] Like UNHCR, it operates under the authority of and reports to the General Assembly.[72] UNRWA was conceived to support and complement the work of the UNCCP. While the UNCCP's "refugee mandate" centred on achieving durable solutions for Palestine refugees through resolution of the Israeli-Palestine conflict, with special emphasis on voluntary repatriation, UNRWA was intended to

67. UNGA 212(III)), 19 November 1948.
68. U.S. Department of State, publication 3757, Near and Middle Eastern Series, released February 1950.
69. UNRWA, *Assistance to Palestine Refugees: Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, GAOR*, 5th session, suppl. 19, UN doc. A/1451/Rev.1, 5.
70. For information regarding Jewish persons served by UNRWA, see UN United Nations Economic Survey Mission for the Middle East, Final Report, A/AC.25/6, 28 December 1949.
71. UNHCR is established under article 7 of the UN Charter.
72. UNRWA does it directly while UNHCR does it through the Economic and Social Council (UNHCR, para. 11).

support the economic welfare and development of the refugees within the host countries, pending that resolution.[73]

57. Facing the impossibility to bring Israel and the Arab states close to an agreement, by 1951-52 the UNGA cut down UNCCP's budget allowing it to only operate in New York.[74] While not formally abolished, the UNCCP has made no further substantive attempt to resume discussions on unresolved aspects of the Arab-Israeli conflict. Since the mid-1960s, when the UNCCP terminated an assessment of the value of the refugee property left behind in Israel, UNRWA has continued to operate on the basis of a temporarily renewed mandate (every three years), providing essential services and protection to Palestine refugees, including descendants, in the absence of a just and durable solution. Conversely, UNHCR, which had also started with a temporary mandate, was then transformed into a permanent agency.[75]

58. Despite its initially specific mandate in scope and time, UNRWA started to provide large-scale relief, work, and welfare programmes and, since UNCCP's de facto dismissal, was left as the only UN agency assisting (and protecting) Palestine refugees. Interestingly, UNCCP was never formally abolished and yet, dramatically defunded, was left with no means to operate.

59. The General Assembly has regularly endorsed, repeatedly extended, and progressively expanded the Agency's mandate in response to developments in the region that required UNRWA to provide a variety of humanitarian,[76] development,[77] and protection activities based on the needs of Palestine refugees.[78] It has continued to do so for nearly seven decades, causing UNRWA to become a large, active, much debated and often criticized agency that currently defines its mandate as promoting the well-being and human development of the Palestine refugees, including protection, education, health care, relief and social services, camp infrastructure and improvement, microfinance, and emergency assistance, including in times of armed conflict.[79]

60. After almost seven decades of operations, UNRWA is confronted with an increased demand for services resulting from natural growth in the number of registered Palestine refugees, the extent of their vulnerability, and their deepening poverty, particularly due to recurrent crises and deteriorating socio-economic

73. UNRWA's original mandate included: "carry[ing] out direct relief and works programmes in collaboration with local governments," "consult[ing] with the Near Eastern governments concerning measures to be taken preparatory to the time when international assistance for relief and works projects is no longer available," and "plan[ning] for the time when relief was no longer needed". UNGA res. 302 (IV), 8 December 1949, para. 7(b). See also UNCCP, "First Interim Report of the United Nations Economic Survey Mission for the Middle East" appended to UNCCP, *Final Report of the United Nations Economic Survey Mission for the Middle East, Part I (The Final Report and Appendices) and Part II (The Technical Supplement)*, UN doc. A/AC.25/6, New York, 1949, part I, 14,16. 53. Procedural Standards for Refugee Status Determination under UNHCR's Mandate, chapter 5, http://www.refworld.org/pdfid/577e17944.pdf.

74. GAOR: 6th Sess., Annexes, Agenda Item 24 (a) (A/2072, 24 January 1952), p. 1.

75. GA res. 58/153, 22 December 2003. Implementing actions proposed by the United Nations High Commissioner for Refugees to strengthen the capacity of his office to carry out its mandate, 22 December 2003, para. 9.

76. E.g. UNGA res. 614 (VII) of 1952 notes a need for "increased relief expenditures" in the UNRWA budget. UNGA Resolution 916 (X) of 1955 notes the "serious need of other claimants for relief […][. . .] namely, the frontier villagers in Jordan, the non-refugee population of the Gaza Strip, a number of refugees in Egypt, and certain of the Bedouin." Following the 1967 war, UNGA Resolution 2252 (ES-V) asked UNRWA to "continue to provide humanitarian assistance [. . .] on an emergency basis, and as a temporary measure, to persons in the area who are currently displaced and in serious need of continued assistance"." In later years, the UNGA repeatedly restated the Agency's mandate for those displaced in 1967. After the Israeli invasion of Lebanon of 1982, UNGA extended UNRWA's mandate to encompass those displaced by "subsequent hostilities." UNGA Resolution 37/120 (J) of 1982 explicitly adds protection to the list of UNRWA responsibilities, urging the Agency to "undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestine refugees in the occupied territories."

77. In 1958 and 1959, UNGA recommended that the Agency increase programs relating to education, vocational training, and self-support—an emphasis that would become an important blueprint for the Agency. From 1992 to 2002, UNRWA collaborated with the Office of the UN Special Coordinator for the Middle East Peace Process (UNSCO) and other specialized agencies of the UN system to contribute to the development of economic and social stability in the occupied Palestine territory. In 1993, after Israel and the Palestine Liberation Organization sign the Declaration of Principles on Interim Self-Government Arrangements, UNRWA began developing its Peace Implementation Programme, which works "to meet Palestine requests for assistance and priorities" during the interim period; UNGA res. 49/35 (1994) notes its "significant success."

78. UNRWA, "Frequently Asked Questions," http://www.unrwa.org/who-we-are/frequently-asked-questions. UNRWA's mandate was most recently renewed until June 2017 in UN General Assembly Resolution 68/76, Assistance to Palestine refugees, A/RES/68/76, 16 December 2013. [Please check this. The last mandate renewal for UNRWA was on 6 December 2016 by General Assembly resolution 71/91.]

79. See UNGA resolution 71/91 of December 2016, Assistance to Palestine refugees, UN doc. A/RES/71/91, which renewed UNRWA's mandate until June 2020 (see para 6). See also Secretary-General Report, Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Seventy-first session, agenda item 49, United Nations Relief and Works Agency for Palestine Refugees in the Near East, 30 March 2017, UN Doc. A/71/849.

and humanitarian conditions in its areas of operation.[80] Its almost entire reliance on voluntary contributions and financial support has constantly put UNRWA in a mode of cyclical financial crisis, where the delivery of core essential services and special programs is generally at risk.

61. The duration of UNRWA's mandate is contingent upon the resolution of the conflict and "the just resolution of the question of Palestine refugees."[81] Hence, Palestine refugees in the areas of UNRWA's operation would only fall under the legal purview of the 1951 Convention and the mandate of UNHCR in the event that the General Assembly deliberated to terminate UNRWA's mandate, or if the Agency ceased otherwise to deliver its services in the areas of its geographical mandate.

UNRWA's Role vis-à-vis UNHCR

62. Rather than being antithetical or contradictory, UNHCR and UNRWA, which were created by the UN General Assembly only three days apart, have a complementary mandate vis-à-vis Palestine refugees[82] so as to ensure continuity of protection in the spirit of the 1951RC.[83] UNHCR interprets it so that UNRWA is responsible for Palestine refugees in Lebanon, Jordan, Syria, the West Bank, and the Gaza Strip, and UNHCR is responsible for them (i.e. Palestine refugees from 1948 and 1967, as well as "new" refugees) when they find themselves in need of international protection outside UNRWA's areas of operation.[84]

63. Under article 1D(2) of the 1951RC, whenever the assistance and protection provided to the refugees served by UNRWA ceases for any reasons, they fall under the purview of the 1951RC.[85] So, should the General Assembly determine the cessation of UNRWA's mandate, the UN responsibility for Palestine refugees in the region would fall under UNHCR's mandate. However, consideration of the decisive role of the host countries, in determining both the extent to which UNHCR can operate and the legal status and residency of the refugees, is of primary importance. Unlike the country that has created the displacement, which is under an obligation to allow the displaced persons to voluntarily return, there is no legal obligation upon host countries to locally integrate and upon third countries to resettle.

64. It is worth considering that, should UNHCR register Palestine refugees in the current UNRWA areas of operations, their numbers (with the exception of Jordan) would be much higher since, unlike UNRWA, UNHCR registers both male and female lines and also count as Palestine refugees those who were displaced for the first time in connection with the 1967 displaced (including descendants), who receive UNRWA's services without being part of the overall registered refugee population.

65. Should Palestine refugees in UNRWA's areas of operation fall within the purview of UNHCR, UN resolutions on Palestine refugees, such as UNGA Resolution 194 and the rights it enshrines, would remain a valid landmark until a just and durable solution is implemented for the question of Palestine refugees.

80. UNRWA "Statement of UNRWA Commissioner-General to the Advisory Commission," https://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-advisory-commissionjune2018.
81. UNGA res.302 (IV), 8 December 1949. See also General Assembly Resolution 71/91,which extends UNRWA's mandate until 30 June 2020. UN Security Council Resolutions." http://www.refworld.org/docid/5a1836804.htm.
82. UNHCR, Note on the Mandate of the High Commissioner for Refugees and his Office, October 2013, http://www.refworld.org/docid/5268c9474.html, which states (fn15): "The functions of the High Commissioner for Refugees and UNRWA are complementary: the High Commissioner for Refugees has the global refugee mandate, while UNRWA has a specific mandate over a particular category of refugees residing in five areas of operation (Gaza, West Bank, Lebanon, Jordan and Syria). This complementarity is acknowledged in the Statute, para. 7(c) and also in Article 1D of the 1951 Convention".
83. UNHCR, Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestine Refugees, para. 6.
84. Ibid, see para. 7.
85. Ibid, Section E.

UNRWA, UNHCR, and Durable Solutions

66. UNRWA does not work on any specific durable solution but it advocates for a just and durable solution to the refugee question in line with international law.[86] It is not commonly reported that in its early years, UNRWA attempted to promote the long-term integration of Palestine refugees into local economies.[87] This was met by firm resistance from the Arab states (except Jordan) and the refugees themselves, who demanded compliance with the primary recommendation of Resolution 194 on refugees, namely return.[88]

67. Regarding the mandate of the UN agencies serving Palestine refugees, it is worth recalling that it is not in the purview of any UN member state to relinquish the possibility to enjoy the fundamental rights and inherent claims that these refugees have under international law. This includes the right of return whose validity for Palestine refugees is often dismissed by U.S. critics.

68. The formulation of the right of return is articulated in various human rights instruments[89] and UN treaty body general comments.[90] While the establishment of the international human rights framework occurred subsequent to the initial Palestinian displacement, the legal foundation of the right of return of Palestine refugees, as it was reaffirmed in UNGA Resolution 194, is rooted in international law as it stood prior to 1947.[91] Such right flows from the illegality of the forced displacement and acts of violence that were committed against the Arab civilian population of Palestine by Zionist paramilitary and, subsequently, Israeli military forces (well documented, including by Israeli historians).[92] Already prior to 1948, disruption of people and family life, and arbitrary destruction or seizure of private property during hostilities were considered illegal;[93] pillage, including looting, plunder, or sacking by soldiers, carried out collectively or individually, were absolutely prohibited;[94] violation of these norms would result in an obligation to compensate the victims.[95] Deportations and other inhumane acts committed against civilian populations before or during war were considered a "war crime"[96] and a "crime against humanity,"[97] as confirmed by the jurisprudence developed during the Nuremberg Trials (1945-46).[98] This legal framework was common knowledge among the drafters of UNGA Resolution 194, who limited themselves to "reaffirming" (instead of establishing) a matter which was considered customary law.[99]

69. Return (or "voluntary repatriation" in international refugee parlance) in "safety and dignity" is also considered the *"most viable solution for the majority of people who find themselves in protracted refugee situations"* ahead of local integration and

86. UNRWA, "Frequently Asked Questions," www.unrwa.org/who-we-are/frequently-asked-questions.
87. Schiff, Benjamin N. Schiff, *Refugees unto the Third Generation: UN aid to Palestinians (Syracuse: Syracuse University Press,* 1995), pp. 33-46.
88. UN Economic Survey Mission for the Middle East, Final Report, A/AC.25/6, 28 December 1949.
89. UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, Article 13(2),); International Covenant on Civil and Political Rights, 16 December 1966, Article 12; International Covenant on Economic, Social and Cultural Rights, 16 December 1966; International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, Article 5d(ii),).
90. Human Rights Committee, General Comment No 27, Article 12 (Freedom of Movement), UN Doc CCPR/C/21/Rev.1/Add.9, 02 November 1999, para. 19 CERD, General Recommendation 22, Article 5, 49th session (1996), UN Doc A/51/18, annex VIII, at 126, para. 2.
91. *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907.
92. Benny Morris, *The Birth of the Palestine Refugee Problem, 1947-1949* (Cambridge, UK: Cambridge University Press, 1987),); Simha Flapan, *The Birth of Israel: Myths and Realities* (New York: Pantheon, 1987).
93. Articles 46 and 23(g) respectively, Hague Regulations.
94. Articles 28 and 46, Hague Regulations.
95. Article 3, Hague Convention.
96. Article 6b, IMT Charter.
97. Article 6c, IMT Charter.
98. The Nuremberg and Tokyo trials referred to the Hague Conventions as constituting customary international law. See The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg, Germany, especially Part 22, judgment, 22nd August, 1946 to 31st August, 1946, 30th September, 1946 and 1st October, 1946 (London: published under the authority of H.M. Attorney-General by His Majesty's Stationery Office, 1950); and The Tokyo Major War Crimes Trial: The Judgment, Separate Opinions, Proceedings in Chambers, Appeals and Reviews of the International Military Tribunal for the Far East, Annotated, Compiled and Edited by R. John Pritchard, A Collection in 124 Volumes (New York: The Edwin Mellon Press, 1998), also cited in Kattan, 2009:345 fn 233.
99. Progress Report of the UN Mediator for Palestine, GAOR, 3rd Sess. Supp. 11, UN Doc. A/648, at Pt. 1, V, paras. 2, 6-8.[emphasis added]

resettlement.[100] This is confirmed by the striking numbers of refugees who return to their country compared to those who are resettled (5 million versus 102,800 in 2017).[101] Hence, should Palestine refugees in the various host countries fall within the purview of UNHCR, the right of return, which is based in international law and in UNGA resolutions, would be prioritized.

70. In this respect, Resolution 194—calling for the return of the refugees to their "homes" and reconfirmed over 150 times—has served as a model for the resolution of other conflict-generated large refugee crises (e.g. Iraq, Cambodia, Central America, Bosnia, Timor Leste, and Afghanistan). With respect to Palestine refugees, Resolution 194 is binding because through it the General Assembly expressed a consensus widely shared at the time and reiterated well-established principles of international law.[102]

71. While other solutions are worth exploring, within the purview of refugee's choice (as no solution can be forced upon him/her), return should not be dismissed simply on the ground of political considerations and practical challenges.

72. Where safe return is not feasible, the next most common and more practicable durable solution is local integration in the country of first refuge. However, unlike return/voluntary repatriation which is solidly built in international law, there is not an obligation to "locally integrate" refugees. States' parties to 1951RC need to grant refugees certain rights, but there is no obligation to grant citizenship or permanent stay. Hence, in this context it is important to affirm that the right of return is a right and should be treated as such.

73. Ending the refugees' status through durable solutions alternate to repatriation, such as local integration and resettlement, means a cessation of the refugee status and, hence the need for international protection. It does not affect the rights and historical claims that derive from international law; in the case of Palestine refugees, the right to enter/return to their country, as enshrined in international law, restitution, and compensation would remain until there is a settlement of the refugee claims.

100. UNHCR, *Protracted Refugee Situations*, 20 November 2008, UNHCR/DPC/2008/Doc. 02.
101. The number of resettlement places available globally does not exceed 1% of the world's total refugee population.
102. On the legal character of resolutions that have been reaffirmed hundreds of times, see Judge Tanaka's dissenting Opinion on the ICJ South West Africa Case, "South West Africa Case (Second Phase)", *Dissenting Opinion of Judge Tanaka, ICJ Reports*, 196.

Conclusions

CONCLUSIONS

71. The United States has been strategic in determining the UN regime regarding Palestine refugees. The United States, under the auspices of the General Assembly, has played a crucial role in setting up UNRWA and in the way the Agency has worked and developed. For decades, it has influenced through its role within the UN, by means of multilateralism, politics, and processes regarding Palestine refugees. By allowing UNRWA to provide Palestine refugees with relief and development opportunities, especially quality education, employment opportunities, and health services, the international community—and the United States first and foremost—has contributed to alleviate the suffering of Palestine refugees and also fostered stability in the region.

72. The current U.S.-led attempts to reshape the way Palestine refugees are defined, registered and counted, and to dismantle UNRWA, have no legal basis; rather, they seem to constitute an attempt to attain political goals without regard to international law, human rights and history.

73. Both UNRWA's definition and its registration system are in line with international norms and practice, and Palestine refugees, including descendants, are legitimate refugees. While some irregularities exist (unlike UNHCR, UNRWA only registers refugees though the male line and does not count those who were displaced for the first time by the 1967 hostilities as part of its Registered Refugee population), these have not been made the object of U.S. criticism and request for reform.

74. It is irrelevant whether UNRWA's refugee definition differs from how all other refugees in the world are classified. Upon the initiative of the U.S. government, the UN has adopted a sui generis regime for Palestine refugees, by creating (UNCCP and) UNRWA and by incorporating article 7(c) in the UNHCR Statute and article 1 D in the 1951RC. Article 1 D contains its own "cessation clause" and it was upon insistence of the United States, which saw UNRWA as an instrument to prevent countries in the Middle East from falling into the Soviet sphere of influence that UNRWA continued to treat all Palestine refugees—including those who had citizenship, like in Jordan—as eligible for its services.

75. UNRWA's history demonstrates that rather than "perpetuating" the refugee problem through its services to refugees, and in the absence of a political solution, the Agency has been a stabilizing factor, helping maintain peace by supporting welfare and development of the refugees in the various host countries. Rather, dependency of growing numbers of refugees on UNRWA services stems from the failure to achieve a political resolution in line with international law. UNRWA stands as a symptom of these structural deficits, not its cause.

76. The right of return of Palestine refugees rests upon international law, as reaffirmed repeatedly by the General Assembly, and its exercise cannot be cancelled based on political considerations.

77. As a United Nations member state, the United States has the power to bring any issues for discussion before the UN, including the need to reform a UN agency, its mandate, or operations. However, the

pressure that the United States appears to be exerting both on UNRWA—pressing the Agency to reform itself in a way that contrasts with the Agency mandate and the immediate interests of the refugees—and on other UN member states to change their policies vis-à-vis UNRWA and Palestine refugees, sits uncomfortably with these states' sovereignty and the independence that UN agencies enjoy under the 1946 Convention on the Privileges and Immunities of the United Nations. It is also at odds with the overall purposes of independence of states in their dealings with the United Nations and cooperation among nations for maintenance of peace and stability enshrined by Article 2 of the UN Charter.

78. Should the General Assembly advise that UNRWA needs to be reformed, new visions and strategy should be discussed within the framework of UN rules and procedures and, bearing in mind the importance of respecting international law—especially human rights norms—also as a stabilizing factor.


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