

THE LEGAL HORIZONS OF DE-FUNDING THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST-UNRWA

Legal Analysis

March 2024

This legal analysis highlights the legal interpretation of the ongoing debate on the United Nations Relief and Work Agency (UNRWA) and the possible legal outcomes and implications of any infringement of its mandate or capacity to operate and perform its humanitarian and developmental operations.

Mandate of the United Nations Relief and Work Agency for Palestine Refugees in the Near East

The United Nations Relief and Work Agency for Palestine Refugees in the Near East, was established by the United Nations General Assembly Resolution 302 (IV) of 8 December 1949 as a temporary organization, following the 1948 war and began operating in 1950. The agency is a subsidiary organ to the United Nations established in accordance with article 22 of the UN Charter; it is one of the two only agencies reporting directly to the general assembly.[i]

The main mandate was composed of the following elements: (a) To carry out in collaboration with local governments the direct relief and works programmes and (b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.



Source @ UNRWA

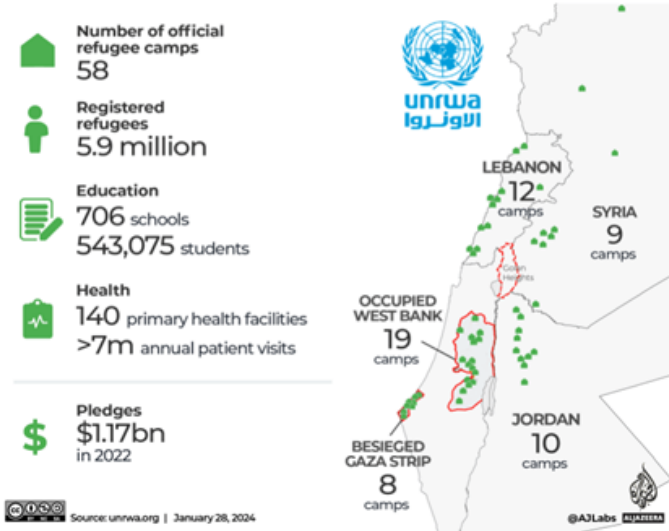
Amidst the absence of a solution to the Palestine refugee problem, the agency operates with the triennial mandate that it receives from the general assembly with the latest extension up until 30 June 2026.

The extension of the UNRWA's mandate by the General Assembly represents an authorization for the agency to operate within the set timeframe, however the agency is subjected to continuous threats of insufficient funds and unstable contributions impacted by political decisions, and shifting priorities and policies of contributing states.

ISRAEL'S WAR ON GAZA

UNRWA at a glance

Founded in 1949, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is a specialised UN agency that provides Palestinian refugees with humanitarian aid, education, health and social services.



Source: unrwa.org | January 28, 2024

Source @ Al Jazeera

The pressing dilemma remains that if indeed the agency’s existence is linked to the absence of a solution to the “Palestine Refugee Problem”, then dismantling the organization or ending its capacity to operate is adequate to declaring that the refugee problem has been resolved.

The legal consequences of rendering the UNRWA incapable extend further beyond the economic and social devastating implications on the Palestinian refugees’ lives, to threaten the legal character of these refugees in hosting states and their unnegotiable right to return to their lands in Palestine.

Refugees, the UNRWA, and the Right to Return

The General Assembly has not explicitly adopted a clear definition of Palestinian refugees; still, it implicitly adopted the operational definition set out in the annual reports of the agency’s director that are approved by the general assembly.[1]

The agency’s definition of a refugee eligible for assistance is drawn narrowly to stipulate the loss of both home and means of livelihood as a result of the 1948 hostilities. In fact, Palestinians who lost their source of income without losing their home don’t qualify for the agency’s relief and are considered as “economic refugees”. [ii]

This labeling counts for refugees registered by the agency to benefit from its services, and it is distinct from the official registry of the Palestine refugee population by the hosting nations.

[1] The operational definition of Palestinian Refugees by UNRWA slightly evolved over the course of years. In 2006 the mandate of UNRWA extended to cover the family members of refugee women married to non-refugee husbands. In 2008, as a result of the assistance provided by the agency to displaced persons (not-Palestinian refugees as per the agencies mandate) by the 2006 hostilities in Lebanon and Gaza, the general assembly set out the mandate to assist persons displaced by “the 1967 and subsequent hostilities” in two resolutions (UNGA Res. 63/92 and UNGA Res.63/93).

The distinct registration mechanisms and momentums among the countries of refuge resulted in multiple spectrums of recognition of Palestinian refugees even within the same country of residence. This is often witnessed in varying levels of protection, enjoyment of civil and political rights, and legal status. In worst scenarios, Palestinian refugees are not considered eligible for relief services^[2], end up having contradicting documentation, or are even rendered stateless and unrecognized neither by the agency nor by the official authorities.

The international recognition of the refugees of Palestine and its direct link to the ownership and loss of land property in Palestine is unambiguous evidence of the expulsion of Palestinians outside their homelands in 1948. Specifically, setting out an equation of the loss of homes as a root factor and indicator of refuge.

The acknowledgement of the refugees inherited rights in their land is indispensable to exert the right to return to the full lands of Palestine.

Going back to the origins of the international agency, the UNRWA itself has no means of support and is not responsible for the implementation of the decision 194 and it was thereof created to handle the refugee situation deliberately far from any actions to facilitate the right of return as a subsequent for UNCCP.

Calls now to integrate the Palestinian refugees within the mandate of the UNHCR with the fund suspension for UNRWA, are based on the UNHCR's capacity of integration of refugees within host communities risking a dissolution of Palestinians' right to return. The UNHCR among other organizations are evaluated as incapable to replace the basic operations of the agency and lack the adequate resources.

In a wider scope, the UNRWA is an internationally recognized witness of the Palestinian refugees' history and forced displacement outside their homeland. Many Palestinians believe that their "Blue Card" and registration in the agency is itself an undeniable proof of their ethnic identity and historical rights.

Dr. Takkenberg adds on this, we quote: *"The UNRWA is here as a symbol for the illegality of the ethnic cleansing of Palestinians and the forced displacement in 1948 and beyond. It is important to understand that the right to return arises from the original ethnic cleansing of Palestinians and the forced displacement of Palestinians."*

[2] Although some Palestinians did seek refuge in Egypt as a result of the 1948 hostilities, this group of Palestinian refugees are not covered by the agencies assistance owing to insufficient resources. See Bartholomeusz, Lance (2010). The Mandate of UNRWA At Sixty. Refugee Survey Quarterly, Vol. 28, Nos 2 &3

The un-altered fact remains that the right to return –even if the UNRWA fades– will remain an inherited, inalienable right for Palestinians.

Attributes of the UNRWA Mandate

One of the main attributes of the UNRWA mandate is the debated inheritance of the “refugee status” for the descendants of Palestinian refugees.[3] The generational recognition of Palestinian refugees guarantees the offspring of refugees who fled in 1948 are not integrated into host nations and neglected their inalienable rights.

The family documentation and personal registration of Palestinian refugees by the agency adds a layer of legitimacy to their presence and mobility outside Palestine.

The UNRWA also offers means of livelihood for refugees by providing vital services within the refugee camps in the areas of its operation. Over the years, the agency has developed a tremendous operational capacity that transcend beyond the capacity of any other known organization and the capacity of the hosting states to substitute its services.

On 22 February 2024, UNRWA informed the President of the General Assembly, that “without new funding, UNRWA operations across the region will be severely compromised from March... with grave implications for regional peace, security, and human rights.”

Backed-by massive human resources and vast infrastructure, the UNRWA uniquely acquires a quasi-governmental service provider status[iii] that no other entity has evident competence to offer.

It is clear that without adequate measures to ensure the continuity of services, the protection of the fundamental rights of Palestinian refugees in the region will be deemed negligent.

[3] The Trump administration and many Israeli politicians argue that only those who fled in 1948 should be recognized as refugees, and that the expansion of services for refugee descendants made the agency unsustainable.

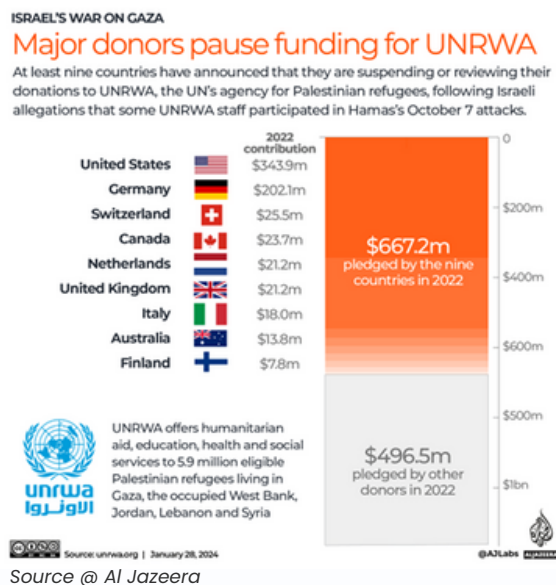
The Finances of UNRWA & the Suspension of Funds

UNRWA is the largest UN operation in the Middle East with more than 30,000 staff and is funded almost entirely by voluntary contributions from donor states and other strategic partnerships in addition to funding from the regular budget of the United Nations, which is used mostly for international staffing costs. The agency relies on the contributions of states as a primary monetary source to finance its operations.

Member states of the United Nations have no legal obligation to contribute to the agency. The voluntary nature of funds subjects the agency to constant financial challenges. By 2018 the agency witnessed escalating financial burdens portrayed in a starting shortfall of \$146 million.

In January 2024 and after allegations of UNRWA staff members involvement in the October 7 attacks, major funding states announced the suspension of their contributions to UNRWA.

The already struggling agency, is left handicapped and unable to realize its mandate.



A closer look at the financial shortages of the agency validates our long-lasting concern; why is the UNRWA left with ineffective funding mechanisms?

Despite overlapping fiscal hardships, the United Nations hasn't adopted any mechanisms to maintain financial sustainability or any contingency plans.

In a discussion with Dr. Lex Takkenberg on this matter he affirmed our concerns, *"In contrary to other UN bodies, the UNRWA has no financial buffer. The financial crisis that the agency has been suffering from has been so chronic leaving the agency with zero-buffer and no contingency plans in place."*

He added, “The real problem is in the funding mechanisms of the agency. Alternative funding mechanisms could be ideally through assessed contributions (mandatory contributions by members of the United Nations).”

We, at the **Palestinian Association for Human Rights**, confirm that the financial burdens are not legitimate to end the international agency. However, we are highly concerned of the perspective outcomes of the expected reduction in services and its direct implications on the lives of Palestinian refugees particularly in the besieged Gaza Strip.

In this regard, we acknowledge that the main liability remains on the global community represented in the United Nations to determine other durable funding structures for the international agency.

The Independent Panel Review

The United Nations secretary general appointed an independent panel to conduct an investigation aimed to “assess whether the agency is doing everything within its power to ensure neutrality and to respond to allegations of serious breaches when they are made”.

The panel investigation that started in mid-February is expected to submit an interim report to the Secretary-General in late March. A final report, which will be made public, is expected to be completed by late April.

The independent panel [4] report is of remarkable significance on the universally recognized credibility of the agency that was questioned by the alleged accusations.

The prospects of the outcome of the report and its influence on the financial behavior of funding states is unpredictable. However, the legal weight of this report is significant and shields the agency against the alleged convictions, and re-affirms its neutrality.

The panel main responsibility is to look into the measures that the agency has adopted over the years to uphold its neutrality. A positive outcome is estimated to hold back the decisions of donor states in cutting their funds.

[4] The panel constitutes of the Raoul Wallenberg Institute in Sweden, the Chr Michelsen Institute in Norway, and the Danish Institute for Human Rights; and it is led by the former French Foreign Minister Catherine Colonna.

Ending the International Agency

The second component of the UNRWA's mandate implies that the agency shall cease to exist once a permanent solution for the Palestine refugee problem is recognized.

The extension of the mandate of the agency on a regular basis is linked to the absence of a solution to the refugee problem. This mandate is derived primary from the General Assembly, the agency's principal organ.

Not compromised by a constituent instrument or a Statute, the mandate is derived from all relevant resolutions and requests issued by the General Assembly of the United Nations. As a subsidiary organ the terms of reference of the UNRWA are determined, and may be modified by, or under the authority of, the principal organ- the General Assembly.[iv]

The potential risk undermining the operational capacity of UNRWA represents a legal dilemma: In the absence of a corresponding legal instrument that ends or substitutes the international agency, or any permanent solution for the refugee problem that aligns with the decision 194, isn't the United Nations liable for sustaining the operations of the UNRWA?

Then again, who would hold the liability of the on-set cut of life-saving aid that the agency provides to the people of Gaza amidst the ongoing conflict that left more than 1.7 million people displaced, around 80% of whom were already refugees prior to the start of the Israeli military operations against the Gaza Strip?

On 27 January 2024, Commissioner Lazzarini, urged countries who have suspended their funding to re-consider their decisions before UNRWA is forced to suspend its humanitarian response. Emphasizing that the lives of people in Gaza depend on this support and so does regional stability.

Another question arises on the consequences of the disruption of applicable contracts and agreements developed by the agency with stakeholders, including hosting states. The mere example could be realized in questioning the legitimacy of residence of refugees on the lands rented by the agency- the official refugee camps, if the agency got truly concluded. Not to mention ongoing projects and programs that are threatened by the financial perils.

Outcomes

The United Nations Relief and Work Agency, in the absence of a longstanding solution for the Palestinian refugee problem, is to persist.

The international community, hosting states, and the United Nations are not ready to handle the precedents of any infringement of the mandate of UNRWA.

A subtle cut of aid or stop of services will apparently result in a humanitarian catastrophe that would undoubtedly be translated into civil and political unrest among the Palestinian community.

The existing hostilities in Palestine and the ongoing war on Gaza exacerbate the vulnerabilities of Palestinian refugees, further deepening the Palestinians' historical struggle.

Recommendations

We, at the [Palestinian Association for Human Rights](#), condemn any measures that degrade the lives and resilience of Palestinian communities in Palestine and in exile; and we urgently demand practical measures by the United Nations to ensure the sustainability of the UNRWA's operational capacity.

We stand firm against all forms of collective punishment that is being implicitly inflicted by many international actors upon the Palestinian people by disregarding their basic rights of education, health, and livelihood that the UNRWA guarantees.

With all that being said, we call for a coordinated approach to address the financial instability of the agency and urge for collective actions to develop a sustainable and steady financial model that guarantees unaltered support for Palestinian refugees.

Acknowledgements

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Annex

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- [i] "Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East", [UN Doc. ST/SGB/2000/6](#), 17 Feb. 2000
- [ii] UNRWA, "Annual Report of the Director of [UNRWA], 1 July 1960–30 June 1961", [UN Doc. A/4861](#), para. 42
- [iii] "UNRWA and the Palestinian refugees: Protecting refugee rights while structurally addressing the agency's financially unsustainable modus operandi". Francesca P Albanese, Lex Takkenberg. Refugee Studies Centre [RSC Working Paper Series 138](#), 27 February 2023
- [iv] The terms of reference of a subsidiary organ of the General Assembly "are determined, and may be modified by, or under the authority of, [the] principal organ", *Repertory of Practice of United Nations Organs*, Vol. I, 228

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