

UNRWA and Palestinian Refugees

Introduction

This chapter examines the legal situation of Palestinian refugees, assessing the main differences from other refugee situations, and the consequences of these differences.ⁱ The chapter explores the central role of the United Nations (UN) and its subsidiary agencies, particularly the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) in the Palestinian refugee problem, especially on the right to durable solutions.

The unique character of the Palestinian refugee problem relates to the UN's ongoing involvement in Palestine. Since 1945, the UN's obligations towards resolution of the Palestinian refugee problem have rested on the Charter of the United Nations; its legal commitments to the majority population in Palestine prior to Partitionⁱⁱ; and its partial responsibility for the flight or expulsion of hundreds of thousands of Palestinian refugees in the wake of the conflict following the Partition plan of UN General Assembly (UNGA) Resolution (Res.) 181(II) (29 November 1947) (see Akram and Lynk, 2011:502).

Resolution 181(II) recommended a division of Palestine into two states: a Jewish state with a 44% Palestinian population and an Arab state with a 1% Jewish population.ⁱⁱⁱ On 15 May 1948, the Mandate over Palestine expired and the British withdrew. Israel declared its State on 14 May, while war broke out, and the native Palestinians were forced out or fled as Israeli forces consolidated territory. In response to the expulsion and flight of approximately 800,000 refugees who became destitute and at the mercy of the international community, the UN took several important actions.

In 1948-1949, the UN established a special regime comprising two agencies, the United Nations Conciliation Commission on Palestine (UNCCP) and UNRWA, with shared but distinct international obligations towards the displaced Palestinian population. Consequently, the UN decided to exclude Palestinians from the ‘universal’ refugee regime incorporated in the 1950 United Nations High Commissioner for Refugees (UNHCR) Statute and the 1951 Refugee Convention. Over time, the key protection of durable solutions has been severed from the refugee definition, relegating Palestinians to weak and widely disparate rights protections around the world.

The consequences of ambiguous definitions, mandates, and benefits affect a huge global population. According to the most recent *Survey of Palestinian Refugees and Displaced Persons* (BADIL 2010-2012), the worldwide Palestinian population is 11.2 million, 66% of whom are displaced persons or refugees. Over half, or 5.8 million, are 1948 refugees and their descendants, 4.8 million of whom are registered with UNRWA. More than one million are 1967 displaced persons, and an additional 519,000 Palestinians are internally displaced on both sides of the Green Line.

Establishment of UN Agencies to Assist and Protect Palestine Refugees

The United Nations Conciliation Commission on Palestine (UNCCP)

On December 1, 1948, the UNGA passed Res. 194(III), which created the UNCCP, defined its durable solutions mandate towards the refugees, and established the framework for bringing about a final resolution to the conflict. The UNCCP was founded with a mandate of *refugee protection*, particularly to achieve a *specific durable solution* for the entire population of displaced Palestinians. UNCCP's mandate extended to all habitual residents or citizens of Palestine, who were either displaced by the 1947-48 conflict or were unable to return to territory under Israeli control.^{iv}

By the mid-1950s, it was evident to the UN and the parties involved that the UNCCP was unable to fulfill its dual mandate of mediator and international protection agency. Israel's opposition to repatriation made it impossible to solve the greater conflict while simultaneously implementing the required durable solution for the refugees. Although the UNCCP was never legally terminated, its operations shrank due to political impasse, lack of support, and de-funding by the UN. The UNCCP was never replaced by any international agency with an explicit mandate focusing on durable solutions for the entire Palestinian refugee population defined under Res. 194(III).

The United Nations Relief and Works Agency for Palestine Refugees (UNRWA)

On 8 December 1949, by Res. 302(IV), the UNGA created UNRWA. UNRWA was established at the outset as a short-term (three years, renewable) 'relief and works' agency. Its services initially extended to a subset of the population of UNCCP-defined 'Palestine refugees'—the subgroup that was 'in need.' By 1951, UNRWA had inherited a list of almost one million persons from the predecessor refugee agencies providing relief to the Palestinians. UNRWA's refugee definition as it has evolved today is not tied to specific eligibility for refugee protection, but covers groups and categories of vulnerable persons designated on the basis of need for services.

Resolution 302(IV) affirmed that Para. 11 of Res. 194(III) was the frame of reference for the required durable solution, pending which UNRWA was to continue to provide relief to the refugees. In his *Note* of 9 April 1951, the UNCCP Legal Adviser clarified that Para. 11's definition and its durable solutions formula related to *all those* who fled Palestine due to the conflict, not just those in the Arab states eligible for UNRWA's humanitarian assistance. However, unlike UNHCR, UNRWA has no enabling Statute or an Executive Committee. It rests its legal authority on three bases: its status as a subsidiary body of the UNGA; UNGA resolutions; and Commissioner-General statements and reports to the UN. The absence of clear statutory guidelines and its weak governing structure leave UNRWA without precise legal authority for many of its activities.^v

UNRWA's initial focus on relief turned to 'works' after the Economic Survey Mission recommended instituting large-scale development projects to settle the refugees in the Arab host states. Political opposition towards host country integration blocked attempts to direct UNRWA's role away from humanitarian assistance. By the early 1960s, UNRWA had re-focused its resources on education, and instituted an ambitious plan to build schools throughout the refugee camps. UNRWA services have continued to expand to broad health provision, social services, shelter and camp improvement, microfinance and microenterprise development

programmes. In most of these areas, UNRWA has received approval by the UNGA and few challenges from states.

Following the 1967 war, UNRWA began responding to the increased need for human rights intervention and monitoring to protect individuals in ongoing conflict. UNGA resolutions increasingly used the language of ‘protection’ and ‘legal rights’ in conjunction with UNRWA’s role and activities towards Palestinian refugees. These Resolutions fall into three categories: recommending the Secretary-General to take protection measures towards Palestinians in consultation with UNRWA; commending UNRWA for undertaking certain protection measures; and recognising as fact that UNRWA’s activities include ‘assistance and protection.’^{vi}

In 1990, in the wake of the first *intifada*, the UN Security Council (UNSC) passed Res. 681, endorsing the establishment of the Refugee Affairs Officers (RAO) programme to monitor human rights violations of Palestinian refugees within the Occupied Territories. Despite pushback on the basis that RAO ‘protection’ activities went beyond UNRWA’s mandate, they continued to operate through the early 1990s until the signing of the Oslo agreements. UNRWA has most recently instituted a ‘Medium Term Strategy’ (MTS) for 2010 to 2015 designed to mainstream protection throughout its operations as an internal matter, and expand protection

activities as an external matter (UNRWA, 2010). It has also engaged in *ad hoc* expansion of its fields of operations, for example collaborating with UNHCR to assist Palestinian refugees from Iraq following the two Gulf Wars, and aiding Palestinians fleeing the current conflict in Syria to non-UNRWA fields such as Turkey (see UNRWA, 2012; LaGuardia and Van der Toorn, 2011).

UNRWA's mandate covers five geographic areas—Gaza, the West Bank, Jordan, Syria and Lebanon—and not beyond. Within its five fields, UNRWA's mandate extends to groups or categories of vulnerable Palestinian refugees and displaced persons according to relief or protection criteria. Its designated categories and individuals can be dropped from the rolls or cease to be provided services based on changed priorities of need and vulnerabilities.

The United Nations High Commissioner for Refugees (UNHCR) and Palestinian Refugees

The UNHCR Statute adopted by UNGA Res. 428(V) in December 1950 incorporated an individualised 'universal' definition of refugee, which was later included in the Refugee Convention as Article 1A(2). Under Res. 428(V), the broad scope of UNHCR's mandate is 'providing international protection' to refugees falling within its Statute, as well as to those displaced persons falling outside its statutory definition. UNHCR's core function, however, is to promote and secure *durable solutions for refugees*.

UNHCR's Statute limits its mandate vis-à-vis Palestinians. Chapter II, Para. 7(c) states that the Agency's 'competence' shall not extend to a person 'Who continues to receive from other organs or agencies of the United Nations protection or assistance . . .'. This 'exclusion clause' was incorporated into Article 1D of the Refugee Convention, and a second, 'inclusion' clause was added later in the Convention drafting process. Article 1D reads in full:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

UNHCR's initial interpretation of Article 1D in its 1979 *Handbook* required that Palestinians claiming refugee status were to be assessed under the individualised criteria of Article 1A(2),

rather than the group definition established under Res. 194—the protection definition operational for UNCCP. It required Palestinian refugees to demonstrate that they left the host countries owing to a ‘well-founded fear of persecution’ on the grounds cited in Article 1A(2). The *Handbook*’s oversight of the ‘inclusion clause’ encouraged a restrictive interpretation of Article 1D in a number of states.

UNHCR has amended its interpretation of Article 1D in two *Notes on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees* (2002 and 2009). The *Notes* define three categories of Palestinian refugees:

- a) ‘Palestine refugees’ in the sense of Res. 194(III), displaced from the part of Palestine that became Israel and unable to return there.
- b) ‘Displaced Persons’ within the sense of Res. 2252, who have been unable to return to the Occupied Territories due to Israeli policies since 1967.
- c) ‘Palestinian refugees’ neither 1948 nor 1967 displaced persons who are outside the Occupied Territories but are unable or unwilling to return there due to a well-founded fear of persecution under the meaning of Refugee Convention Article 1A(2).

Under UNHCR’s current interpretation, Article 1D does not apply to category c) refugees—who must instead satisfy the individualised persecution criteria of Article 1A(2)—but does apply to categories a) and b) since they are eligible to receive assistance from UNRWA. UNHCR recognises that the second sentence of Article 1D is an ‘inclusion clause’, and states that categories a) and b) are Convention refugees simply because (*ipso facto*) they meet a group/category definition. They need not prove individualised persecution. UNHCR’s Amended *Note* adds that categories a) and b) are entitled to the benefits of the Convention as long as they reside outside UNRWA areas. The *Note* clarifies that an individual refugee need not prove that s/he is outside UNRWA areas involuntarily due to circumstances outside his control. Finally, the *Note* states that descendants of 1948 and 1967 refugees are entitled to UNHCR and Convention protection even if they have never been in an UNRWA area.

Defining Palestine/Palestinian Refugees

The multiple refugee definitions that were drafted for different purposes, coupled with their widely divergent interpretations, have made the determination of who *is* a Palestinian refugee ambiguous and complex. The first discussion of a Palestinian refugee definition appears in a series of the UN Secretariat’s ‘working papers’ related to the drafting of UNGA Res. 194(III).

The Resolution does not define the ‘refugees’ covered under UNCCP’s mandate, but UNCCP’s 1950 *Analysis of paragraph 11 of the General Assembly’s Resolution of 11 December 1948* stated that “the term ‘refugees’ applies to all persons, Arabs, Jews, and others who have been displaced from their homes in Palestine....” The Legal Adviser *Note* to the UNCCP issued on 9 April 1951 defined the categories of Palestinian refugees covered by the terms of Res. 194 as:

1. ‘persons of Arab origin who were Palestinian citizens and, after 29 November 1947, left territory at present under the control of the Israel authorities’;
2. ‘stateless persons of Arab origin who after 29 November 1947 left that territory where they had been settled up to that date’;
3. ‘Persons of Arab origin who were Palestinian citizens and left the said territory after 6 August 1948 and before 29 November 1947’; and
4. ‘persons of Arab origin who had opted for Palestinian citizenship, left that territory before 6 August 1948, and retained their citizenship up to 29 November 1947.’

The second definition of ‘Palestine refugee’ is that found in UNRWA’s Eligibility Regulations. After inheriting its caseload from the UN Relief for Palestine Refugees (UNRPR) and other relief organizations, UNRWA developed a working definition in order to reduce its relief records in response to donor pressure. UNRWA’s initial working definition stated that a Palestine

refugee ‘is a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood’ (UNRWA 1950). This category incorporated ‘Displaced Persons’ (UNGA Res. 2252, 1967) who were forced from their homes in the 1967 conflict, but was discontinued when Jordan assumed responsibility for them. In 1993, UNRWA omitted both the requirement to establish ‘need’ and ‘flight from Palestine as a result of the 1948 conflict’ as criteria for registration; however, the need for assistance remains the determinant of eligibility for services (UNRWA, 2009). UNRWA’s current Consolidated Eligibility and Registration Instructions (CERI) define Palestine refugees—the largest group registered with UNRWA, but not the only category for UNRWA registration and services-- 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’ (Ibid, Part III.A.1).

The third definition applicable to Palestinians as refugees is the ‘universal’ definition incorporated into Article 1A(2) of the 1951 Refugee Convention. Article 1A(2) refers to refugees of any nationality or origin; it defines a refugee based on individualised assessment of fear of persecution due to one (or more) of five prescribed grounds—race, religion, nationality, political opinion, or particular social group. Article 1D, on the other hand, applies to Palestinians as an

entire group or category, making these two definitions inconsistent in their application to Palestinians.

Adding to the complexity of Palestinian refugee status is the wide divergence in interpretations under state domestic policies and jurisprudence. Badil's *Handbook on Protection of Palestinian Refugees* (BADIL 2005, 2011) is the most comprehensive study available, and reports that in 20 of the 23 states researched, 'Article 1D is either not incorporated or applied at all, or interpreted in a way that precludes recognition of Palestinian refugees as refugees under this provision' (ibid, 337). The Handbook concludes that 'due to the particular interpretation of Article 1D by national authorities and courts in these countries, Palestinian asylum-seekers have not derived any rights and benefits from Article 1D beyond the "right" to not be excluded from applying for refugee status under Article 1A(2) of the 1951 Refugee Convention' (ibid, 337-338)^{vii}

Recent European cases illustrate the inconsistent application of Article 1D. In *El-Ali v. The Secretary of State for the Home Department* (26 July 2002) EWCA Civ. 1103. 1WLR 95, an immigration court in the United Kingdom interpreted Article 1D's phrase 'at present receiving' as relating only to the date on which the Refugee Convention was signed. Thus, Article 1D applies only to those Palestinians who were born on or before 28 July 1951, and were in

UNRWA areas on that date. The phrase ‘protection or assistance has ceased for any reason’ refers only to when UNRWA ceases to operate, and not to actual termination of services for any particular individual. In *Bolbol v. Bevandorlasi es Allampolgarsagi Hivatal (BAH)* (June 2010) C-31/09, the European Court of Justice (ECJ) held the opposite, finding that the ‘protection or assistance has ceased’ language applied to individuals who have actually availed themselves of UNRWA’s assistance, but which is no longer available. In 2012, the ECJ expanded this interpretation of 1D in *El Kott v. BAH* (13 September 2012) C-364/11, finding that the phrase ‘protection or assistance has ceased’ refers to the protection or assistance to which individuals had actually availed themselves, and which is no longer provided to them for any reason beyond their control. The ECJ further found that the *ipso facto* clause of 1D means that if the prior conditions are satisfied, the individual Palestinian would be automatically entitled to refugee status in a member state.

Under either the *El-Ali* or the *Bolbol* decision, the vast majority of Palestinians who would be considered ‘Palestine refugees’ under the Res. 194(III) definition would not be considered ‘Palestinian refugees’ under Article 1D. Nor would they be recognised as refugees under the narrow definition of Article 1A(2). Following the *El-Ali* case, in the October 2012 decision of *Said v. Sec’y of State for the Home Dept.* (26 October 2012) UKUT 00413 (IAC), the UK court

stated that *Bolbol* overrules *El-Ali*; however, neither the UK nor any other jurisdiction has yet adapted domestic law to the broader ruling of *El Kott*, so its impact on Palestinian refugee claims remains to be seen.

The full meaning and scope of Article 1D are revealed in the Refugee Convention's *travaux préparatoires*. Although Article 1D is most commonly understood as an *exclusion* clause for Palestinian refugees, it may be most accurately described as a *contingent inclusion* clause: its first sentence operates to exclude Palestinians, but its second sentence re-includes them into the Refugee Convention upon the occurrence of certain contingencies. The Arab delegates who proposed the provision considered Palestinians to be different from all other refugees. First, they claimed that 'the existence of Palestine refugees . . . was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility' (UN GAOR, 1950, para 46).

Second, the Arab delegates viewed UNHCR and the new refugee treaty as essentially tasked with resettlement. The Palestinians, however, demanded and were entitled to repatriation: 'the obstacle to their repatriation was not dissatisfaction with their homeland [as required by Article

1], but the fact that a Member of the United Nations was preventing their return.’ (ibid, para 47). As the Saudi delegate stated, ‘The Arab States desired that those refugees should be aided pending their repatriation, repatriation being the only real solution of their problem . . . Pending a proper settlement of the Arab-Israeli Conflict, the Palestine refugees should continue to be granted a separate and special status’ (ibid, paras 52 and 62).

Third, the Arab delegates recognised the need to ensure that Palestinians would receive protection and assistance until the agreed durable solution could be realised. When the second sentence of 1D was later proposed, the Egyptian delegate stated: ‘Once the United Nations assistance ceased, the Palestine refugees should automatically enjoy the benefits of the Convention’ (UN Conference of Plenipotentiaries, 1951). The amendment, however, left significant inconsistencies between the two sentences in the provision, and between Article 1D and the UNHCR Statute.

Some conclusions can be drawn from this brief overview of the drafting history concerning the key ambiguities in Article 1D. Article 1D does not include a definition of which refugees it covers (or excludes), but its reference to ‘persons . . . at present receiving’ can only be understood from the drafting history as incorporating the Res. 194(III) definition of ‘Palestine

refugee.’ The ‘organs or agencies’ referred to are clearly UNCCP and UNRWA, both established before UNHCR. The loss of protection was the greater concern of the UN, as shown by the establishment of UNCCP, entrusted with a mandate to find a specific *durable solution* to the Palestinian refugee problem. As for the clause ‘the position of such persons being definitively settled according to the relevant resolutions adopted by the General Assembly,’ the drafting history also gives guidance. Since this clause does not appear in the UNHCR Statute, the relevant time period is the drafting of the second sentence of Article 1D. Between the fall of 1947 and July 1951, the UNGA had passed a series of Resolutions on Palestine/Israel related to the refugee issue, referring to the formula in Res. 194.^{viii} The UN’s view of what the ‘definitive settlement’ of the refugee problem must entail was embodied in Res. 194(III), Para. 11. This durable solutions formula was reaffirmed in all subsequent UNGA resolutions; thus, the clause referred to the formula of Para. 11. Under the interpretation most consistent with the drafting history, every Palestinian refugee falling under any of the categories encompassed by the 194 definition is entitled to protection under the 1951 Convention.

Due to the complexity of the definitions, there is no uniform understanding of who is a Palestinian refugee; the benefits or durable solutions s/he is owed; which agency is to seek and

implement the required durable solutions; which ‘refugees’ are represented in the peace negotiations between Israel and the Palestinians; and when refugee status terminates.

Implications for Durable Solutions

International protection and the search for a durable solution are distinct yet interrelated rights. UNHCR defines ‘international protection of refugees’ as an intervention ‘on behalf of asylum-seekers and refugees to ensure that their rights, security and welfare are recognised and safeguarded in accordance with international standards’ (Jastram and Achiron, 2001, 129).

UNHCR places primary importance on the key aspect of protection for refugees, ‘the implementation of durable solutions’ (ibid). UNRWA clarifies the distinction between the range of activities constituting international protection and the specific refugee protection right to durable solutions, noting that ‘Neither humanitarian assistance nor international protection can substitute for, still less produce, a just and durable solution to the plight of Palestine refugees’ (Morris, 2008, 2). UNRWA also lists protection and durable solutions as separate components of its mandate towards Palestinian refugees (ibid, 3).

International humanitarian assistance and international protection are also distinct but overlapping concepts; the former encompasses relief services undertaken by government and non-government agencies, while the latter relates to a broader range of human and civil rights normally provided by the state of nationality. In many ways the distinction between these concepts has become blurred as a general matter, and specifically in relation to UNRWA. At the general level, this is due to the evolution of humanitarian assistance work ‘mainstreaming’ human rights protection norms, and with regard to UNRWA, to the expansion of its activities into areas once considered international protection. For refugees and displaced persons, the core ‘protection’ right is to a durable solution, involving the right to return home or to a choice among available host country absorption or resettlement options; restitution of properties and compensation for losses; and increasingly, restorative and retributive justice (Badil, 2012: 90). Their recognition *as* refugees is tied directly to an international commitment that these durable solutions are to be realised for them. For the majority of the world’s refugees, UNHCR is entrusted to carry out this commitment. Thus, refugee status recognition is the essential and necessary element that triggers international protection in the form of the right to durable solutions.

For Palestinians, three essential links are missing: 1) a clear, agreed-upon refugee definition that relates directly to access to *durable solutions*; 2) one or more agencies entrusted with realising the durable solution rights for *all* those Palestinians qualifying under that definition; and 3) the recognition that all so-defined Palestinian refugees have been guaranteed the particular durable solutions formula embodied in Res. 194(III), and will be represented as such in a final resolution to their plight.

Eligibility for and Cessation of Refugee Status

On the first link, the most recognised ‘refugee’ definitions are mutually inconsistent: the category-based definition of Palestine refugee under Res. 194(III) as opposed to the individualised definition in the Refugee Convention that most states apply to Palestinians outside the UNRWA areas. The latter is particularly problematic. Since Palestinians usually arrive in non-UNRWA areas after residing for some time in an UNRWA area, states applying the Article 1A(2) persecution analysis relate it to one of the Arab host states, and usually find discrimination but not persecution. In contrast, if the Res. 194(III) category definition were applied, most Palestinians would automatically be recognised as refugees on the basis of the original persecution by Israel that dispossessed them of their homeland and denies the right to return to their homes and properties.

Another inconsistency between these two definitions is the application of the cessation clauses to refugee status. The status of a refugee defined under Article 1A(2) can terminate under the application of Article 1C of the Refugee Convention when s/he has taken steps to re-establish himself in his country of nationality or obtains nationality and protection in a new state; and under Article 1E when s/he has established residence in a second state that grants him rights equivalent to those of a national. For Palestinians, the application of these clauses is extremely problematic; long-term residence in an Arab host state would terminate any refugee status s/he may claim under the Convention. However, the Article 1C cessation clauses do not apply to Palestinians, as Article 1C states, “This Convention shall cease to apply to any person *falling under the terms of section A . . .*”. Article 1D refugees do not fall “under the terms of Section A,” hence 1C does not refer to Palestinians at all. The Article 1E cessation clause might apply to Palestinians, but that would be inconsistent with the termination clause under Article 1D. The termination of 1D refugee status for Palestinian refugees occurs when they are ‘ . . . definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations . . . ’, that is, when the Res. 194(III), Para. 11 formula has been fulfilled, and not by the application of other cessation or termination provisions.

Access to Durable Solutions

As for the second link, international agency mandates tied to refugee protection, UNRWA and/or UNHCR have not replaced UNCCP's broad mandate. UNCCP had a more expanded notion of protection in its obligations to resolve conflict issues, negotiate for restitution of the refugees' property, and secure return and compensation rights. At the same time, UNCCP did not have a clearly articulated mandate of day-to-day protection (UNCCP 1950). UNCCP's category definition relates to persecution by Israel and applies to Palestinians everywhere who fit that category, as well as their descendants. The UNGA has affirmed that Res. 194(III) also covers 1967 Displaced Persons and that 'just settlement', as it appears in later resolutions, refers to Res. 194(III)'s formula for durable solutions (ie UNSC 1967). Finally, UNCCP's mandate of international protection, including seeking durable solutions, terminates *as a legal matter* when the conditions of Res. 194(III) are satisfied for the entire category defined under that Resolution, and not otherwise (1951 Convention, Art. 1C & 1E).

UNRWA's Protection Role and Weaknesses in its Mandate

Addressing the third link, UNRWA's benefits or services are provided to individual 'registered' Palestinian refugees and categories of Palestinians on the basis of need for assistance or specified vulnerabilities. Following amendments made over time to accommodate subsequent groups of

displaced Palestinians, UNRWA's registration and service eligibility have been bifurcated. After dropping the 'need' and 'flight' requirements, defined Palestine refugees and their descendants continue to be registered, but are not necessarily eligible for services. Later-displaced populations have also received services based on need for assistance, but are not registered on UNRWA's rolls. Such persons can be removed from UNRWA registration if they are no longer in need, or if the category itself is phased out.

Due to the lack of an authorising statute or a governing body with clear legal authority by UN member states, UNRWA's mandate is on firmest ground as a legal matter regarding those activities clearly within its founding Resolution, or UNGA *authorising* Resolutions (as opposed to after-the-fact commendatory Resolutions). It remains unproven whether UNRWA can effectively deliver the refugee protection activities described in its MTS, activities similar to those UNHCR undertakes to advance legal rights for its beneficiaries. UNRWA can, and routinely now does, collaborate with UNHCR to promote temporary absorption for Palestinians in and from UNRWA areas. However, UNRWA agrees that on the core refugee protection right, the search for and implementation of durable solutions, it has no mandate, other than to highlight the need for a just and comprehensive solution for the refugee problem.

Conclusions

Drawing conclusions from the various definitions and agency mandates, and the territories in which they operate as they affect Palestinian refugees, the protection gap is evident. As noted, the UNGA Res. 194(III) definition of ‘Palestine refugee’ applies today to a population of Palestinians, including a third generation, of approximately 6 million out of the 11.2 million Palestinians worldwide. The Agency that was to identify the beneficiaries of that definition and provide the full panoply of international protection functions, UNCCP, has become defunct as a practical, but not a legal, matter. UNHCR’s interpretation of who is a ‘Palestinian refugee’ is inadequate to address the protection gap, because under its interpretation of Article 1D, a durable solution-related definition applies to only about half of the global Palestinian refugee or stateless population.

This anomaly is best illustrated by the lack of any intervention by UNHCR or UNRWA in negotiations between the parties to the Israel-Palestine conflict concerning durable solutions for Palestinian refugees. In contrast to dozens of conflicts in which UNHCR has protected the rights of refugees, this role is absent for Palestinian refugees. Despite promoting various durable solution plans in post-conflict agreements worldwide, UNHCR has never claimed a role to

promote Palestinian refugee rights in any of the negotiations. UNRWA, on the other hand, has been excluded from even an ‘observer’ role in situations like the post-Madrid and the Oslo process. This reflects both political failure by states, and the limitations of UNRWA’s mandate.

The full scope of the Palestinian protection gap includes the weak legal framework in the Arab world. None of the Arab host states is a party to the Refugee Convention or a regional convention with refugee protections (such as in Africa or the Americas). Hence, no treaty guarantees refugee rights in the territories where the majority of Palestinian refugees reside. The Arab states are not parties to the 1954 Convention on Stateless Persons, with its important rights-provisions for which UNHCR is the monitoring body. UNRWA would have no authority to monitor or implement the Refugee Convention or the Stateless Persons Convention in any case. The Arab states are parties to many individual human rights conventions, but UNRWA has limited capacity to monitor, intervene, file reports in the treaty bodies, or pressure for compliance concerning the Arab states’ implementation of these treaties vis-à-vis Palestinians in their territories—a role even more constrained by its budget than perhaps the flexibility of its mandate. Although the Arab states are parties to the 1965 Casablanca Protocol, a region-wide treaty guaranteeing basic rights to Palestinians, they have widely disregarded their Protocol obligations (Akram and Rempel 2004, 164). UNHCR does not have treaty-based authority to

intervene in the Arab states. UNHCR regularly engages with states and other agencies to pressure non-compliant actors through the UN human rights machinery. UNRWA claims competence to take on such monitoring, but has no treaty-based authority to do so, and is further limited by resource constraints. Thus, Palestinian refugees in the Arab region are outside a firm basis for agency intervention in this entire machinery for protection and promotion of their refugee rights, leaving them in indefinite protection limbo as a matter of refugee law.

Bibliography

Akram, S.M. and Lynk, M. (2011) Arab-Israeli Conflict. In: Wolfrum, R. (ed.) *The Max Planck Encyclopedia of Public International Law*, Vol. 1. New York: Oxford University Press, Inc. pp. 499-525.

Akram, S. M. and Rempel, T. (2004) Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees. *Boston University International Law Journal*, 22 (1), pp. 1-162.

BADIL (2012) *Survey of Palestinian Refugees and Displaced Persons: 2010-2012*, Vol. 7. Bethlehem: BADIL Resource Center.

BADIL (2005) *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*. Bethlehem: BADIL Resource Center.

Interim Report of the Director of the UNRWA, GOAR, 5th sess., suppl. 19. (6 October 1950) UN Doc. A/1451/Rev.1.

Jastram, K. and Achiron, M. (UNHCR) (1 December 2001) *Refugee Protection: A Guide to International Refugee Law*. Available at: <http://www.unhcr.org/3d4aba564.html>.

LaGuardia, D. and Van den Toorn, W. (2011) *Evaluation of UNRWA's Organizational Development (OD)*. Brussels: Transtec Project Management. Available at: <http://www.unrwa.org/userfiles/2012011541241.pdf>.

Morris, N. (2008) *Consultant's Report Dated 31 March 2008: What Protection Means for UNRWA in Concept and Practice*. Available at: <http://www.unrwa.org/userfiles/20100118155412.pdf>.

Report Submitted to the Security Council by the Secretary-General in Accordance with Security Council Resolution 605 (1987) (21 January 1988) UN Doc. S/19443.

UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-ninth Meeting (28 November 1951) UN Doc A/CONF.2/SR.29.

UN GAOR (27 November 1950) UN Doc. A/C.3/SR.328. 3d Comm., 5th Sess., 328th mtg.

UN Secretariat. *UNCCP Memorandum on Relations Between UNRWA and UNCCP*. (30 March 1950) UN Doc. A/AC.25/W/42.

UNCCP Analysis of Paragraph 11 of the General Assembly's Resolution of 11 December 1948
(15 May 1950) UN Doc. W/45.

UNCCP Definition of a 'Refugee' under Paragraph 11 of the General Assembly Resolution of 11
December 1948 (9 April 1951) UN Doc. A/AC.25/W/61.

UNCCP Summary Record of the Three Hundred and Fifty-First Meeting (13 September 1962)
UN Doc A/AC.25/SR.351.

UNHCR (1979, Reedited 1992) *Handbook on Procedures and Criteria for Determining Refugee
Status under the 1951 Convention and the 1967 Protocol relating to the Status of
Refugees*. HCR/IP/4/Eng/REV.1.

UNHCR (2002) Note on the Applicability of Article 1D of the 1951 Convention relating to the
Status of Refugees to Palestinian Refugees.

UNHCR (2009) Revised Note on the Applicability of Article 1D of the 1951 Convention relating
to the Status of Refugees to Palestinian Refugees.

UNRWA (2012) *Outline of Protection Initiatives*. Available at:

<http://www.unrwa.org/userfiles/file/publications/UNRWA-Protection.pdf>.

UNRWA (2010). *UNRWA Medium Term Strategy. 2010-2015*. Available at:

<http://www.unrwa.org/userfiles/201003317746.pdf>.

UNRWA (2009) *Consolidated Eligibility Registration Instructions (CERI)*. Available at:

<http://unispal.un.org/pdfs/UNRWA-CERI.pdf>.

Endnotes

ⁱ The author thanks Danessa Watkins, Terry Rempel, Lex Takkenberg and Michael Lynk for input on this chapter.

ⁱⁱ Covenant of the League of Nations (28 April 1919) Article 22.

UN Trusteeship Council, successor to the League Mandate System; UNGA Res. 106 (S-1) (15 May 1947) UN Doc A/RES/106 (S-1) (establishing UNSCOP and UNSCOP Reports).

ⁱⁱⁱ At the time, Jews were approximately 1/3 of the Palestinian population and owned no more than 7% of the land.

^{iv} Para. 11 of Res. 194(III) states that the ‘refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return.’

^v UNRWA is the sole UN programme without a governing body outside the UNGA, which devotes only about one day a year discussing its annual report and budget. (Thanks to Lex Takkenberg for this point.)

^{vi} *See* UNGA Res. 37/120 (1982) Part (J), para. 1; UNGA Res. 49/35 (1994) Part E; UNGA Res. 61/114 (2006); Report Submitted to the Security Council by the Secretary-General in Accordance with SC Res. 605 (1987) para. 37.

^{vii} The Handbook concludes that Article 1D is properly applied only in Finland, Hungary, and Norway.

^{viii} *See* UNGA Res. 181(II) (the Partition Resolution); UNGA Res. 194(III) (establishing UNCCP); UNGA Res. 273(III) (11 May 1949) UN Doc A/RES/273(III) (Israel’s UN membership); UNGA Res. 302(IV) (establishing UNRWA); UNGA Res. 393(V) (2 December 1950) UN Doc A/RES/393(V) (UNRWA assistance fund); UNGA Res. 394(V) (14 December 1950) UN Doc A/RES/394(V) (protection measures of the refugees’ rights, property and interests).