

JUSTICE

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No. **55**

UNRWA

Past, **Present** & some **Future** Scenarios

Special Issue on UNRWA

UNRWA to 1975: Organizational
Adaptation and Changing Contexts

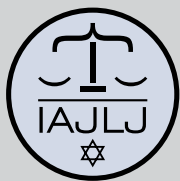
UNRWA: The Crux of the
Arab-Israeli Conflict

UNRWA: Still UN-Fixed

Why Has the U.S. Congress
Done so Little about UNRWA?

Two "Refugee" Organizations:
UNRWA vs. UNHCR

Proud Palestinians Must Lead
the Fight to Reform UNRWA



הארגון הבינלאומי של עורכי-דין ומשפטים יהודים (ע"ר)
THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS (R.A.)

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President's Message

Highlights from the Opening Statement of the IAJLJ Conference, Eilat, Nov. 19, 2014

In light of the difficult events that we experienced during the recent "Protective Edge" campaign, I am particularly pleased that this time the IAJLJ conference is taking place in Israel. We decided to add to the program a panel discussion on the legal aspects of the campaign and its consequences.

Our organization was founded in 1969 by René Cassin, Arthur Goldberg and Haim Cohn. At the time, they stressed that the purpose of establishing the organization was to fight anti-Semitism and Holocaust denial, although they added that the organization would also focus on human rights for all people.

Anyone who has followed the recent activities of our association will agree that we are fully committed to our founders' vision, and our organization has been active in a variety of spheres, among which human rights hold an important place.

The founders of the organization could not possibly have anticipated the terrible deterioration in attitudes towards Jews that we are witnessing today.

In recent years, we have seen increasing displays of anti-Semitism around the world, including terrorism and attempts to attack Jewish targets, harassment of Jews and incidents of violence surrounding Jewish schools and synagogues. Anti-Semitic statements have been voiced by various influential journalists and by leaders of countries. We have also noticed the strengthening of extremist political parties and their entry into government institutions.

2013 was one of the most difficult years of the last decade, because anti-Semitism shifted sharply from the radical fringes of the left and right towards the center of society, and indeed anti-Semitic incidents became a daily occurrence.

In early November 2013, FRA, the European Union Agency for Fundamental Rights, a research body, published a comprehensive study on the reactions and feelings towards anti-Semitism in eight EU member states. The study surveyed nearly 6,000 Jews in countries where about one million Jews reside, representing 90% of all European Jewry. The picture that emerges from the survey is alarming. When encountering anti-Semitic incidents,

the vast majority of Jews (77%) fail to report the incidents to either Jewish organizations or local law enforcement agencies. About 23% of Jews do not participate in Jewish events or attend Jewish institutions for fear of being attacked en route, while 38% of the respondents do not leave their homes with any distinguishing symbols such as a Kippa or a Star of David. Twenty-nine percent of Jews are considering emigrating and 66% of the respondents consider anti-Semitism to be a problem that affects their lives. Seventy-six percent indicated that anti-Semitism has worsened over the past five years.

Just a few weeks after the release of the study, the Agency removed the working definition of anti-Semitism that had been in international use since the beginning of 2005 from its website.

The official reason given for the removal was that the definition of anti-Semitism had never been made part of a binding EU document. Furthermore, it was explained that the definition of anti-Semitism, as well as other non-papers designed to provide a platform for discussion, had been removed from the FRA site during the process of overhauling the site.

These actions can be regarded as an insult to the definition of anti-Semitism, which was drafted within the framework of a joint effort by researchers and organizations, including those affiliated with the European Union, and which was widely considered to be an international achievement. The definition was praised because it provided law enforcement agencies with an effective tool for identifying and punishing anti-Semitism and other racist incidents.

It is important to note that this definition of anti-Semitism contained a number of sections identifying anti-Zionism and certain attitudes toward Israel as anti-Semitism. In particular circumstances, it was considered anti-Semitic when Israel was compared to Nazi Germany and when Israel was the object of discrimination, as is so common in dialogue today. In recent years, these sections have been strongly criticized, and they have been at the center of discussions in the courts of England and the United States. Removal of the definition means the legitimization of negative views toward Israel and its Jewish supporters in the Diaspora, even if the reason for its removal was based on technical grounds.



There are widespread expressions of Jew-hatred and anti-Semitism on numerous internet sites, social media platforms, and smart phone applications. Various Jewish conspiracy theories are also gaining increasing popularity throughout the Internet.

Alongside the strengthening of anti-Semitism, as a result of the Arab-Israeli conflict, we see increasingly vociferous attacks against Israel's right to exist. These two trends are clearly related to each other and feed on each other. Latin America, Greece, Ukraine, Hungary, France and others, are joining the countries of the Arab world, and it is possible to hear political party leaders and MPs in these states openly and publicly voice anti-Semitic messages – a phenomenon that should concern every Jew.

Another aspect of this problem is the increasing anti-Semitism, including anti-Semitic violence, especially during the recent "Protective Edge" campaign waged in the Gaza Strip.

The *old* "classic" forms of anti-Semitism related to hatred of Jews, and following the Holocaust, became less legitimate. Except in the Muslim world, anti-Semitism was considered the domain of the lower socio-economic and uneducated strata, relying on the lies and traditions of ancient hatred. However, the *new* anti-Semitism combines hatred of Zionism and Israel with hatred of Jews and is now gaining widespread acceptance among affluent and educated classes, as well as among leading public figures, politicians and the media.

An important tool for dealing with anti-Semitism is education, and in fact activities are being orchestrated around the world in this direction. An international conference in Berlin on November 12-13, 2014, attended by over 300 persons, marked the tenth anniversary of the Organization for Security and Co-operation in Europe conference on anti-Semitism and the Berlin Declaration. Member states were urged to monitor and combat anti-Semitism through legislation and education. Rabbi Andrew Baker, representing the OSCE chair on combating anti-Semitism, noted that the most pressing issue is providing physical protection and security to Jewish communities in the wake of frequent attacks, including those perpetrated by returning jihadists. Foreign Minister Frank-Walter Steinmeier of Germany recalled speaking with Elie Wiesel, who said he would never have believed anyone who tried to tell him in 1945 that he would be fighting

anti-Semitism in 2014. "But it is necessary," Mr. Steinmeier quoted Mr. Wiesel as saying. "The danger is again there." The results of education only appear after considerable time and investment, and there is no doubt that not enough is being done in democratic countries in this regard.

The uniqueness of our association lies in its focus on law and the judicial system. Indeed, when we become aware of exceptional anti-Semitic events – as we cannot deal with every anti-Semitic incident – we try to work with the local Jewish community to formulate a joint approach to the legal authorities to ensure that they take appropriate action to deal with the case in question.

Our plan this year is to try and encourage the European countries to insert a definition of anti-Semitism in their statute books. Such a provision would allow criminal proceedings against those who act in a manner falling within the statutory definition of anti-Semitic activity. Similar attempts have been made in the past, but so far they were unsuccessful. In view of current events, we hope that we can exert our influence in this direction.

Despite these difficult challenges, our association will continue, as in the past, to work towards creating a better society in Israel – one that values equality, rejects racism and draws us closer to the vision set forth in the Declaration of Independence. There is much work ahead for us, and I hope we will achieve these goals.

During our conference, we shall be discussing weighty issues. The theme of this conference is "*International Human Rights and Israel, Politicization or a Complex Reality?*" To answer this question, we have decided to address a variety of topics, including apartheid, the boycott and Human Rights in an asymmetric war and more. We will also touch on UNRWA, after a year of strenuous activity on this issue.

I hope that we will be able to delve deep into these matters and test our ability to answer the question posed by our conference theme.

As usual, the meeting between lawyers from around the world generates business contacts that have a significant impact on the professional life of each and every one of us.

Irit Kohn
IAJLJ President

A Brief History of UNRWA to 1975: Organizational Adaptation and Changing Contexts

Alexander H. Joffe

Introduction

This article provides a selective historical outline of UNRWA, to situate discussions regarding reforms. It is important to note at the outset that the critical literature surrounding UNRWA, though surprisingly sparse until perhaps the 1980s, continues to grow rapidly today. There are now hundreds of studies of the organization from different academic viewpoints, so many in fact that some have complained of a “Palestinian exceptionalism”¹ that dominates refugee studies. Few studies, however, are historical, much less comprehensive.

Nevertheless, UNRWA is not well understood. Access to internal UNRWA documents remains tightly restricted, making analyses of decision-making, policy and personnel extremely difficult. Studies of how and why individual states adopted their policies toward UNRWA are also almost non-existent. This review can only hint at the security, development, and political contexts behind individual state policies, primarily those of the U.S. and the U.K.

The literature on UNRWA is not easily distinguished from that on the Palestine Arab refugee issue as a whole, which is vast and highly politicized, as well as polemical. Control of the historical narrative surrounding the refugees has been a key element of the Arab-Israeli conflict since 1948 and remains so today. Since the beginning, UNRWA has been a full participant in what are, on the one hand, battles over history and memory, and on the other, very practical conflicts over politics, funding and policymaking in a competitive global marketplace.

This review focuses on four issues in UNRWA’s history through approximately 1975: the origins of UNRWA and international relief efforts, the origins of the refugee problem and the question of “who is a refugee?,” the issue of “reintegration,” and UNRWA’s changing mandates.

The Origins of UNRWA and International Relief Efforts

The origins of UNRWA lie in the Palestine Arab refugee

crisis and UN General Assembly Resolution 302 (IV) of December 8, 1949 that:

Establishes the United Nations Relief and Works Agency for Palestine Refugees in the Near East: (a) To carry out in collaboration with local governments the direct relief and works programs as recommended by the Economic Survey Mission; (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.²



An initial appropriation of \$27,450,000 was planned. It is worth noting that UNRWA was conceived as a temporary organization constituted under Article 22 of the United Nations Charter, which authorizes the General Assembly to “establish such subsidiary organs as it deems necessary for the performance of its functions”, that is, dealing with international economic and social cooperation.³ Two other agencies, the United Nations Children’s Fund (UNICEF) and the UN High Commissioner for Refugees (UNHCR), were also created under Article 22. These were in contrast to subsidiary units created under Article 59 of the Charter, such as the World Health Organization, funded by mandatory contributions from UN member states.

1. Michael Kagan, *The (Relative) Decline of Palestinian Exceptionalism and its Consequences for Refugee Studies in the Middle East*, 22 JOURNAL OF REFUGEE STUDIES 417-38 (2009).
2. *Assistance to Palestine Refugees*, G.A. Res. 302 (IV) (Dec. 8, 1949).
3. U.N. Charter, art. 22.

UNRWA's financial structure was thus deliberately designed to be unstable. One of the key reasons for this is apparent from a U.S. State Department memorandum detailing a discussion with British counterparts and which stated that "any new agency set up should not be administered or controlled by the secretariat of the United Nations," nor should it "include Slav or other undesirable membership," and that "the proposed arrangement should not involve any government directly in the responsibility of handling relief funds raised under U.N. auspices."⁴

But the United Nations had become involved with the refugee issue even earlier, in July 1948, when Secretary General Trygve Lie dispatched Sir Raphael Cilento, director of the Disaster Relief Program, to the region. As panic grew in the media, and in diplomatic and church circles in the fall of 1948 regarding the scale of the refugee crisis and the severity of the conditions, a new UN response was created, the Relief for Palestine Refugees program (UNRPR). General Assembly Resolution 212 (III) stated: "the alleviation of conditions of starvation and distress among the Palestine refugees is one of the minimum conditions for the success of the efforts of the United Nations to bring peace to that land." The resolution estimated that \$29,500,000 "will be required to provide relief for 500,000 refugees for a period of nine months from 1 December 1948 to 31 August 1949, and that an additional amount of approximately \$2,500,000 will be required for administrative and local operational expenses."⁵

Uniquely, the UNRPR program relied on outside contractors, the American Friends Service Committee, the International Committee of the Red Cross, and the League of Red Cross Societies, to deliver aid to the increasing refugee populations. The American Friends Service Committee (AFSC), the subject of a book I authored with a colleague,⁶ accomplished its task with great efficiency in Gaza until UNRWA took over early in 1950.

"Who Is a Refugee?" and the Issue of "Reintegration"

The question of "who is a refugee" is a politically fraught issue today, and the ramifications of UNRWA's administrative decisions are addressed in other articles in this issue. The causes of the refugee crisis have been among the most contentiously debated issues in the Arab-Israeli conflict, and have been the more overburdened in subsequent decades by new data, revisionism, and fabrications.

In 1948, as the result of the hostilities surrounding the Israeli declaration of statehood, approximately 650,000 Palestinian Arabs left their homes and fled into neighboring countries. According to both early and recent historical studies, there were at least three distinct phases of the exodus.⁷ The first waves of abandonment began after the November 1947 ratification of U.N. General

Assembly Resolution 181, known as the Partition Plan. At that point, some 30,000 people, mostly from more affluent urban families in Jerusalem, Haifa, and Jaffa, began to leave. The second phase occurred in March 1948, when tens of thousands from the Sharon coastal plains began to move to the Arab-controlled hill regions, outside the areas that had been designated to become part of Israel. During this phase, some 6,000 left their homes in Tiberias, 60,000 fled Haifa, and 65,000-70,000 left Jaffa.

The third and most dramatic phase began in May 1948, following Israel's declaration of independence and the subsequent invasion by the Egyptian, Iraqi, Syrian, Lebanese, and Arab Legion (Transjordanian) armies.⁸ During that period, the flight of Palestinian Arab civilians grew exponentially, and when the hostilities ended, the United Nations estimated that around 350,000 people had left after May.

Dispersal patterns of the refugees were more or less predictable. According to the United Nations, most refugees from the northern regions of the country (Haifa, the Galilee, and Tiberias) fled further north into Lebanon and Syria. Those from the coastal plain regions went east to Jordanian territory (including the West Bank). Those in the south went to the Gaza Strip, which was controlled by Egypt.

Throughout the fall of 1948, as the UNRPR relief effort was being planned, estimates of the number of refugees varied widely. Estimates in August had been 330,000, rising to 360,000 in September 1948 and 472,000 in October. Another estimate in October by the United Nations' Acting Mediator, Ralph Bunche, was 500,000, and by December, State Department estimates ranged from 500,000 to 550,000.⁹ Estimates from Palestine Arab and Arab League

4. *Statement by the United States and the United Kingdom Groups*, November 14 and 15, 1949, U.S. Department of State, Foreign Relations of the United States, 1949, The Near East, South Asia, and Africa: Multilateral Relations 68.
5. G.A. Res. 212 (III), para. 2 (Nov. 19, 1949). Also see Kagan, *supra* note 1.
6. Asaf Romirowsky and Alexander H. Joffe, *RELIGION, POLITICS, AND THE ORIGINS OF PALESTINE REFUGEE RELIEF* (2013).
7. Efraim Karsh, *How Many Palestinian Arab Refugees Were There?* 17 *ISRAEL AFFAIRS* 224-46 (2011). Also, Shabtai Tevet, *The Palestine Arab Refugee Problem and its Origins*, 26 *MIDDLE EAST STUDIES* 214, 219-20 (1990).
8. E.g., Itamar Radai, *The Collapse of the Palestinian-Arab Middle Class in 1948: The Case of Qatamon*, 43 *MIDDLE EASTERN STUDIES* 961-82 (2007); Efraim Karsh, *Nakbat Haifa: Collapse and Dispersion of a Major Palestinian Community*, 37 *MIDDLE EASTERN STUDIES* 25-70 (2001).
9. Sam Pope Brewer, *Refugees Create Big Arab Burden*, N. Y. TIMES, Dec. 12, 1948, at 5.

sources were consistently and dramatically higher -- from 631,000 to 780,000. When UNRPR began operation on December 1, 1948, it found 962,643 persons registered on its relief rolls.¹⁰

Numbers were critical for several reasons. Higher numbers of Palestine Arab refugees, real or imagined, were an obvious propaganda boon for Arab spokesmen. For the United Nations, however, the critical issue was money. UNRPR had budgeted for only 500,000 refugees.

It was already well-understood by the fall of 1948 that the number of refugees was being inflated through the inclusion of Bedouin and local residents, and through double counting and fraud. Sir Raphael Cilento had reported this to the Foreign Office in October.¹¹ In June 1949, the United Nations Conciliation Commission for Palestine in Geneva was told by UNRPR Deputy Director Reginald Parminter that only 650,000 of the figure of 940,000 were true refugees.¹²

The problem of defining "who is a refugee" was also publicly understood by 1950. As Channing Richardson, an AFSC field worker and later Professor of International Relations at Hamilton College, put it in the journal *International Organization*:

"What is a 'refugee'?" Since no official definition has ever been given, the agencies interpret the word as best they can in the field. Thus arises a series of problems which few, if any, international organizations might answer satisfactorily. Are Bedouins entitled to United Nations relief if they are cut off from some of the lands in which they used to roam? Are fellahins refugees if they used to be migrant workers deriving 40 per cent of their livelihood from lands now in Israel? What about villagers living in their own homes but separated from their lands by mines and barbed wire? Or settled residents of an area who are now destitute and hungry because the presence of hordes of refugees has cut off their labor?¹³

In 1950, the newly founded UNRWA offered a working definition of "refugee": "the Agency has decided that a refugee is a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood." However, it took note of circumstances described by Richardson, what it called the "border-line" cases of a family that "may have lost part or all of its land from which its living was secured, but ... may still have a house to live in" and "Others, such as Bedouins, normally moved from one area of the country to another, and some escaped with

part or all of their goods but cannot return to the area where they formerly resided the greater part of the time."¹⁴

By 1965, UNRWA's report noted that

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

The report also made special note of the condition of "the Azameh tribe of bedouin in Jordan, Gaza and the Sinai Peninsula. The Commissioner-General reiterated the opinion that the tragic plight of these unfortunate victims of the conflict in Palestine must surely weigh heavily on the conscience of mankind"¹⁵ and in this manner extended the definition of "who is a refugee" still further both temporally and geographically.

This progressive redefinition of "who is a refugee" served the expanding population, who were defined as and who defined themselves as refugees, thus helping to sharpen a sense of Palestinian nationalism in which refugeedom was central. It also helped UNRWA sustain itself across never-ending financial crises.

UNRWA's mission was "to carry out in collaboration with local governments the direct relief and works

10. Rony E. Gabbay, *A POLITICAL STUDY OF THE ARAB-JEWISH CONFLICT: THE ARAB REFUGEE PROBLEM (A CASE STUDY)* 167 (1959); Karsh, *supra* note 8, at 225.

11. Karsh, *supra* note 8, at 226.

12. U.N. Conciliation Commission for Palestine. SR/LM/17. Summary Record of a Meeting between the Conciliation Commission and Representatives of Relief Organizations in Geneva, 7 June 1949.

13. Channing B. Richardson, *The United Nations Relief for Palestine Refugees*, 4 *INTERNATIONAL ORGANIZATION* 44, at 50 (1950).

14. *Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, U.N. Doc. A/1451/Rev.1, para. 15 (Oct. 6, 1950).

15. *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1964- 30 June 1965, G.A., Doc. A/6013, paras. 21, 25.

programs as recommended by the Economic Survey Mission” and “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.” This formula implied again that UNRWA would be temporary but was vague about the nature and scope of its activities. What was clear at the time, both within the U.N. and among Western diplomats, was that refugee resettlement was a vital strategy in resolving the conflict.

The Economic Survey Mission, headed by Gordon Clapp, former chairman of the Tennessee Valley Authority, was the culmination of an American-led regional development concept that had emerged in 1949, and to which the American Friends Service Committee had made an important early contribution. The Clapp commission was effectively an enhanced version of the United Nations Technical Mission on Refugees, created by the Conciliation Commission for Palestine (an organ that still exists):¹⁶

- 1) to promote the establishment in the Middle East of economic conditions favorable to the establishment of peace and stability in that area;
- 2) to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees in order to integrate them into the economic life of the areas in which they will reside. The refugees will be settled under conditions which will permit them to become self-sustaining within a minimum period of time;
- 3) to aid the interested Governments to further such measures and development programs as are required to overcome economic dislocations created by the hostilities.¹⁷

The stated emphasis on repatriation, resettlement and integration was deliberate and reflected the widespread view that these were the only viable options for the refugees.

The means of squaring the circle was to adopt the even more vague term, “reintegration.” After much contentious debate, on December 2, 1950, the U.N. General Assembly adopted Resolution (V), that stated:

without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, the reintegration of the refugees into the economic life of the Near East, either by

repatriation or resettlement, is essential in preparation for the time when international assistance is no longer available, and for the realization of conditions of peace and stability in the area.¹⁸

The Resolution went on to direct UNRWA “to establish a reintegration fund which shall be utilized for projects requested by any government in the Near East and approved by the Agency for the permanent re-establishment of refugees and their removal from relief.”

At the same time, it was well understood within the UNRWA Advisory Committee and the U.S. State Department, which created a series of preliminary planning documents, that resettlement was the key. As the American political advisor to UNRWA, Donald Bergus, put it in a Top Secret 1952 memo, “the political barriers to the UNRWA program have almost been completely dissolved. The time has now come for us to press forward with positive action on the refugee program to a point where receiving states are fully convinced that refugee resettlement means a significant economic development.”¹⁹ The estimated costs were half a billion dollars. This concept, however, was deliberately cultivated by Arab states. As a U.S. National Security Council memo the year before put it, “By their public acceptance of this resolution [creating UNRWA] and by private statements, Arab representatives have indicated that they regard resettlement of most of the refugees in Arab territory as inevitable.”²⁰

But the reintegration formula proved a failure. As Sir Henry Knight, the British representative to the UNRWA

16. conf.un.org/DGAACS/Meetings.nsf/0/cc157d5b5e8790b085256b9f0079b3bf?OpenDocument (last visited Dec. 5, 2014).

17. U.N., Public Information Bureau, Press Release PAL/521, Aug. 24, 1949.

18. G.A. Res. 393 (V), (Oct. 6, 1950). For the political background to Res. 393 (V), see Gabbay, *supra* note 10, at 386-93.

19. Donald G. Bergus, *An American Policy for Arab-Israeli Peace*, Department of State, Bureau of Near Eastern, South Asian, and African Affairs, Office of the Country Director for Israel and Arab-Israel Affairs, Beirut, U.S. National Archives, Record Group 59, Container 72, Folder 2, ARC Identifier 2507045, Dec. 2, 1952.

20. *Memorandum by the Under Secretary of State (Webb) to the Executive Secretary, National Security Council (Lay), Third Progress Report on NSC-47/2*, Jan. 26, 1951, U.S. Department of State, Foreign Relations of the United States (1951), at 18-19.

advisory committee put it, “reintegration is interpreted as assistance to refugees in finding homes and jobs,” that is, the refugees saw the very concept and its programs as tantamount to resettlement. Along the way, the U.S. and the U.K. spent immense sums on regional development projects like Point IV (modeled on the Marshall Plan), and dam and irrigation projects including the Aswan Dam (to which UNRWA committed \$83 million in financing).²¹ Meanwhile UNRWA officials and diplomats chased an assortment of rumors and promises regarding the willingness of Arab states, including Syria, Lebanon, Iraq and Libya, to resettle refugees. Only Jordan, which received Point IV aid for irrigation works in the Jordan Valley, gave refugees citizenship, largely as a means to help retain control over the West Bank.

In 1959, the connection between reintegration, regional development and the Palestine Arab refugee problem was raised one final time by United Nations Secretary General Dag Hammarskjöld, who suggested that “the unemployed population represented by the Palestinian refugees should be regarded not as a liability but, more justly, as an asset for the future; it is a reservoir of manpower which in the desirable general economic development will assist in the creation of standards for the whole population of the area.”²² But the international community had given up on reintegration and resettlement, and on regional development. UNRWA itself faced the failure of reintegration and the looming deadline of an expiring mandate. A new direction was required.

UNRWA’s Changing Mandates

In his report for 1959, incoming UNRWA director (and first Commissioner General) John Davis noted that “the execution of the ‘long-term task’ of assisting refugees to become self-supporting requires certain conditions which so far have not prevailed.”²³ He added, despairingly, that:

It is no exaggeration to state that every aspect of life and human endeavour in the Near East is conditioned and complicated by the Palestine refugee problem. Its psychological, political and social repercussions are of no less significance than its economic and humanitarian aspects. Any solution of the Palestine refugee problem must take these aspects into account.

This remarkable statement placed the refugee problem at the center of everything in the Middle East and echoed Arab rhetoric that had been heard since 1948. Davis’s comments contrasted with those made the year before by his predecessor, Henry R. Labrousse, who had noted the failure of reintegration

but qualified his comments, saying “the picture is not entirely black.”²⁴ Situating the refugee crisis at the center of everything was not a rejection of resettlement as such but implied that until the refugees themselves were satisfied, their plight would remain at the center of Near Eastern affairs. Indeed, Davis’s dramatic assertion, an essential part of the Palestinian narrative, is among the first from an UNRWA official that was intended precisely to keep the refugees, and UNRWA, at the center of Near Eastern affairs.

Davis argued that UNRWA’s mandate should be extended beyond June 30, 1960 and in his report for 1960 called for a reorientation of the organization’s mission, with an expanded emphasis on “providing general education, both elementary and secondary... teaching vocational skills, and awarding university scholarships; and ... offering small loans and grants to individual refugees who have skills and want to become self-employed.”²⁵ This was a shrewd and successful adaptation for the organization, and a fateful turning point in its relationship with the refugees and the idea of resettlement.²⁶

Providing primary, secondary, and vocational training to children vastly expanded the organization’s contact with refugees. In 1950, UNRWA operated 64 schools with 41,000 elementary students and employed approximately 800 teachers. By 1960, this had expanded to 382 schools, almost 124,000 students and 3,500 teachers. By 1980, over 54% of UNRWA’s resources were dedicated to education.²⁷

21. Miriam Lowi, *WATER AND POWER: THE POLITICS OF A SCARCE RESOURCE IN THE JORDAN RIVER BASIN* 79-103 (1993). Benjamin N. Schiff, *REFUGEES UNTO THE THIRD GENERATION: UN AID TO PALESTINIANS* 36-45 (1995); Gabbay, *supra* note 10, at 532-36.
22. G.A., A/4121, *Proposals for the Continuation of United Nations Assistance to Palestine Refugees*, Submitted by the Secretary General, para. 11, June 15, 1959.
23. *Annual Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1958-30 June 1959, U.N. Doc. A/4213, para. 6 (1959).
24. *Annual Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1957-30 June 1958, U.N. Doc. A/3931, para. 5 (1958).
25. *Annual Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 1 July 1959-30 June 1960, U.N. Doc. A/4478, para. 13 (1960).
26. Maya Rosenfeld, *From Emergency Relief Assistance to Human Development and Back: UNRWA and the Palestinian Refugees, 1950-2009*, 28 *REFUGEE SURVEY QUARTERLY*, 298-99 (2009).
27. Schiff, *supra* note 22, at 29, Table 2.2. See also Rosenfeld, *supra* note 26, at 302.

In 2011, UNRWA provided education to 215,000 students in 243 schools in the Gaza Strip alone.²⁸

Davis thus set the stage for the organization's rapid growth throughout the 1960s and 1970s. Rather than clearly admit failure – that the refugee issue was a political problem that could only be solved by political means – UNRWA adapted by moving into a new and unobjectionable area, education, but one that was open-ended. This dovetailed perfectly with the dramatic growth of decolonization and Palestine as focal points for the United Nations.

A short list of the relevant resolutions begins with Resolution 1514 (XV), the “Declaration on the Granting of Independence to Colonial Countries and Peoples,” of December 14, 1960,²⁹ and is followed by the initial Palestinian support infrastructure in General Assembly Resolution 2535 (XXIV) of 1969 that “Reaffirms the inalienable rights of the people of Palestine,”³⁰ Resolution 2672 of 1970 that addressed the “inalienable rights” of “Palestinian Arab refugees,”³¹ and the addition of the “Question of Palestine” to the agenda of the 29th session of the United Nations in 1974. The “Question of Palestine” has remained a permanent feature of every United Nations session.

Resolutions 3375 recognizing the Palestine Liberation Organization as the “representative of the Palestinian people,”³² 3376 creating the “Committee on the Exercise of the Inalienable Rights of the Palestinian People,”³³ and 3379, which “Determines that Zionism is a form of racism and racial discrimination”³⁴ – all passed on the same day in 1975. This was followed in 1977 by Resolution 3240 that created the Special Unit on Palestinian Rights within the United Nations Secretariat, with the goal of the “greatest possible dissemination of information on the inalienable rights of the Palestinian people and on the efforts of the United Nations to promote the attainment of those rights” and the “International Day of Solidarity with the Palestinian people.”³⁵ Later renamed the Division of Palestinian Rights, this unit provides support to the “Committee on the Exercise of the Inalienable Rights of the Palestinian People,” including international meetings, liaison with NGOs, creating and disseminating studies and bulletins, and training programs for the Palestinian Authority.

Outside of the Division of Palestinian Rights, the Palestine Arab refugee issue is addressed by the General Assembly's Fourth Committee, or the Special Political and Decolonization Committee. According to its web site, the committee deals with “a variety of subjects which include those related to decolonization, Palestinian refugees and human rights, peacekeeping, mine action, outer space, public information, atomic radiation and the University for Peace.”³⁶ A rough estimate is that at least half of the Fourth Committee's agenda relates to Palestine Arab refugees and their descendants.

Support for the Palestinian cause is also provided through the Special Coordinator for the Middle East Peace Process, the Special Coordinator in the Occupied Territories, the various disengagement observer and truce forces, the Human Rights Committee and the Human Rights Council, the Office for the Coordination of Humanitarian Affairs, the Committee on Jerusalem, the Register of Damage caused by the Construction of the Wall, the Special Committee to Investigate Israeli Practices, the “Special Rapporteur on the situation of human rights in the OPT,” and a slew of more than 50 others, including the Conciliation Commission for Palestine, which, in its 65th report to the General Assembly in 2010, “observes that it has nothing new to report.”³⁷

UNRWA has responded to this raft of institutional support by deepening its political activities. These include legal backing for the so-called “rights based approach,” encouraging grassroots Palestinian organizations that reject negotiations with Israel, and lending explicit support to the concept of a Palestinian “right of return.” This notion calls for the dissolution of Israel and hence negates any negotiated two-state settlement, and promises to extend the conflict, and UNRWA's mandate, indefinitely.

UNRWA has thus long become a unique independent force in Palestinian society, global civil society, and the Arab-Israeli conflict. Any negotiated settlement must simultaneously bypass the organization and plan for its prerogatives being absorbed into an independent Palestinian state. Given the organization's irredentism, public relations skills, and the fact the United Nations General Assembly has the final word about its existence, it seems likely the debate over UNRWA will continue, possibly beyond the achievement of peace. ■

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28. Al Mezan, Center for Human Rights, *Factsheet: The State of General Education in the Gaza Strip at the Beginning of the New Academic Year* (Sept. 2011).

29. G.A. Res. 1514 (XV) (Dec. 14, 1960).

30. G.A. Res. 2535 (XXV) (Dec. 8, 1970).

31. G.A. Res. 2672 (XXV) (Dec. 8, 1970).

32. G.A. Res. 3375 (XXX) (Nov. 10, 1975).

33. G.A. Res. 3376 (XXX) (Nov. 10, 1975).

34. G.A. Res. 3379 (XXX) (Nov. 10, 1975).

35. G.A. Res. 32/40 (A+B) (Dec. 2, 1977).

36. www.un.org/en/ga/fourth/index.html (last visited Nov. 21, 2014).

37. Report of the United Nations Conciliation Commission for Palestine, G.A. Doc. A 66/296 (Aug. 12, 2011).

UNRWA:

The Crux of the Arab-Israeli Conflict

Asaf Romirowsky

Introduction

This article surveys several historical issues regarding the involvement of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in the Arab-Israeli conflict. It is important to note that access to internal UNRWA documents remains very limited, making analysis of decision-making, policy and personnel particularly difficult. Further, the literature on UNRWA is not easily distinguished from that of the Palestine Arab refugee issue, which is vast, political and polemical.

Almost since its inception, UNRWA, the international institution charged with aiding the refugees, has worked against their resettlement in Arab countries where Palestinians are located. One way UNRWA has done this has been by shifting its mission from refugee relief to education, devising its own expanded definitions of who is a refugee, and expanding its legal mandates to “protect” and represent refugees. As a result, the Palestinian clients of UNRWA have gradually taken over the organization and have undermined an international relief effort, created in naïve good faith, but with the complicity of the UN General Assembly.

Over the years, UNRWA, by its own admission, has proudly evolved from a temporary relief and works program into a broad social welfare organization for Palestinian society. It has also succeeded to such an extent that “there is little or no significant difference between the standard of living of refugees and non-refugees in the WBGS [West Bank and Gaza Strip], Jordan, or Syria.”¹ Maintaining those standards of living in dynamic economic conditions, much in the manner of a government, is a primary concern of the organization.² Conversely, the international community, led by the United States and now, the European Union, has adopted a strategy of increasing support for UNRWA and other Palestinian institutions, such as the Palestinian Authority, in the traditional effort to avoid instability and, since the 1990s, in the attempt to shape Palestinian state-building.³ Another irony, however, is that UNRWA competes directly with the Palestinian Authority for international support.⁴

Education

UNRWA’s primary product—its educational infrastructure, most importantly textbooks used in UNRWA schools—are a product of the Arab countries, none of which have positive sentiments toward Israel or the peace process, while the teachers are Palestinians. During the 1960s and 1970s, one explicit goal of the Palestine Liberation Organization (PLO) was spreading Palestinian nationalism through the global Palestinian community, and in particular, through educational institutions to which it had access. In keeping with its nationalistic orientation and multilevel approach to Palestinian society at large, the PLO targeted schools, teachers’ unions, and youth organizations. The same



1. Mario Babilie, Ian Barney, Rex Brynen, Lauri Blome Jacobsen, Lena Endresen, Gro Hasselknippe, *UNRWA’s Financial Crisis and Refugee Living Conditions* 166 (2003), available at www.fao.no/pub/rapp/427/427-vol3.pdf (last visited October 23, 2014).
2. E.g., UNRWA, *Labour Market Briefing, West Bank, Second Half 2010*, available at www.unrwa.org/userfiles/201106082849.pdf (last visited October 23, 2014). The press release announcing this report pointed to the loss of 3% in the real value of wages for refugees and non-refugees in the West Bank and warned that this “regression” in economic conditions “is likely to raise the rate of aid dependency among refugees, placing ever greater pressures on UNRWA.” *New UN research challenges conventional view of the West Bank economy*, United Nations Relief and Works Agency (June 8, 2011), available at www.unrwa.org/etemplate.php?id=999 (last visited October 23, 2014).
3. In 2010, Canada redirected its contribution of approximately \$10 million (Canadian) away from UNRWA and towards “specific projects in the Palestinian Authority that will ensure accountability and foster democracy in the PA.” Reports indicate that Canadian funding would be directed towards building the PA’s justice system and courts. See, *Canada elects to fund PA justice system*, JERUSALEM POST,

can be said for the PLO's rivals, the Muslim Brothers, which had been active in the West Bank since at least the 1960s. Between the two, Palestinian education was completely politicized. UNRWA and national governments also funded scholarships for Palestinians to pursue higher education in Western and Soviet bloc institutions. Indeed, UNRWA's defenders praise it as a Palestinian national institution and for providing many levels of Palestinian education.

In 1974, the PLO adopted the "phased approach." This was a plan for the gradual destruction of Israel through the "right of return," meaning that Palestinians would be allowed to return to homes vacated during 1948 and thus create a demographic majority in Israel or a Palestinian "secular democratic state." UNRWA's turn to education during this period meshed well with the PLO's approach, as it did with the creation of the many UN resolutions to support the newly declared "inalienable rights" of the Palestinian people. Since the 1960s, UNRWA's actions, like those of the Palestinian Authority, have been criticized for their anti-Semitism and anti-peace content.

Further, providing education for Palestine Arab refugees was also a critical means to generate Palestinian identity and nationalism, but then to transfer responsibility for its maintenance back to UNRWA and the international community.

The influx of an increasing number of refugees from the West Bank into the UNRWA system following the 1967 Six-Day War appeared to offer an opportunity to conduct studies and establish a new baseline for the organization. Lack of host country cooperation and deteriorating political conditions in Lebanon, culminating in civil war, again made the process impossible. General rations from UNRWA were only eliminated in 1982, when the "Special Hardship Case" category was introduced. But financial crises continued throughout the 1970s and 1980s. From 1973 to the present, UNRWA has initiated a variety of emergency appeals, both in response to its own financial crises and to political or military events, such as the 1982 Lebanon War, the First Intifada of 1987, and the Gaza War of 2006. In fact, UNRWA has issued "emergency appeals" every year since 2000.⁵

Terrorism

Since the 1960s, American lawmakers have focused more closely on UNRWA and its relationship to terrorism. Section 301(c) of the 1961 Foreign Assistance Act (P.L. 87-195), as amended, states that

No contributions by the United States shall be made to [UNRWA] except on the condition that [UNRWA] take[s] all possible

measures to assure that no part of the United States contribution shall be used to furnish assistance to any refugee who is receiving military training as a member of the so-called Palestine Liberation Army or any other guerrilla type organization or who has engaged in any act of terrorism.⁶

Since the 1970s, a number of U.S. Congressional resolutions have sought to limit or cut off funding to UNRWA and the Palestinian Authority. American legislators regularly introduce language into appropriations bills to require UNRWA to advance transparency, self-policing and accountability with regard to vetting employees for terrorist connections as well as to eliminate the promotion of terrorism in educational materials. Similar provisions are regularly written into funding for United States Agency for International Development budgets, administered by the State Department, for grants intended for the Palestinian Authority. In 2002, a letter from U.S. Representative Tom Lantos, a ranking Democratic member of the House

January 13, 2010. Canada's contribution comprised approximately 1% of UNRWA's normal operating budget. Reports indicated in 2011 that Holland was also considering defunding UNRWA. Han ten Broeke, member of the Dutch Parliament, VVD party speaker, stated: "UNRWA uses its own unique definition of refugees, different to the UN's. The refugee issue is a big obstacle for peace. We therefore ask that the government acknowledge this discrepancy, which leads to the third-generation Palestinian refugees." Tzvi Ben Gedalyahu, *Holland May Cut Funds to UNRWA*, ARUTZ SHEVA (Dec. 13, 2011), available at www.israelnationalnews.com/News/News.aspx/150674#.Tuo-GiOXQy8 (last visited October 23, 2014).

4. Emanuel Marx and Nitza Nachmias, *Dilemmas of Prolonged Humanitarian Aid Operations: The Case of UNRWA (UN Relief and Work Agency for the Palestinian Refugees)*, JOURNAL OF HUMANITARIAN ASSISTANCE (July 15, 2004).
5. 2012 UNRWA Emergency Appeal, requests US \$300,724,896 and warns of growing "settler violence," house demolitions and a "vicious cycle of unemployment, food insecurity and aid dependency," available at www.unrwa.org/userfiles/2011120681236.pdf (last visited October 23, 2014).
6. U.S. Gov't Accountability Office, GAO-09-622, *Measures to Prevent Inadvertent Payments to Terrorists Under Palestinian Aid Programs Have Been Strengthened, but Some Weakness Remain* (May 2009), available at www.gao.gov/new.items/d09622.pdf (last visited Nov. 6, 2014).

International Relations Committee, to United Nations Secretary General Kofi Annan, complained that “UNRWA officials have not only failed to prevent their camps from becoming centers of terrorist activity, but have also failed to report these developments to you.” Annan replied to Lantos that “the United Nations has no responsibility for security matters in refugee camps, or indeed anywhere else in the occupied territory.”⁷

Official U.S. Government analyses indicate that UNRWA has claimed to have responded by improving vetting of its employees against watch lists of Al Qaida and Taliban suspects, but that it remains unwilling to screen names against lists of Hamas, Hezbollah or other Palestinian groups provided by Israel.⁸

Aid

American legislators have identified another problem regarding UNRWA, namely that Congressional stipulations are regularly circumvented by a Presidential waiver, in which the President finds that continuing aid to UNRWA and other Palestinian entities regardless of terrorist ties or structural concerns is in the national security interest of the United States.⁹ These concerns have increased since the Hamas takeover of the Gaza Strip in 2007, where UNRWA remains fundamental to the local economy, and in subsequent years as the possibility has periodically resurfaced of Hamas reconciling with the U.S.-funded Palestinian Authority.¹⁰ As U.S. funding of various Palestinian institutions, including the Palestinian Authority itself, has escalated in recent decades, American lawmakers have repeatedly questioned members of the Executive Branch regarding diversion of funds to terrorism, or the presence of terrorists within U.S.-funded entities.¹¹ Though the term “refugee warrior” has not been used, U.S. funding of this phenomenon is precisely the issue of concern to the U.S. Congress.

UNRWA’s financial structure underlies its moral hazard and directly supports its own rent-seeking behavior. Ironically, one of the rhetorical strategies employed by the organization is stressing the pathos of the refugees’ plight, a variation on the “moral degeneration” argument made by American Friends Service Committee (AFSC) personnel. In general, the advocacy position of UNRWA, though blatantly self-serving, is also frequently couched in terms of giving “voice” to the refugees. One example is a statement made in 1995:

It would be counter-productive if UNRWA did not receive sufficient funds to maintain the same level of assistance and services to the 3.2 million Palestine refugees that it had historically provided. The rationale for the

support of UNRWA as an element of stability was more valid than ever and would remain so until a political solution to the refugee issue was found. The commencement of negotiations on the problem, as foreseen in the Declaration of Principles, would be likely to increase the level of anxiety and restlessness, as refugees followed the course of the discussions over their fate. At that stage, the continuation of UNRWA’s traditional support for the refugee community and of Agency efforts to improve the living conditions of refugees would be indispensable as a social and political safety net.¹²

Accountability and Transparency

UNRWA’s flaws have not gone unnoticed, even by members of the organization itself. Indeed, the most important critique to appear in recent years was that of James Lindsay, a former legal advisor and general counsel to the organization. Lindsay worked for UNRWA from 2000-2007 and, after leaving, produced a monograph in 2009 for the Washington Institute for Near East Policy that caused a firestorm.¹³

7. Isabel Kershner, *The Refugees’ Choice*, THE JERUSALEM REPORT, August 12, 2002, at 24.
8. See Jim Zanotti, Cong. Research Serv., RS22967, U.S. Foreign Aid to the Palestinians (August 29, 2011), 17-18; *supra* note 6.
9. Zanotti, *supra* note 8, at 7, 11-12; Alexander Joffe, *Who Oversees Foreign Aid to the Palestinians?* (2011), available at www.gatestoneinstitute.org/2085/palestinians-foreign-aid (last visited October 23, 2014).
10. J. Zanotti et al., Cong. Research Serv. RS40101, *Israel and Hamas: Conflict in Gaza (2008-2009)* 16 (2009), 36-37.
11. E.g., Committee of Foreign Affairs, H.R., Connecting the Money to the Mission: The Past, Present, and Future of U.S. Assistance to the Palestinians. Hearing before the Subcommittee on the Middle East and South Asia, December 12, 2007.
12. Rep. of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, July 1, 1994- June 30, 1995, para. 56. U.N. Doc. A/50/13 (SUPP) (1995).
13. James G. Lindsay, *Fixing UNRWA: Repairing the UN’s Troubled System of Aid to Palestinian Refugees* 91 POLICY FOCUS (2009), available at www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus91.pdf (last visited November 2, 2014).

Lindsay concluded — to much controversy — that “the vast majority of UNRWA’s registered refugees have already been ‘resettled’ (or, to use the UN euphemism, ‘reintegrated’),” and that the “only thing preventing citizens from ceasing to be ‘refugees’ is UNRWA’s singular definition of what constitutes a refugee.” Accordingly, Lindsay recommended that UNRWA responsibilities be handed over to Jordan. He acknowledged that legal restrictions on Palestinians being resettled in Syria and Lebanon were difficult, but not impossible to overcome, given time and effort.

He also recommended that UNRWA move to a need-based model:

Some might question whether scarce international aid should be used to fund relatively sophisticated programs for Palestinians—not just education and health care, but also microfinance, urban planning, and so forth—rather than, say, food for starving Africans in places like Darfur. Even putting that question aside, why should such services be provided for free to those who can afford to contribute at least a portion of the cost?¹⁴

Finally, Lindsay suggested that the United States “urge UNRWA to limit its public pronouncements to humanitarian issues and leave political speeches to the political echelons of the United Nations.”

Lindsay’s fairly modest suggestions for reform were not well-received by the organization and its supporters. A press release issued by Andrew Whitley, director of the UNRWA representative office at United Nations headquarters in New York, said: “The agency is disappointed by the findings of the study, found it to be tendentious and partial, and regrets in particular the narrow range of sources used.”¹⁵ It added, “The study ignores the context in which UNRWA operates and the tight line the agency walks due to various pressures.... Someone reading this paper with no background would assume that the Israeli government was a benign actor. No mention is made of the occupation of the West Bank and the Gaza Strip.”

Responses from other UNRWA officials were equally harsh. Chris Gunness, UNRWA’s spokesman in Jerusalem, said that Lindsay “makes selective use of source material and fails to paint a truthful portrait of UNRWA and its operations today.” John Ging, head of UNRWA operations in Gaza, attempted to deflect Lindsay’s criticism of negative depictions of Israel and Jews in UNRWA textbooks. In effect, he blamed the Palestinian Authority for the problem, saying Lindsay had “no basis to say that it is UNRWA’s decision because our mandate

is given to us. I agree that it is a political failure, but we don’t set up the mandate, we are only the implementers.” This echoed previous UNRWA responses to similar evidence as far back as the late 1960s.

Critiques like Lindsay’s have had some political effect, but attempts at forcing institutional reform have tended to be undertaken piecemeal, rather than by tackling the overall problem. Since the 1960s, for example, American lawmakers have tended to focus specifically on one of UNRWA’s darkest legacies: its relationship with terrorism. Already in Section 301(c) of the 1961 Foreign Assistance Act (P.L. 87-195), as amended, Congress addressed this issue.

This was certainly an important issue. Unfortunately, UNRWA’s relationship with Palestinian terrorism has been a long one, particularly after the Palestine Liberation Organization (PLO) achieved both international political status and practical authority over the UNRWA refugee camps. Through agreements with the government of Lebanon in 1969 and its eventual UN status as a formal observer, the PLO gained a quasi-governmental role in local and international Palestinian affairs. Jalal al-Husseini, in his article “UNRWA and the Palestinian Nation-Building Process,” wrote that the PLO soon began using UNRWA facilities as terrorist bases.¹⁶

This continues to be a problem today. Lindsay himself noted:

UNRWA has taken very few steps to detect and eliminate terrorists from the ranks of its staff or its beneficiaries, and no steps at all to prevent members of terrorist organizations, such as Hamas, from joining its staff. These failings have occurred not because UNRWA consciously supports terrorism, but rather because it is not particularly concerned about the issue, its main focus being the provision of services and protection of Palestinian refugees.¹⁷

The American government has not ignored this issue. Since the 1970s, a number of Congressional resolutions have sought to limit or cut off funding to UNRWA, and

14. *Id.*, at 57.

15. Natasha Mozgovaya, *Ex-UNRWA official blasts agency for politicizing Palestinian refugee issue*, HAARETZ, February 8, 2009.

16. Jalal al-Husseini, *UNRWA and the Palestinian Nation-Building Process*, 29 JOURNAL OF PALESTINE STUDIES 51-64 (2000), available at www/jstor.org/stable/2676536 (last visited November 2, 2014).

17. Lindsay, *supra* note 13, at 32.

Congress regularly introduces language into appropriations bills requiring UNRWA to promote transparency, self-policing, and accountability with regard to vetting employees for terrorist connections, as well as eliminating the promotion of terrorism in educational materials. Similar provisions are regularly written into United States Agency for International Development budgets—administered by the State Department—in regard to the Palestinian Authority.

Moreover, after careful examination of UNRWA documents, Professor Benjamin Schiff, author of *Refugees Unto the Third Generation: UN Aid to Palestinians*, claimed that in 1965, UNRWA director Lawrence Michelmores offered Arab states a deal regarding refugee rolls and rectification. In exchange for new surveys, UNRWA would drop the criteria that Palestine Arab refugees had to have been resident in Palestine for at least two years before losing their residences and livelihoods, and that “other claimants,” namely non-refugees, Bedouin, and poverty stricken individuals, would be added. In this way, a “third generation” of Palestine Arab refugees would have been added to the rolls.¹⁸

All of these concerns have increased since the Hamas takeover of the Gaza Strip in 2007, where UNRWA remains fundamental to the local economy, and in subsequent years, as the possibility has periodically resurfaced of Hamas reconciling with the U.S. funded Palestinian Authority.¹⁹ As U.S. funding of various Palestinian institutions, including the Palestinian Authority itself, has escalated in recent decades, American lawmakers have repeatedly questioned members of the Executive Branch regarding diversions of funds to terrorism, or the presence of terrorists within U.S. funded entities.²⁰ Though the term “refugee warrior” has not been used, U.S. funding of this phenomenon is precisely the issue of concern to the U.S. Congress.

UNRWA’s ever expanding role in the Palestinian economy is measured through the number of its local employees. By the mid-1970s, UNRWA had 15,000 employees. During the 1980s and 1990s, refugee participation in UNRWA increased still further into “planning, implementation, monitoring, and evaluation of Agency programmes.”²¹ UNRWA now has more than 30,000 employees, the largest of any United Nations organization, and only a small number of international employees. It maintains two headquarters offices in Gaza and Amman, five field offices in Gaza, Lebanon, Syria, Jordan and the West Bank, and four Representative offices, in New York, Geneva, Brussels, and Cairo.²² There are some 3,000 employees in Lebanon and 10,000 in Gaza. The “approved total budget” for 2011 was \$624.7 million, with most funds coming from the United States and the European Union.²³ The assumption of moral hazard by the United States alone through contributions to UNRWA has amounted to some \$4 billion since 1950.²⁴

This process of a complete and total Palestinian takeover of UNRWA is similar to regulatory capture, which occurs when a state regulatory authority is taken over by the interests or industries that it is designed to control. UNRWA is an international agency that is effectively managed by the interests that it is intended to serve. The full weight of the organization’s coercive “soft power” and halo effect have been brought to bear on local and international political and media processes in order to shield it and keep the rent-seeking cycle in operation. This has been done in large part by members of the “refugee” population itself working within UNRWA, with the help of the senior international managerial staff. By acting as a pressure group, the organization has thus been able to extend its mandate, and ward off oversight and reform. It might also be asked whether UNRWA’s prerogatives and operations constitute a deliberate infringement on the sovereignty and legitimacy of the Palestinian Authority.

Finally, in the fall of 1949, when the Clapp Commission visited a refugee camp and was met by protest, an American Friends Service Committee (AFSC) staffer reported that “A large sign had been printed in English on which were the following, numbered as indicated: 1. Send us back home. 2. Compensate us. 3. Maintain us until we are refreshed. Just what they had in mind by ‘refreshed’ I leave to your imagination.”²⁵ This embodies UNRWA’s mandate today. ■

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18. Benjamin N. Schiff, *REFUGEES UNTO THE THIRD GENERATION* 53-54 (1995).

19. *Supra* note 10, at 16, 36-37.

20. E.g., Committee on Foreign Affairs, H. R., 110th Cong. Connecting the Money to the Mission: The Past, Present, and Future of U.S. Assistance to the Palestinians: Hearing before the Subcommittee on the Middle East and South Asia, of the 110th Cong. (2007).

21. Terry Rempel, *UNRWA and the Palestine Refugees: A Genealogy of “Participatory” Development*, 28 *REFUGEE SURVEY QUARTERLY* 425 (2009).

22. Working at UNRWA, www.unrwa.org/careers/working-unrwa (last visited October 23, 2014).

23. Core Programme Budget, www.unrwa.org/how-you-can-help/how-we-spend-funds/core-programme-budget (last visited October 23, 2014).

24. Zanoliti, *supra* note 8, at 2.

25. Don Stevenson to Bronson P. Clark, Interview with Ambassador Eliahu Elath of Israel at the Israeli Embassy, Washington on August 9, 1949. August 12, 1949, American Friends Service Committee Archives.

UNRWA: Still UN-Fixed¹

James G. Lindsay

While there are many problems with UNRWA, this article focuses on the more significant issues—in particular on the biggest issue of all, UNRWA’s definition of a refugee. UNRWA’s definition is unique and contrary to international refugee law. The article also focuses on UNRWA’s practices with regard to needs-based provision of services, limiting political pronouncements and speeches, rationalization of welfare, vetting UNRWA’s Palestinian staff and Registered Refugees, and standardizing textbooks and monitoring teachers.

The Definition of a Refugee

The area in which UNRWA is most in need of reform, and perhaps the greatest flaw in UNRWA’s policy and practice, is its definition of a refugee. Most of what the Agency is doing wrong stems from this central fact: UNRWA identifies or defines refugees quite differently from the international norm – the international norm being the policies and procedures of the United Nations High Commissioner for Refugees (UNHCR). UNHCR’s definition of a refugee, the international norm, comes from the 1951 Convention Relating to the Status of Refugees; UNRWA’s definition of a refugee is a wholly internal creation, one used by no other agency or organization in the world. As is discussed below, there are very substantial differences between the two definitions.

The UNHCR definition:

In general, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol define a refugee as someone who “owing to a 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country.”²

There are exceptions to the general rule, the one most relevant to this article is that a person who meets the above test can nevertheless be denied refugee status if:

- a. “He has acquired a new nationality, and enjoys the protection of the country of his new nationality,”³ or
- b. He “...is recognized by the competent authorities of the country in which he has taken residence as having

the rights and obligations which are attached to the possession of the nationality of that country.”⁴

The UNHCR Commentary on “b” above states that



This provision relates to persons who might otherwise qualify for refugee status and who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship. (They are frequently referred to as “national refugees”.) The country that has received them is frequently one where the population is of the same ethnic origin as themselves. There is no precise definition of “rights and obligations” that would constitute a reason for exclusion under this clause. It may, however, be said that the exclusion operates if a person’s status is largely assimilated to that of a national of the country. In particular he must, like a national, be fully protected against deportation or expulsion.⁵

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1. This article draws in part from, and expands on, research the author completed for his earlier writings on the subject of UNRWA’s problems, as set out in *Fixing UNRWA: Repairing the UN’s Troubled System of Aid to Palestinian Refugees*, WASHINGTON INSTITUTE FOR NEAR EAST POLICY, Policy Focus 91, Jan. 2009 and *Reforming UNRWA*, 19 MIDDLE EAST QUARTERLY (2012), at 85-91.
 2. See Convention Relating to the Status of Refugees, Chap. 1, Art. 1, Sec. A (2), 1951 available at www.unhcr.org/3b66c2aa10.html (last visited Nov. 14, 2014).
 3. *Id.*, Art. 1, Sec. C (3).
 4. *Id.*, Art. 1, Sec. E.
 5. UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, paras. 144-45. [A footnote indicates that the situation that inspired the restriction was that of refugees of German extraction who had arrived in the Federal Republic of Germany at the end of WW II and who were recognized as possessing the rights and obligations attaching to German nationality.] available at www.unhcr.org/3d58e13b4.html (last visited Nov. 14, 2014).

The UNRWA definition:

In contrast to the UNHCR definition of a refugee, UNRWA's Consolidated Eligibility and Registration Instructions (CERI)⁶ do not claim to define who is a refugee. Rather, they set out certain criteria that, if met, entitle a person to be registered in UNRWA's Registration System and/or to receive the Agency's services.⁷ The CERI state that the standards and criteria are intended to facilitate the Agency's operations⁸ (i.e., not to determine who is a refugee under international law).

Those UNRWA criteria are as follows:

Persons who meet UNRWA's Palestine Refugee criteria are those 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. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services. The Agency accepts new applications from persons who wish to be registered as Palestine Refugees. Once they are registered with UNRWA, persons in this category are referred to as Registered Refugees or as Registered Palestine Refugees.⁹

In other words, the UNHCR definition is of universal application, identifying who, no matter where he/she is in the world, is a refugee. In contrast, the UNRWA definition is much less encompassing, admitting up front that it is designed for the limited purposes of identifying persons who are entitled to be registered by UNRWA and to receive services from UNRWA. UNRWA does not say that such persons **are** refugees in the universal, international law sense, but rather that, internally to UNRWA, they will be "*referred to as Registered Refugees or as Registered Palestine Refugees*" (emphasis added).

It cannot be overemphasized that an UNRWA-defined Registered Refugee may, or may not, be a refugee in terms of international law, as reflected in UNHCR's rules and the 1951 Convention Relating to the Status of Refugees. Even though the Agency keeps records of over five million Palestinians whom it "refers to" as Registered Refugees, that does not mean that under international law there actually **are** five million Palestine refugees. This distinction is ignored on the many occasions when UNRWA, or the U.S. State Department for that matter, makes mention of five million Palestine refugees.¹⁰

The most significant difference between the two definitions, and, when combined with the common

assumption that an UNRWA Registered Refugee is a refugee under international law, the difference having the most pernicious effect, is the absence of statelessness from the UNRWA definition. Under established international refugee law and practice, statelessness is the essence of refugee status. As noted above, the UNHCR specifically excludes people from refugee status if they have acquired a new nationality—or even if they have been "*received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship.*"

When UNRWA declaims that its work is "consistent with established international refugee law and practice" and denounces "the fanciful notion that UNRWA itself and its approach to its work are per se the reason for the continuing existence of Palestinian refugees,"¹¹ it never addresses the fact that there is no basis whatsoever in international law for its practice of "referring to" persons who have acquired a new nationality as "refugees." This indefensible practice is not an oversight on UNRWA's part—even some commentators sympathetic to UNRWA have admitted that citizens under the protection of their state of citizenship are not refugees.¹² Instead, knowing that it is impossible to make a credible argument that citizens are "refugees," UNRWA simply does not address the issue.

6. UNRWA, Consolidated Eligibility and Registration Instructions (hereafter "CERI"), available at www.unrwa.org/sites/default/files/2010011995652.pdf (last visited Nov. 14, 2014).

7. CERI, *supra* note 6, at para. II.

8. CERI, *supra* note 6, at para. I.

9. CERI, *supra* note 6, at para. III.a.1.

10. For an example from UNRWA's spokesperson, see Chris Gunness, *UNRWA: Beyond the Myths*, THE WORLD POST, Aug. 31, 2011), available at: www.huffingtonpost.com/chris-gunness/unrwa-beyond-the-myths_b_941669.html (last visited Nov. 14, 2014). For a high level (and much noted) example from the U.S. State Department, see the Letter from Thomas Nides, then Deputy Secretary of State for Management and Resources, to Senator Patrick Leahy (*UNRWA provides essential services for approximately five million refugees....*), May 24, 2012, available at www.scribd.com/doc/94703915/DepSec-State-Opposes-Kirk-Amdt#download (last visited Nov. 14, 2014).

11. Gunness, *supra* note 10.

12. See, e.g., Rex Brynen, *Fact check: The Jerusalem Post on refugee status*, PALESTINIAN REFUGEE RESEARCH NET (Aug. 14, 2014) ("*Palestinians who have acquired citizenship elsewhere (as is the case with most in Jordan) would not be considered UNHCR refugees....*"). available at prnblog.wordpress.com/2014/08/14/factcheck-the-jerusalem-post-on-refugee-status/ (last visited Nov. 14, 2014).

The extent of this problematic practice is substantial. Of the five million refugees claimed by UNRWA, more than two million are registered in Jordan¹³ —but **more than 90% of the UNRWA Registered Refugees in Jordan have Jordanian citizenship**.¹⁴ If one speaks in terms of established international refugee law and practice, then, in the blink of an eye, the five million persons whom UNRWA (as well as the U.S. State Department) “refers to” as refugees are reduced by 1.8 million.

While insisting that the Jordanian oxymoronic “citizen-refugees” are actual refugees is UNRWA’s greatest and most flagrant deception, there is more. An estimated 85% of the 500,000 plus of the UNRWA Registered Refugees in Syria (i.e., approximately 425,000 people) have, by Syrian Law 260 of 1956, almost all of the rights and responsibilities normally associated with citizenship.¹⁵ Formally, they are not citizens and, unlike other Arabs, are specifically banned from obtaining Syrian citizenship (the better to try to perpetuate their refugee status). However, the differences in Syria between citizens and UNRWA Registered Refugees falling under Law 260 are few and minimal; if their status were ever challenged on the basis of international law, 85% of UNRWA Registered Refugees in Syria would almost certainly fall under the UNHCR clause that excludes from refugee status anyone who “is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.” So we can probably eliminate about 425,000 of those 500,000 UNRWA Registered Refugees in Syria from those who would be considered actual refugees under international law.

UNRWA lists a total of two million UNRWA Registered Refugees in the West Bank (approximately 750,000) and Gaza (approximately 1,250,000). The political status of the UNRWA Registered Refugee population in those areas, UNRWA registration aside, is essentially identical to the status of the non-refugee population. Moreover, on November 29, 2012, the U.N. General Assembly declared Palestine to be a “Non-Member Observer State,” and some 135 countries are alleged to have recognized the State of Palestine.¹⁶ If Palestine is a state, and if the UNRWA Registered Refugees living in that state are citizens of the state of Palestine (or accorded virtually identical rights to those who are citizens), are they then still refugees? True, the international community considers Gaza and the West Bank to be occupied by Israel, but does that make any difference to statehood? Even assuming that the General Assembly’s declaration is, legally speaking, a nullity, still, at the very least, it is clear that if a real State of Palestine came into existence, then, under established international refugee law and practice, its citizens could not be refugees.

Lastly, there are approximately 450,000 UNRWA Registered Refugees that UNRWA lists as registered in Lebanon. To start with, virtually all observers believe the 450,000 number to be substantially exaggerated, with many of the UNRWA Registered Refugees having left Lebanon.¹⁷ My own experience bears out that belief. When I was working for UNRWA, a study was commissioned to determine the living conditions of UNRWA Refugees in Lebanon. The contractor was required, as part of the study, to contact and interview a random sample of UNRWA Refugees whom the Agency’s records showed were living in Lebanon. The contractor, despite diligent search and follow up, could only find about 55% of those registered.

13. The numbers of UNRWA Refugees in Gaza, West Bank, Jordan, Syria and Lebanon come from the UNRWA website www.unrwa.org/sites/default/files/2014_01_uif_-_english.pdf (last visited Nov. 14, 2014) and seem not to take into account the mass movements of people since the outbreak of the Syrian civil war in 2011. Hence, the numbers probably reflect where the UNRWA Refugees are registered, rather than where they are physically located now.
14. Jordan, World Refugee Survey 2008, U.S. Committee for Refugees and Immigrants, 104-105, available at www.uscrrfugees.org/2010Website/5_Resources/5_5_Refugee_Warehousing/5_5_4_Archived_World_Refugee_Surveys/5_5_4_6_World_Refugee_Survey_2008/Country%20Updates/Iran%20to%20Mauritania.pdf (last visited Nov. 14, 2014).
15. According to Law 260 of 1956, those Palestine refugees present in Syria as of the date of the law are equal in all ways to Syrian citizens, with minor, largely symbolic, exceptions (e.g., they are prohibited from voting, holding public office, owning agricultural land or owning more than one house per person). See, e.g., *Palestinians from Syria: Syria Needs Analysis Project-March 2014 4*, available at reliefweb.int/sites/reliefweb.int/files/resources/palestinians_from_syria_march_2014.pdf (last visited Nov. 14, 2014).
16. See, Ishaan Tharoor, *Map: The Countries that Recognize Palestine as a State*, WASHINGTON POST (Nov. 7, 2014), available at www.washingtonpost.com/blogs/worldviews/wp/2014/11/07/map-the-countries-that-recognize-palestine-as-a-state/ (last visited Nov. 14, 2014).
17. See, e.g., *Palestinian Refugees in Lebanon*, 3 ANERA REPORTS (June 2012), 2 and fn. 2 (estimating, based on the Socio-Economic Survey of Palestinian Refugees in Lebanon, American University of Beirut (December 2010), that there were about 260,000-280,000 Palestinian refugees residing in Lebanon). available at www.anera.org/wp-content/uploads/2013/03/LEBRefugeeReport.pdf (last visited Nov. 14, 2014).

In addition to many UNRWA Registered Refugees having left Lebanon, some tens of thousands of UNRWA Registered Refugees were naturalized by the Lebanese authorities over the years (although the exact numbers are in dispute).¹⁸

However, for the UNRWA Registered Refugees who are physically residing in Lebanon, or at least for those who have not been naturalized, there are various severe restrictions regarding property ownership, access to government services, professions in which they may work and locations where they may live. The number of non-naturalized UNRWA Registered Refugees actually present in Lebanon — probably something like 250,000—clearly are not recognized by the Lebanese authorities “as having the rights and obligations which are attached to the possession” of Lebanese nationality.

Descendants of Refugees

A number of critics, including this author, have noted that UNRWA’s definition of a refugee specifically includes the descendants, without limitation, of refugee males. Some such critics have argued that, at least with regard to the grandchildren and later descendants of the persons who originally gained refugee status, UNRWA practice is suspect and may differ from the practice of UNHCR.¹⁹ However, as UNRWA and its supporters argue, UNHCR does refer to the **dependents** of a refugee as being eligible for “derivative refugee status” and does state that persons with derivative refugee status enjoy “the same rights and entitlements as other recognized refugees.”²⁰ Based on the concept of persons with derivative refugee status having the same rights and entitlements as other refugees, one could argue, as UNRWA does, that a person with derivative refugee status has the right to have his or her own dependents receive derivative refugee status.²¹ In that case, the differences between UNRWA and UNHCR in the matter of refugee status passing to descendants would not be as great as the critics have suggested.

In this vein, UNHCR has recognized what it calls “Protracted Refugee Situations.” These are situations that, as a UNHCR publication put it, “endure because of ongoing problems in the countries of origin and stagnate and become protracted as a result of responses [in countries of asylum] to refugee inflows, typically involving restrictions on refugee movement and employment possibilities and confinement to camps.”²²

While I believe none of these UNHCR protracted refugee situations has persisted as long as the UNRWA refugee situation (likely because UNHCR, unlike UNRWA, is supportive of resettlement and/or local integration where repatriation is not feasible), some have, nonetheless, continued through more than one generation. For instance,

at times there have been as many as nearly 500,000 Burundi refugees in Tanzania, some since the early 1970s. Refugees from the early 1970s would have had, by the end of the first decade of this century, thousands of children and, in many cases, grandchildren who were born, and have remained for their entire lives, outside of Burundi.²³ UNHCR considers such un-naturalized children and grandchildren of Burundi refugees to be refugees. With regard to “inheriting” refugee status, the Burundi case seems not dissimilar from the situation of those UNRWA Registered Refugees who are actual refugees under international law.

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18. See, e.g., Sherifa Shafie, *Palestinian Refugees in Lebanon*, FORCEDMIGRATION.ORG (July 2007), available at www.forcedmigration.org/research-resources/expert-guides/palestinian-refugees-in-lebanon (last visited Nov. 14, 2014); Abbas Shibliak, *Civil and Citizenship Rights of Palestinian Refugees*, Palestinian Diaspora and Refugee Center, (Dec. 14, 1995); Julie Peteet, *Landscape of Hope and Despair: Palestinian Refugee Camps* (Jan 1, 2011) 177; Kathleen Fincham, *Shifting Youth Identities and Notions of Citizenship in the Palestinian Diaspora: The Case of Lebanon*, in *NATURALIZATION POLICIES, EDUCATION AND CITIZENSHIP: MULTICULTURAL AND MULTI-NATION SOCIETIES IN INTERNATIONAL PERSPECTIVE*, Dina Kiwan ed., (2013) 175, fn 4.
 19. For an example of the author’s earlier writing on this subject, see, James Lindsay, *Reforming UNRWA*, 19 MIDDLE EAST QUARTERLY 85 (2012).
 20. See, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*, para 5.1, available at www.unhcr.org/43170ff81e.html (last visited Nov. 14, 2014).
 21. Indeed, in this area, because UNRWA limits the inheritance of refugee status to descendants of the male line (see, CERI, *supra* note 6, at para. III.A.1), it could be argued that UNRWA is **stricter** than UNHCR, which has no such gender-based limitation.
 22. Executive Committee of the High Commissioner’s Programme, Standing Committee, *Protracted Refugee Situations*, EC/54/SC/CRP.14 (10 June 10, 2004); available at www.refworld.org/pdfid/4a54bc00d.pdf (last visited Nov. 14, 2014).
 23. For a discussion of the origins of the Burundi refugees, see *Burundian Refugees in Tanzania: A Key Factor in the Burundi Peace Process*, 12 INTERNATIONAL CRISIS GROUP CENTRAL AFRICA REPORT (Nov. 25, 1999) available at www.crisisgroup.org/~media/Files/africa/central-africa/burundi/Burundian%20Refugees%20in%20Tanzania%20The%20Key%20Factor%20to%20the%20Burundi%20Peace%20Process.pdf (last visited Nov. 14, 2014).

This approach makes sense. If the child or grandchild of the refugee is being treated in the same way as the refugee – i.e., suffering from “...restrictions on ... movement and employment possibilities and confinement to camps” — what else, from a legal or humanitarian standpoint, could his or her status be? To remove such people from UNHCR’s protections would be to leave them stateless and with no other country to which they could go – exactly the situation UNHCR refugee status is designed to address.

The scandal, then, is not that refugee status can be passed from generation to generation, but rather that through inaction, refugee status is allowed to persist from generation to generation. For UNRWA Refugees, refugee status persists solely because UNRWA pretends persons who are protected by a state (the oxymoronic “citizen refugees”) are still refugees and, for those who really are refugees, refuses to make any effort to end their refugee status, as (in the absence of the possibility of repatriation) by resettlement or local integration. UNRWA has made no effort toward resettlement or local integration since the 1950s. Indeed, since that period UNRWA has purposefully chosen not to make any effort to end the refugee status of UNRWA Registered Refugees – or even to remove from the list of Registered Refugees those who, through their own efforts and/or the actions of host states, have been resettled or locally integrated and, thus, are no longer refugees under established international refugee law and practice.

UNRWA has a strong humanitarian and legal case when it argues that the descendants of refugees, stateless and unprotected, are themselves refugees, but UNRWA’s referring to citizens as refugees, when they are by definition non-refugees, is legally, politically and morally indefensible. Therefore, in trying to fix UNRWA, it seems advisable to argue against UNRWA’s practice of maintaining as Registered Refugees oxymoronic citizen-refugees, to argue for creative, sustained and well-funded efforts to promote reintegration and resettlement of those Registered Refugees who are real refugees and to eschew losing arguments about whether international law permits refugee status to be inherited.

Other Factors Inflating the Number of UNRWA Refugees

While this article is mostly concerned with UNRWA’s unique and troublesome definition of a Registered Refugee and how that grossly inflates the actual number of Palestine refugees, there are other factors that tend to have the same effect.

1. There are problems with the accuracy and sufficiency of UNRWA’s records, which are supposed to show the proof that each person registered by UNRWA met the

UNRWA criteria. There were inaccuracies in the rolls of relief recipients that were handed over to UNRWA by UN Relief for Palestine Refugees in 1950,²⁴ and of course there was resistance by recipients of UNRWA services, and the states where they were living, to UNRWA’s efforts to try to rectify those rolls. Those factors, plus UNRWA’s own highly unexact criteria for registration,²⁵ suggest that there are likely many Registered Refugees on UNRWA’s rolls who are not, or whose ancestors were not, refugees from the 1948 war, even under UNRWA’s definition. If the question of the true refugee status of UNRWA Registered Refugees were ever addressed, a careful examination of the basis for granting registration to each of the UNRWA Registered Refugees would need to be undertaken, and the evidence in the files would in some, perhaps many, cases be insufficient to establish refugee status under international law.

2. Moreover, UNRWA registers and provides its services to a number of persons (and in most cases to their descendants as well) who admittedly never met the UNRWA definition of a refugee²⁶— formerly referred to as “economic refugees” and now called persons “*who were determined to have suffered significant loss and/or hardship for reasons related to the 1948 conflict in Palestine*” (more specifically described as “Frontier villagers,” “Jerusalem and Gaza poor,” “Compromise cases,” the descendants and non-UNRWA Refugee spouses of UNRWA Refugee women, non-UNRWA Registered Refugee women married to UNRWA Registered Refugee men and certain traditional adoptees of UNRWA Registered Refugees).²⁷ UNRWA says that these persons, while registered, “*are not counted as part of the official Registered Refugee population of the*

24. UNRWA: A BRIEF HISTORY, 1950–1982 (1983), 4-6, 7-8, 65.

25. CERI, *supra* note 6, para. IV.A.

26. The CERI state on the one hand that such persons are “*eligible to receive UNRWA’s services upon being registered in the Agency’s Registration System and obtaining an UNRWA Registration Card*” (CERI, *supra* note 6, para. 3.A) and on the other hand maintain that such persons “*are not counted as part of the official Registered Refugee population of the Agency*” (CERI, *supra* note 6, para. III.A.2).

27. CERI, *supra* note 6, para. III.A.2. Interestingly, a former category of economic refugees, “Bedouin,” described as nomads whose grazing lands (or some of them at least) were on the Israeli side of the 1949 armistice line, has disappeared from the most recent version of the CERI. It is not clear whether they have been de-registered (unlikely), subsumed into one of the other groups or transmuted into “*part of the official Registered Refugee population of the Agency*.”

Agency,”²⁸ which may (or may not) mean that they are not counted as part of the claimed five million UNRWA Registered Refugees. Needless to say, the “economic refugees” are not refugees under international law and UNHCR practice.

In sum, while the UNRWA definition of a refugee results in some five million UNRWA Registered Refugees, for various reasons (largely citizenship) many fewer would be entitled to refugee status under established international refugee law and practice. For UNRWA to refer to such persons as “refugees” is, at the very least, disingenuous. If a serious, international-law-based, effort were made to determine who among the UNRWA Registered Refugees was entitled to refugee status, only a fraction would qualify.²⁹

Other Needed UNRWA Reforms

There are other areas in which UNRWA is in need of reform, and where reform would better serve both the mostly Western countries that fund UNRWA and the UNRWA Registered Refugees themselves:

1. As a humanitarian organization, there is no reason for UNRWA to provide its services without cost to those who can afford to pay. UNRWA should move to an entirely needs-based provision of services.

2. UNRWA should eschew its current one-sided political speeches – or, better yet, as a humanitarian organization, any political speech at all.

3. The West Bank and Gaza have one of the highest, if not the highest, birth rates in the world outside Africa; UNRWA should encourage family planning not only by making family planning services available to married women with their husband’s permission (as it does now), but by providing incentives to limit the size of families.

4. UNRWA should not just vet its staff and contractors against a U.N. list of a few hundred terrorists but its staff, its contractors and its beneficiaries against the lists of thousands of terrorists available from major donors, such as the U.S. Department of the Treasury OFAC list.

5. Particularly given that UNRWA teachers in Gaza almost uniformly vote for Hamas-affiliated union representatives, UNRWA should monitor via, Arabic-speaking international employees, the teaching that is occurring in its classrooms. The textbooks should not be those of the local authority (the Palestinian Authority in Gaza and the West Bank) but neutral textbooks produced by the United Nations (e.g., by UNESCO).

A. Moving to Needs-Based Provision of Services

There was a long battle over restricting the provision of “rations,” food distribution, to Registered Refugees

who were actually in need. Indeed, for much of UNRWA history, being “in need” was, in theory, one of the criteria for registration at all (that inconvenient anachronism was finally done away with in 1993). Opposition to the restriction of rations to those who actually needed food support was fierce both because rations were a financial benefit (those who didn’t need the rations sold them, or even “rented out” their ration cards) and because rations were seen as an acquired right and a political entitlement. Eventually commonsense, fortified by American pressure and UNRWA’s claim in 1982 that it needed to redirect the rations “temporarily” to Registered Refugees in Lebanon due to the Israeli invasion, won out over the “entitlement” mentality. Thus, since 1982, rations have been restricted to those in actual need, referred to as “Special Hardship Cases” (albeit the General Assembly tried for a decade to convince UNRWA to restart rations to all Registered Refugees).³⁰

The question arises then, if the provision of UNRWA rations can be limited to those who actually need them, why cannot other UNRWA services be limited in the same way? Why should middle-class, non-taxpaying Registered Refugees receive free services from UNRWA while other Registered Refugees lack sufficient food and shelter?

This anomaly is all the more inexplicable in the current situation, with Registered Refugees fleeing from the Syrian fighting suffering from shortages of food and shelter. Could not the funds being spent on middle-class Palestinians be reprogrammed? Just as there was an emergency in 1982 justifying moving to a needs-based provision of rations, is there not an emergency today justifying moving to a needs-based provision of other services?

B. Limiting Political Pronouncements and Speeches

In earlier writings, I have commented on the one-sided political speeches by senior UNRWA officials. Such speech, because it is so one-sided, tends to support the most intransigent and irredentist elements in Palestinian society and to complicate the political efforts to resolve the problems of the UNRWA Refugees. The last two

28. *Id.*

29. Of course, having lost, or having never had, the status of a true refugee from the 1948-1949 war does not mean that an individual cannot have a claim to compensation for property lost as a result of that war.

30. For a more expansive discussion of the struggle to limit rations to those in need, *see*, Fixing UNRWA, *supra* note 1, 16-17.

commissioners-general both have stated that UNRWA is not a political organization. In one 2007 speech, for example, the then-commissioner-general noted that “[one] theme underlying UNRWA’s establishment was the bifurcation of political and humanitarian roles. Even though the political dimension is of significance to the refugee issue, UNRWA’s mandate is entirely non-political in character and confined to humanitarian and human development activities.”³¹

Similarly, the then-deputy commissioner (who later became commissioner-general) stated at one point that “It is not for UNRWA to comment on matters which are political in nature.”³²

In reality, however, UNRWA—through its leaders and press spokespersons—is constantly involved in political speech. One can readily find speeches lamenting the Quartet’s hands-off approach to Hamas, equating Israeli attacks on combatants which accidentally kill civilians with Hamas attacks directed at civilians, supporting the so-called “right of return,” bemoaning the West’s support of the PA-Fatah over Hamas, denouncing the Israeli separation barrier, condemning Israeli settlements—the list goes on and on.³³ Such political speech is not necessarily incorrect in all cases, and certainly there are arguments on both sides of some political issues, but why is UNRWA, a supposedly humanitarian agency, arguing political issues at all? By taking political positions, especially consistently one-sided political positions favoring irredentist elements in Palestinian society, UNRWA contributes to separation of the opposing sides in the Middle East, not bringing them together. UNRWA thus becomes part of the problem rather than part of the solution.

The March 20, 2014, farewell address by the departing Commissioner-General, Filippo Grandi, shows that the nature of this problem has not changed over the intervening years.³⁴ In his address, Grandi referred repeatedly to the UNRWA Refugees collectively as having been “expelled” from their homes, when it is quite clear that there were many reasons for the departure of Arab residents from what became Israel. To be sure, the evidence uncovered in Israeli archives by Israeli historians, Benny Morris to name one,³⁵ confirms that there **were** Arabs who were expelled by Jewish forces. But the same sources make it clear that many Arabs left for other reasons—it was a time of war, rife with propaganda and the fear of being in the wrong place at the wrong time.

Similarly, and like his predecessors, Grandi also indirectly criticized the West for supporting Fatah over Hamas, blaming the West for the split between the two, rather than any ideological differences.

Press releases from the new Commissioner-General,

Pierre Krahenbuhl, are in the same vein as those of his predecessors. In the summer of 2014, after Israel finally initiated action to stop the firing of rockets into its territory from Gaza (each such rocket being a war crime and all those who direct or implement the firing being war criminals), Krahenbuhl stated:

I urgently call on the Israeli Security Forces to put an end to attacks against, or endangering, civilians and civilian infrastructure which are contrary to international humanitarian law. In Gaza, risks are compounded by the very high population density. Maximum restraint must be exercised and measures of distinction, proportionality and precaution must be respected to avoid further casualties and overall destabilization. Clearly at this stage not enough is being done in that regard. Too many lives are being lost and this must end. If calm is not

31. Karen AbuZayd, Palestine Refugees in Ongoing Crises: An UNRWA Perspective, speech delivered at the New Zealand Institute of International Affairs, Victoria University, (Oct. 8, 2007) available at unispal.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/eaf51d55e3b0e4d9852573750048409a?OpenDocument (last visited Nov. 14, 2014).
32. Filippo Grandi, UNRWA: Present Dilemmas and Future Prospects, *Statement at Law Institute, Bir Zeit University* (March 15, 2008), available at unispal.un.org/UNISPAL.NSF/0/68CE02BCCBB82BE7852574160047F326 (last visited Nov. 14, 2014).
33. Surprisingly, in the very same speech in which the deputy commissioner claimed that UNRWA was apolitical, he also declaimed on Israel’s “many breaches of international humanitarian law and human rights law,” the need to parley with Hamas (“the Commissioner-General continues to advocate...for dialogue to be renewed between all concerned actors”), and “the grossly disproportionate military reaction of the Israeli Defence Forces.” For the collection of the commissioner’s and deputy commissioner’s speeches, see the “News” section of the UNRWA website www.un.org/unrwa/news/index.html.
34. Filippo Grandi, Choices Made, Choices Denied, Lecture at Bir Zeit University (March 20, 2014), available at www.unrwa.org/newsroom/official-statements/choices-made-choices-denied (last visited Nov. 14, 2014).
35. Benny Morris, *THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM REVISITED* (2nd ed., 2004).

quickly restored, the casualty levels will become even more intolerable and unacceptable. I echo the United Nations' call for all parties to respect international law, and protect the civilian population. This includes an end to rocket fire from Gaza aimed at Israel, which the United Nations has described as indiscriminate.³⁶

The pattern reflected in the passage is typical of UNRWA Commissioners-General. Israel, defending itself and not known to have been guilty of any action that could be described as a war crime, is singled out as not doing enough to protect civilians. The known war crimes of Hamas are mentioned as an afterthought, and Hamas, which admits to intentionally firing rockets at population centers, is not even named.

C. Rationalization of Welfare

During his March 14, 2014 speech, Grandi also referred to the fact that the population in Gaza had increased by 59% since the year 2000 and lamented that there was not enough money coming in to provide proper services to all these new "refugees" (the statistics are not particularly reliable, but it appears that the Gaza fertility rate is among the highest in the world outside of Africa).³⁷ Just a month later, an Al-Monitor article concerning overpopulation in Gaza³⁸ cited a resident of Gaza, a 70 year-old taxi driver with four wives and 22 children and another who said: "Despite the difficult economic situation facing us, I will not stop having children. I love [having children], and there is nothing preventing me from having more."

Given that the Agency makes family planning services available to Registered Refugees without cost, why not consider reducing UNRWA welfare and services for children beyond some fixed (and far lower than 22) number?

D. Vetting UNRWA's Palestinian Staff and Registered Refugees for Terrorist and Other Violent Connections

Whenever UNRWA is accused of hiring or providing services to terrorists, it piously responds that it vets its 30,000 staff members (but not its Registered Refugees) against the U.N. 1267 Sanctions Committee "*list of terrorists and terrorist entities*."³⁹ But what is that list? According to the U.N. website,⁴⁰ the 1267 Sanctions Committee list is a list agreed upon by the Security Council and consisting at present of a couple of hundred individuals associated with Al-Qaida and 61 "entities and other groups and undertakings" associated with Al-Qaida. So out of the tens or hundreds of thousands of known terrorists running

around the world, UNRWA is vetting its staff (but not its Registered Refugees) against a list of a couple of hundred names.

There are many other lists available, the U.S. Treasury's Office of Foreign Assets Control (OFAC) list being one with more than ten thousand names, but despite U.S. urging, UNRWA refused to use that list because it is not a "U.N." list. Other countries maintain similar lists, but UNRWA has neither sought out nor used any list other than that of the 1267 Sanctions Committee. Thus, twice every year, UNRWA religiously checks the names of its 30,000 staff members (but not its beneficiaries, the Registered Refugees) to see if any of them have magically appeared amongst the tiny number of names on the 1267 Sanctions Committee list.

No matter how pious the presentation, UNRWA's efforts to vet its staff for terrorist connections are not serious, and there are no efforts at all to vet Registered Refugees. Both problems could be fixed relatively easily, but UNRWA lacks the will, let alone the desire, to make the changes and there is no pressure from donors.

E. Standardizing Textbooks and Monitoring Teachers

UNRWA pays for and uses textbooks for its students that come from the local authorities, arguing that using those textbooks allows UNRWA students to easily transition to local schools when UNRWA education ends (UNRWA generally does not provide high school education, except in Lebanon). While a smooth transition is desirable, it is not clear if the benefit justifies a UN agency teaching from locally produced textbooks. Many subjects need no local content at all – for instance, there is no need to teach "Syrian-style" mathematics or "Jordanian-style" physics. And those subjects that do touch

36. Commissioner-General Press Briefing on the Situation in Gaza Strip (July 14, 2014) available at www.unrwa.org/newsroom/official-statements/commissioner-general-press-briefing-situation-gaza-strip (last visited Nov. 14, 2014).

37. See, e.g., Nationmaster, available at www.nationmaster.com/country-info/stats/People/Total-fertility-rate (last visited Nov. 14, 2014).

38. Mohammend Othman, Gaza's Population Booms, AL MONITOR, (April 17, 2014) available at www.al-monitor.com/pulse/originals/2014/04/gaza-growing-population-challenges.html (last visited Nov. 14, 2014).

39. See, Gunness, *supra* note 10.

40. www.un.org/sc/committees/1267/aq_sanctions_list.shtml (last visited Nov. 14, 2014).

on sensitive issues should be taught using balanced, U.N.-provided materials.

Moreover, of the very few UNRWA international staff who are fluent in Arabic, none are assigned to monitor teaching in the agency's 650+ schools. Thus, even if the textbooks were at an international standard, UNRWA teachers, who in Gaza, at least, have consistently elected Hamas representatives to their teachers' union, may be teaching something entirely different. The Palestinian staff educational hierarchy provides monitoring, but given the overwhelming influence of political parties (and the severe consequences of daring to thwart gunmen), the monitors may not feel free to report candidly, even if they were personally inclined to do so.

Given that UNRWA is a U.N. body, and that its schools are not adjuncts of the host-country educational systems, the agency should provide its students with a U.N. curriculum using U.N. textbooks.⁴¹ This effort need not require massive redesign of the existing curricula and textbooks, both of which could be modified to give students a balanced education while preparing them to join national educational systems when they leave UNRWA schools. Specifically, the agency could demand electronic versions of the national textbooks and curricula, modify (using UNESCO expertise) these materials as appropriate to provide a balanced education compatible with U.N. ideals, and then publish the result as UNRWA textbooks.

Regarding teachers and what actually takes place in UNRWA's Gaza classes taught by members of the Hamas-affiliated union, if UNRWA were to propose creating an independent group of Arabic-speaking classroom monitors (from countries other than UNRWA's hosts), I suspect Western funding could be found.

In Conclusion

Many, and perhaps the majority, of UNRWA's Registered Refugees would not be considered refugees under

international law because they are citizens of states or "have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship." UNRWA (and the U.S. State Department) should stop referring to such persons as "refugees." That does not mean that the persons UNRWA refers to as Registered Refugees should be abandoned (their countries of citizenship or residence could be assisted in further integrating them with funds now being provided to UNRWA), but they should not be treated as refugees and provided services by a United Nations agency.

Meanwhile, there are ways that UNRWA, before or during its relinquishment of responsibility for those Registered Refugees who are not refugees at all, can help make its services more efficient and impartial. Those steps should be undertaken immediately, but, as a practical matter they will be taken only if UNRWA's donors pressure UNRWA to reform. The recent political change in Washington may lead to at least modest steps in that direction. One can hope that with the right incentives and sufficient pressure on UNRWA, the Registered Refugees will be allowed to become peaceful and productive citizens of their countries of residence. ■

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41. This was suggested years ago by UNESCO's Commission of Outside Experts, but not acted on. See, Edward Buehrig, *THE UN AND THE PALESTINIAN REFUGEES: A STUDY IN NON-TERRITORIAL ADMINISTRATION* 161-65 (1971).

Why Has the U.S. Congress Done so Little about UNRWA?

Steven J. Rosen

American defenders of Israel generally see UNRWA as one of the worst United Nations agencies, an organization that harbors terrorists, teaches militant conflict with Israel and anti-Semitism in its schools, and perpetuates the Palestinian refugee issue as a source of tension.¹ Yet the paradox is that the United States has consistently been the largest single-state donor to UNRWA.

Therefore it is not surprising that UNRWA's critics have turned repeatedly to Congress, where they know there is bipartisan support for Israel, to fight UNRWA's practices. About once every year, a pro-Israel organization announces an anti-UNRWA initiative on Capitol Hill. With equal frequency, members of Congress issue press statements proposing legislation and Sense-of-Congress resolutions targeting UNRWA's ties to terrorism, anti-Semitism in its textbooks, and UNRWA policies that perpetuate rather than resolve the refugee issue. Seemingly, UNRWA is an important item on the foreign policy agenda of the United States Congress.

From all of this, the casual observer might imagine Congress to be a bulwark against UNRWA. But in reality, this is a mistaken impression. In its most important actions, Congress has in fact been a steady and reliable supporter of UNRWA, from the beginning of American aid to UNRWA in 1950, up to the present. As Karen Abu Zayd, former (2005-2009) Commissioner-General of UNRWA, said in April 2012:

even those who scrutinise [UNRWA] most closely and challenge it most severely are those who also ensure that its programmes receive adequate funding... [D]espite persistent threats to decrease or eliminate funding, from some members of the US Congress acting according to what they believe is the interest of Israel,... there is little actual threat to its survival as an agency.²

In each of UNRWA's 64 years, Congress has

appropriated aid to UNRWA in steadily rising amounts. The cumulative total of American assistance to UNRWA has now reached \$5 billion.³ Nor has Congress used America's status as the leading donor to impose reforms of UNRWA's deplorable practices. While the House and Senate have passed numerous statutory limitations and conditions on aid to the *Palestinian Authority*,⁴ in all these years only a single obligatory limitation has been placed on appropriations to UNRWA—Section 301(c) of the Foreign Assistance Act, conditioning aid on UNRWA's non-involvement with terrorists.

This is not because individual members have failed to propose other legislative initiatives and Sense-of-Congress resolutions. Recent proposals included the UNRWA Integrity Act (2006), the UNRWA Humanitarian Accountability Act (2010), the United Nations Transparency, Accountability, and Reform Act (2011), the Palestine Accountability Act (2013), the Palestinian and United Nations Anti-Terrorism Act (2014), and other proposals. (See Appendix of Congressional Resolutions on UNRWA.)

But the little-known truth is that with the sole exception of Section 301(c) of the Foreign Assistance Act, not a single one of these UNRWA reform initiatives has had majority support in the house of Congress in which it was



1. For an analysis of UNRWA's role in perpetuating the refugee issue as a source of tension, see the present author's overview *Why a special issue on UNRWA?* 19 THE MIDDLE EAST QUARTERLY (2012) available at www.meforum.org/3344/unrwa-special (last visited October 29, 2014).
2. Karen Abu Zayd, *UNRWA needs support not brickbats*, MIDDLE EAST MONITOR (April 1, 2012) available at www.middleeastmonitor.com/articles/guest-writers/3562-unrwa-needs-support-not-brickbats (last visited Nov. 7, 2014).
3. Jim Zanotti, Cong. Research Serv., RS22967, U.S. Foreign Aid to the Palestinians, July 3, 2014, at 20. Available at fas.org/sgp/crs/mideast/RS22967.pdf (last visited October 29, 2014).
4. *Id.*, at 11-12.

introduced, and only Section 301(c) was passed by both houses of Congress and signed by the President. In fact, only one of the other proposals had as many as 142 House sponsors out of the 435 members in the House of Representatives. Most of the proposals had 30 or fewer supporters. None in the Senate had as many as twelve sponsors. And, most importantly, every single proposed UNRWA reform bill or Sense-of-Congress resolution in either house of Congress, except Section 301(c), died after a few months and was not enacted (details in the Appendix).

How could this be? How is it possible that UNRWA, an agency so odious to Israel's friends, enjoys such immunity in the United States Congress? Why did all these efforts to do something about UNRWA die in Congress without enactment? There are several reasons.

AIPAC's Silence

The first and most immediate problem, well known to the lead sponsors of the proposed legislation but hidden from the wider public, is that none of the failed initiatives had real support from the American Israel Public Affairs Committee (AIPAC), the central political arm of the pro-Israel lobby. Except in the solitary case of Section 301(c), AIPAC did not activate its staff and lay activist system to build support for any of these resolutions among Democrats and Republicans in the House and Senate.

In fact, AIPAC keeps its distance from anti-UNRWA initiatives, never opposing them, lest their Congressional and organizational sponsors—and some AIPAC donors—take offence, but not gathering co-sponsors either. AIPAC would certainly never come out and say, “Hands off UNRWA.” It would never acknowledge, even privately, that this is its implicit policy, but it is.

The reason is certainly not that AIPAC has any great love for UNRWA, or is ignorant of the destructive role that UNRWA plays. I served as a senior policy official of AIPAC for two and a half decades, and I can testify that its lay and professional leadership are as frustrated as anyone in the wider pro-Israel community, that so little is being done about the UNRWA cancer. But AIPAC knows from bitter experience that if it yields to the temptation to join an initiative against UNRWA, it will be in an untenable position, out on a limb that will be sawed off by the Government of Israel.

Israel's Strange Bedfellow

This seemingly adversarial relationship between UNRWA and Israel obscures a deeper reality well known to those most directly involved on the ground. Deeply flawed as the agency is, Israel depends on UNRWA as an element promoting stability in the West Bank and Gaza, a vital strategic objective for the Jewish State.

UNRWA's role has been critical since Israel first gained control of the territories almost five decades ago in the June 1967, Six Day War. On June 12, 1967, shortly after the fighting stopped, Israel's U.N. Ambassador, Michael Comay, and UNRWA's Commissioner-General, Lawrence Michelmore, signed a formal agreement establishing recognition by the State of Israel of UNRWA's activity in the West Bank and Gaza. The Israeli government committed itself to “nonintervention” in the U.N. agency's affairs in the humanitarian sphere, reserving the right to intervene only where there are threats to national security. Israel agreed to facilitate the work of the Agency rather than impede it.⁵

On many occasions since that time, the Government of Israel has reaffirmed its commitment to the Comay-Michelmore agreement and to cooperation with UNRWA. For example, in November 2009, at a major event marking the 60th anniversary of UNRWA, the Israeli representative

underscored Israel's continued commitment to the understandings expressed in the 1967 Comay-Michelmore ... Letters. Israel would continue to do its utmost to facilitate UNRWA's operations, subject to the upholding of its own security. Israel was especially devoted to maintaining the close coordination that existed between the Agency and Israeli officials in the field.⁶

On the same occasion, UNRWA Commissioner-General Karen Abu Zayd affirmed the excellent degree of cooperation that UNRWA enjoyed with the Israeli authorities.⁷

5. Exchange of letters constituting a provisional agreement concerning assistance to Palestinian Refugees (1967), available at www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/exchange%20of%20letters%20constituting%20a%20provisional%20agreement%20concerning%20assistance%20to%20palestine%20refugees.aspx (last visited October 29, 2014).
6. U.N. GAOR, 64th Sess., 4th Committee, 22nd Meeting(PM), U.N. Doc GA/SPD/442, (Nov. 1, 2009), available at www.un.org/press/en/2009/gaspd442.doc.htm (last visited Nov. 7, 2014).
7. Press Release, Success of UN Relief Agency for Palestine Refugees Also Sign of Collective Failure to Resolve Political Question That Led to Refugee Crisis, Fourth Committee Hears, UN, Press Release GA/SPD/442 (Nov. 3, 2009), available at www.un.org/News/Press/docs/2009/gaspd442.doc.htm (last visited Nov. 7, 2014).

The epicenter of Israel's cooperation with UNRWA is Israel's Ministry of Defense and the IDF, and specifically the office of the Coordinator of Government Activities in the Territories (COGAT), which has the day-to-day task of coordinating civil and security affairs in the West Bank and Gaza. COGAT attempts to maintain a good working relationship with UNRWA, mainly to help the agency perform its task of providing vital services to the Palestinian Arabs, services that the IDF might have to provide if UNRWA were suddenly removed. As UNRWA Commissioner-General Abu Zayd observed,

Eliminating UNRWA would serve only to deprive Palestine refugees of the basic public services... offered by the Agency. Such services would then have to be provided by another body; in the case of West Bank and Gaza that would be the occupying power, Israel. This explains the official Israeli government support for the role of UNRWA, and the reason there is a modicum of cooperation in allowing basic provision of goods and services by UNRWA in the occupied Palestinian territory.⁸

Israel's "surprisingly good relations with UNRWA" were explained by a former deputy head of COGAT, retired Brigadier General Baruch Spiegel:

The Israeli government supports [UNRWA] educational programs because it is strongly averse to the other alternative: Palestinian children attending Hamas schools in both Gaza and the West Bank. Jerusalem believes that, for all of Hamas' penetration of the UNRWA school system, children educated in UNRWA's schools are indoctrinated to a lesser extent with anti-Israel and anti-Semitic hatred than those attending Hamas' own schools, which appear to be little more than hotbeds for terrorism and violence... Forced to choose between allowing Hamas to carry out [post-conflict] reconstruction or work with UNRWA, Israeli officials prefer to partner with UNRWA, hoping this would prevent the Islamist terror group from obtaining dual-use construction materials.... Jerusalem seems perfectly content to... leave negotiations over the final settlement of the refugee problem until such time as a lasting peace settlement is reached.⁹

The Congressional Research Service reports that "Israeli officials ... assert that UNRWA plays a valuable role by providing stability and serving as the eyes and ears of the international community in Gaza. They generally characterize UNRWA's continued presence as preferable to the uncertain alternative that might emerge if UNRWA were removed from the picture."¹⁰ (The State Department expressed a similar view in its 2015 budget submission to Congress: "UNRWA plays a stabilizing role in the Middle East through its assistance programs, serving as an important counterweight to extremist elements."¹¹)

Israel's dependence on UNRWA makes it leery of anti-UNRWA activity by its friends in Western countries. In January 2010, the president of Canada's Treasury Board announced that the Harper government would redirect its Palestinian aid away from UNRWA and toward specific projects of the Palestinian Authority, much to the satisfaction of pro-Israel organizations in the country.¹² But six months later, in August 2010, the Canadian International Development Agency (CIDA) reported that, "In discussions with ... Israel ..., Canada has been asked to resume funding the [UNRWA] General Fund." A critic of the pro-Israel groups sneered, "The lobby is working in a vacuum with very poor information, pushing for actions that the Israeli government feels is not in its interest."¹³

A similar case occurred in the Netherlands in December 2011, when Foreign Minister Uri Rosenthal said that Holland would "thoroughly review" its policy toward UNRWA because its definition of a refugee is "worrisome" and creates a "big obstacle to peace."¹⁴ Three months later,

8. *Supra* note 2.

9. Baruch Spiegel, *Jerusalem's Surprisingly Good Relations with UNRWA*, 19 MIDDLE EAST QUARTERLY (2012) available at www.meforum.org/3380/israel-relations-unrwa (last visited Nov. 7, 2014).

10. *Supra* note 3.

11. U.S. Department of State, Congressional Budget Justification for Foreign Operations, FY2015 (Appendix 2), at 134.

12. Ron Csillag, *Canada redirecting Palestinian aid from UNRWA*, JTA (Jan. 14, 2010), available at www.jta.org/2010/01/14/news-opinion/israel-middle-east/canada-redirecting-palestinian-aid-from-unrwa (last visited Nov. 7, 2014).

13. Lee Berthiaume, *Israel asked Canada to reverse decision on funding for UN Palestinian refugee agency*, EMBASSY (July 6, 2011), available at embassymag.ca/page/printpage/israel-07-06-2011 (last visited Nov. 7, 2014).

14. Holland to reconsider UNRWA funding (Dec. 12, 2011), available at eajc.org/page32/news27109.html (last visited Nov. 10, 2014).

a member of the Dutch parliament, who was working to condition or cut funding to UNRWA, reported that the Foreign Minister told him that “Jerusalem” asked him to leave the UNRWA funding alone.¹⁵

I can confirm that, during my long service at AIPAC, this was also our experience. Independent pro-Israel voices would initiate an action on Capitol Hill to cut or condition UNRWA aid; then the State Department would call Jerusalem to demand that Israel call off the dogs (what is known in the trade as “The Call”); and soon we at AIPAC would get a call from the Israeli Embassy in Washington to urge restraint. After a few such experiences, it is not surprising that my colleagues in the Legislative Department became unreceptive when well-intentioned people called the organization to propose new plans to reform UNRWA.

Other Reasons why UNRWA Is Immune

Israel’s strange partnership with UNRWA is probably the most important reason Congress has “spared the rod,” but it is not the only reason.

Inflaming the Region: Most Democrats, and some Republicans, are reluctant to take on UNRWA, because they fear it would inflame the already explosive situation in the Middle East. They see that the “Right of Return,” symbolized by UNRWA’s very existence, is a sacred issue to Palestinians. Even the comparatively moderate President of the Palestinian Authority, Mahmoud Abbas, said: “The Palestinian refugees’ right to return to the 1948 borders is a personal right, like marriage... No country, authority, organization, or even Abu Mazen... can deny anyone his right to return.”¹⁶ Some Members fear stoking anger in the Arab “street” and provoking anti-American rage, if they touch the “third rail” issue of the refugees.

Final Status Issue: Members of Congress who believe that an Israeli-Palestinian final status agreement is attainable hope that UNRWA’s imperfections will no longer matter when the refugee issue that keeps the organization alive is resolved in a conflict-ending agreement. These members seek “evenhandedness,” which they think the President and the Secretary of State will require in order to have credibility as mediators to bring such an agreement to fruition.

Sympathy for the Underdog: There is also a pervasive sentiment that the Palestinians, especially the ones that UNRWA considers to be “refugees,” are the people who landed at the bottom in the Middle East, so they deserve sympathy as the “underdog.” If UNRWA’s clients sometimes behave badly, they should be given a discount, because they are the victims. Sure UNRWA is not perfect, but members do not want to seem ungenerous toward those less fortunate, or indifferent to their plight.

Hidden in the Weeds: Another barrier to taking on UNRWA is the fact that its annual appropriation is buried in the massive State Department account, which includes literally thousands of items, of which UNRWA is only a tiny part. The overworked members of the various relevant congressional State and Foreign Operations, Middle East, and International Organization committees that oversee UNRWA authorizations and appropriations cannot possibly get involved in all the controversies hidden in these encyclopedic State Department presentations.

UNRWA is part of the Migration and Refugee Assistance (MRA) account, managed by the State Department’s Bureau of Population, Refugees, and Migration (PRM). PRM’s annual written Congressional Presentations on MRA—one of many State submissions to Congress each year—typically run about 40 pages, covering hundreds of programs.¹⁷ And in these omnibus documents, the scant references to UNRWA are usually confined to a few barely noticeable paragraphs. When UNRWA is mentioned, the references depict admirable, compassionate public servants delivering vital social services to the poor, the homeless, and the desperate. Many members do not want to waste time taking issue with this, when there are so many more controversies that must be debated just to get through the MRA account.

Rescue in Syria: Since 2011, UNRWA’s rescue work in Syria has become another reason that it is exempted from serious scrutiny on Capitol Hill. There is wide bipartisan sympathy for UNRWA’s undeniably vital work trying to protect the 270,000 desperate Syrian-Palestinians who have been displaced by the Assad regime’s brutal aggression against civilians.¹⁸ In the face of this tragedy, there are probably more members who want to increase financial support to UNRWA, than there are to curtail it.

UNRWA Lobby in Washington: In 2011, UNRWA opened a lobbying arm in Washington. The Washington Representation office is tasked to “regularly and actively engage with relevant members of Congress and Congressional staffers to advance understanding of UNRWA” and to conduct advocacy with the State

15. Reported in private email to the author (March 3, 2012).

16. Quoted in Al-Sabil (Jordan), Jan.11, 2014, available at www.memri.org/report/en/0/0/0/0/0/7921.htm#_edn12 (last visited Nov. 7, 2014).

17. E.g., U.S. Department of State, Migration and Refugee Assistance FY 2012, available at www.state.gov/documents/organization/181379.pdf (last visited Nov. 7, 2014).

18. www.unrwa.org/syria-crisis (last visited Nov. 7, 2014).

Department and the National Security Council.¹⁹ Armed with a substantial budget provided in part by U.S. taxpayers, UNRWA recruited highly experienced Washington insiders to represent its interests. Director Matthew A. Reynolds previously served as Assistant Secretary of State for Legislative Affairs, Staff Director of the powerful House Rules Committee, and staff member on the House International Relations and Senate Foreign Relations Committees. Deputy Director Chris McGrath previously worked for Senate Majority Leader Harry Reid and Senator Robert Menendez, now chairman of the Foreign Relations Committee. Led by this well-chosen team, the UNRWA office works quietly but effectively behind the scenes, depicting the organization as benign and building its defenses against assaults on the Hill. The official representatives are assisted by a privately-funded U.S. citizen lobby for UNRWA, also in Washington, the American Friends of UNRWA, led by Phil Wilcox, formerly a senior State Department official. It has an annual budget of \$500,000, raised through tax-exempt contributions.²⁰

Israel Is the Key

If Israel were to change its policy toward UNRWA, would that be sufficient in itself to produce different results in Congress, or would these other causal factors have to change too?

This hypothetical question cannot be answered with certitude, because up to now it has not happened. But most observers who have watched the history of pro-Israel advocacy on Capitol Hill have been impressed by the ability of AIPAC to achieve ambitious legislative objectives, even against great resistance, when it commits its full resources, with the backing of Israel, to achieve bipartisan support. For example, AIPAC's many successes in conditioning aid to the Palestinian Authority, and in imposing economic sanctions on Iran, were achieved by overpowering numerous opponents, no less formidable than those protecting UNRWA.

But AIPAC will not support an UNRWA initiative that does not have clear backing from Israel. It follows that Israel is the key.

The Cause of the Problem

UNRWA's policies are not subject to direct control by Congress or the U.S. government. UNRWA is an Agency of the United Nations, operating under authority and funding granted by the United Nations General Assembly (UNGA) and oversight by UNGA's Fourth Committee. In reality, UNRWA enjoys nearly automatic rubber-stamp support in the UNGA, and Israel receives nothing but hostility there. So any effort to change UNRWA's policies in favor of Israel through the UNGA would be futile.

The U.S. Congress can try to influence UNRWA through "soft power," by holding hearings, issuing Sense-of-Congress resolutions, and making individual statements—shining a light on UNRWA's shortcomings to embarrass the agency and call attention to its faults. On occasion, this process of shaming UNRWA has had some effect, but overall soft power has not been enough to remedy its deep-seated problems. The more effective lever that Congress could use to influence UNRWA, its "hard power," is the threat to reduce or suspend United States financial assistance if Congressional conditions are not met. Conditioning aid does work, albeit imperfectly, in the one piece of UNRWA reform legislation that was enacted into law, Section 301(c) of the Foreign Assistance Act, prohibiting aid if the agency supports terror in any way.

But, with the exception of Section 301(c), this most effective form of pressure—conditioning aid—is exactly what Israel quietly opposes. That is the main reason that most of the UNRWA reform initiatives described in the Appendix did not have the support they needed and therefore died without enactment.

A Way Out of the Impasse?

Are there additional steps that Congress could take to address the UNRWA problem without crossing the Israeli red line? One avenue that has not been tried is Congressional action to correct State Department policy toward UNRWA, rather than UNRWA itself.

For 64 years, the State Department ("State") has colluded in UNRWA practices that perpetuate the refugee problem rather than resolving it. Instead of seeking to correct the dubious UNRWA designations that continually expand the refugee population instead of resolving the problem or reducing its scale, State defends UNRWA practices. State routinely repeats as truth the fiction that there are more than five million "refugees."²¹ State defends the practice of counting as Palestinian "refugees" people who

19. UN Secretary General, *Strengthening the management capacity of the United Nations Relief and Works Agency for Palestine Refugees in the Near East: Report of the Secretary-General*, U.N. Doc. A/65/705 (Feb. 1, 2011) available at domino.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/86ea0c29bad9ee4f852578370053e73f?OpenDocument (last visited Nov. 7, 2014).

20. www.guidestar.org/organizations/20-2714426/friends-unrwa-association.aspx (last visited Nov. 7, 2014).

21. E.g., Letter from Deputy Secretary of State to Patrick J. Leahy (May 24, 2012), available at <http://www.scribd.com/doc/94703915/DepSec-State-Opposes-Kirk-Amdt#download> (last visited Nov. 7, 2014).

became citizens of other Arab states; defends counting people who were never refugees, but are merely grandchildren of deceased refugees; and defends counting people already living in the West Bank and Gaza, territory that the Palestinians themselves have declared to be their “homeland” and “state” and the location where declared U.S. policy states that they should be settled.

These UNRWA practices foment conflict and hurt peace. And yet the State Department declares and defends what it openly calls “United States acceptance [of] UNRWA’s method of recognizing refugees.”²²

These UNRWA practices are also in conflict with the black-letter laws of the United States. For example, more than 90% of the two million UNRWA “refugees” who reside in the Hashemite Kingdom of Jordan are citizens of that country under Articles 3 and 9 of Jordan’s Nationality Law No. 6 of 1954.²³ Under United States law, a person who is living as a legal citizen in another country and is not subject to extreme persecution in that country cannot be considered to be a “refugee.” To be eligible for U.S. refugee status, an individual must be either a “person who is outside any country of such person’s nationality or ... is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution.”²⁴ These conditions do not exist among Palestinians who are citizens of Jordan, yet State joins UNRWA in calling these millions of Jordanian citizens with well-established lives in Jordan “refugees.”

Another example of UNRWA definitions contravening U.S. law is the UNRWA practice of automatically conferring derivative “refugee” status on persons who never lived in what is now Israel and who were never displaced, but who are merely descended from a (male) refugee, even if they are merely grandchildren or great-grandchildren who have long been settled elsewhere. Section 207 of the United States Immigration and Nationality Act allows spouses and minor children of refugees to apply for derivative status as refugees but, unlike UNRWA’s policies, does not allow for grandchildren or great-grandchildren. Indeed, the federal regulation implementing Section 207 specifically declares that grandchildren are ineligible for derivative refugee status.²⁵ Form I-730, the USCIS Refugee/Asylee Relative Petition used by the Department of Homeland Security, says that “A petition may not be approved for the following persons: ... (6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.”²⁶ If these legal standards were followed by the State Department in reviewing the UNRWA registration system, the United States would no longer recognize more than 90% of UNRWA beneficiaries as refugees.

Yet, in recent statements, State specifically endorses the

practice of giving derivative “refugee” status to grandchildren of authentic (male) Palestinian refugees. “UNRWA generally recognizes descendants of refugees as refugees,” State Department spokesman Patrick Ventrell told *The Cable*. “For purposes of their operations, the U.S. government supports this guiding principle.”²⁷ In correspondence with the Congressional Research Service in September 2013, the State Department defended this practice at length.²⁸

Another example is State’s willingness to call Palestinians who already reside in the territory of their own declared “state” in the West Bank and Gaza “refugees.” Forty percent of Palestinians listed by UNRWA as “refugees” reside in the West Bank and Gaza. This population could not qualify as refugees under the applicable laws in the United States, because they are “firmly resettled” within the guidelines of the Immigration and Nationality Act.²⁹ According to that Act, persons who are “firmly resettled” in another country are barred from receiving refugee status in the U.S., whether or not they have been given formal citizenship where they reside.

The Palestinian Basic Law provides unambiguously

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22. Josh Rogin, *Did the State Department just create 5 million Palestinian refugees?* *THE CABLE, FOREIGN POLICY* (May 25, 2012), available at thecable.foreignpolicy.com/posts/2012/05/25/did_the_state_department_just_create_5_million_palestinian_refugees (last visited Nov. 7, 2014).
 23. Law No. 6 of 1954 on Nationality (last amended 1987) (January 1, 1954), available at www.refworld.org/docid/3ae6b4ea13.html (last visited Nov. 10, 2014).
 24. INA Act 101(a), sec. 42. Available at www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101.
 25. www.reginfo.gov/public/do/DownloadDocument?documentID=139882&version=1 (last visited Nov. 10, 2014).
 26. Department of Homeland Security, U.S. Citizenship and Immigration Services, Form I-730, Refugee/Asylee Relative Petition, available at www.uscis.gov/files/form/i-730instr.pdf (last visited Nov. 7, 2014). These rules are treated by American courts as being as legally binding as statutory law, under the “reasonable interpretation” test of the Chevron doctrine, as articulated by the U.S. Supreme Court, *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).
 27. *Supra* note 21.
 28. *Supra* note 3, at 24.
 29. 8 U.S.C. §1158(b)(2)(A)(vi) (2006), Sec. 208(b)(2)(A)(vi), available at www.gpo.gov/fdsys/pkg/USCODE-2011-title8/html/USCODE-2011-title8-chap12-subchapII-partI-sec1158.htm (last visited Nov. 7, 2014).

that the residents of the West Bank and Gaza are permanently settled: “No Palestinian may be deported from the homeland, prevented or prohibited from returning to or leaving it, deprived of his citizenship, or handed over to any foreign entity.”³⁰ The U.S. Department of State has determined that the Palestinian Authority Passport/Travel Document meets the requirements of a passport as defined in Section 101(a)(30) of the Immigration and Nationality Act (INA) and therefore is acceptable for visa issuing purposes and entering and departing the United States.³¹

It is also clearly established United States policy that Palestinians who live in the West Bank and Gaza are citizens of the Palestinian Authority already residing in what will be their future state, not refugees preparing to resettle in Israel or another country. Three Presidents — Barack Obama,³² William Clinton,³³ and George W. Bush³⁴ — have declared that the durable solution to the Palestinian refugee problem will be their settlement in the future state of Palestine (i.e., the West Bank and Gaza), not Israel. The United States House of Representatives and the Senate have already endorsed the principle that the Palestinian refugees should be settled in the future Palestinian state, not Israel, and so stated in a Concurrent Resolution passed in both houses in June 2004.³⁵ Congress should insist that the State Department be consistent with these laws and policies. The millions of Palestinians who already live in the West Bank and Gaza are not “refugees.”

A Strategy to Move Forward

If Congress cannot “fix” UNRWA, because Israel’s dependence on that organization stands in the way, it can “fix” the State Department’s policy toward the definition of a Palestinian “refugee.” The United States needs to lead the donor nations in redefining UNRWA as a social service agency delivering health care and educational opportunities to needy Palestinians, not an agency for persons falsely defined as refugees.³⁶

The purpose should not be to terminate UNRWA services for registrants who are not really refugees, but to reregister them in other non-refugee categories that already exist in UNRWA’s own rules. UNRWA’s Consolidated Eligibility & Registration Instructions do not require UNRWA beneficiaries to be classified as “refugees” because its Section III.A.2 and Section III.B create classes of UNRWA beneficiaries not registered as “refugees” but who are nonetheless eligible for UNRWA services. These classes of persons are listed as “Other Registered Persons” and persons “eligible to receive UNRWA services without being registered in UNRWA’s Registration System.”³⁷

Changing U.S. practices could lead, over time, to corresponding changes in other donor countries in the

European Union, Japan, Australia, and Canada. If all the major donors redefined this population as “needy persons, yes, but refugees, no,” it would be a major contribution toward reducing conflict in the region. It would not solve all the problems of UNRWA, but it would ameliorate UNRWA’s most damaging effect, its practices that perpetuate the refugee issue as a source of tension and conflict.

This is something Congress can do without harming UNRWA’s ability to deliver social services. An untested question is whether, if Israel nonetheless received that “Call” from Washington to “call off the dogs,” it would feel obligated to oppose the legislation even though UNRWA’s budget would not be cut and its schools and hospitals would continue to function. ■

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30. The Palestinian Basic Law, art. 28. www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law (last visited Nov. 7, 2014).
 31. U. S. Bureau of Citizenship and Immigration Services, Palestine/Occupied Territories: Information on passports issued by the Palestine National Authority (Dec. 17, 1998), PAL99001.ZCH, available at www.unhcr.org/refworld/country,,USCIS,,PSE,4562d8cf2,3df0b9914,0.html (last visited Nov. 7, 2014).
 32. President Obama, AIPAC Policy Conference 2011, available at www.whitehouse.gov/photos-and-video/video/2011/05/22/president-obama-2011-aipac-policy-conference#transcript (last visited Nov. 7, 2014).
 33. Clinton Proposal on Israeli-Palestinian Peace (Dec. 23, 2000), available at www.peacelobby.org/clinton_parameters.htm (last visited Nov. 7, 2014).
 34. Exchange of letters between PM Sharon and President Bush (Apr. 14, 2004), available at www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Exchange+of+letters+Sharon+Bush+14-Apr-2004.htm (last visited Nov. 7, 2014).
 35. H. Con. Res. 460, 108th Cong. (2003-2004).
 36. Steven J. Rosen and Daniel Pipes, *Lessening UNRWA’s Damage*, JERUSALEM POST, July 9, 2012.
 37. U.N. Relief and Works Agency for Palestinian Refugees in the Middle East, Consolidated Eligibility and Registration Instructions, available at www.unrwa.org/userfiles/2010011995652.pdf (last visited Nov. 7, 2014).

Appendix: Congressional Resolutions on UNRWA

<p>1999: Section 301(c) of the Foreign Assistance Act conditioned United States aid on UNRWA taking “all possible measures to assure that” no U.S. assistance goes to any UNRWA beneficiary who “is receiving military training” for any guerrilla organization or “who has engaged in any act of terrorism.” In 2003, PL 108-7, Section 580, required the General Accounting Office (GAO) to report to the appropriations committees on State Department compliance with Section 301(c) of the 1961 Foreign Assistance Act and the implementation of procedures established to meet State standards for Section 301(c).³⁸</p>
<p>Result: Enacted into law, (Title 22 U.S. Code sec. 2221).</p>
<p>2003: House Concurrent Resolution 311 urging UNRWA to establish a program for resettling refugees and urging the international community to recognize the plight of Jewish refugees from Arab countries. 22 cosponsors.³⁹</p>
<p>Result: Died in Committee.</p>
<p>2006: House Resolution 5278: UNRWA Integrity Act. 20 cosponsors. To condition aid to UNRWA on Presidential certification that UNRWA “is not an impediment to achieving a lasting solution for Palestinian refugees in the West Bank and Gaza and moving such refugees to post-refugee status” and mandates a report by the Secretary of State on the extent to which UNRWA “contributes to a solution to the refugee problem or perpetuates the refugee problem”; that “UNRWA programs encourage or discourage Palestinians from moving out of refugee camps and pursuing an economically independent existence”; that UNRWA has “a long-term plan for providing jobs and housing for Palestinian refugees and for phasing out services provided by UNRWA; and the extent to which UNRWA includes in its educational materials or other programs anti-Semitic elements or elements that promote the denial of the right of Israel to exist.”⁴⁰</p>
<p>Result: Died in Committee.</p>
<p>2009: House Concurrent Resolution 29. 32 sponsors. Sense-of-Congress resolution that reaffirms Section 301(c) of the Foreign Assistance Act conditioning UNRWA aid on no involvement with terror; calls on UNRWA to improve their transparency by publishing online copies of all educational materials used in UNRWA-administered schools; and urges UNRWA to improve their accountability by implementing terrorist name recognition software and other screening procedures that would help to ensure that UNRWA staff, volunteers, and beneficiaries are neither terrorists themselves, nor affiliated with known terrorist organizations.⁴¹</p>
<p>Result: Died in committee.</p>

38. See Department of State and UNRWA Actions to Implement Section 301(c) of the Foreign Assistance Act of 1961, GAO-04-276R (Nov. 17, 2003) available at www.gao.gov/products/GAO-04-276R (last visited Nov. 7, 2014).

39. H. Con. Res. 311, 108th Con. (2003), available at beta.congress.gov/bill/108th-congress/house-concurrent-resolution/311 (last visited Nov. 7, 2014).

40. H.R. 5278, 109th Con. (2006) available at www.govtrack.us/congress/bills/109/hr5278/text/x (last visited Nov. 7, 2014).

41. H. Con. Res. 29, 111th Con. (2009) available at www.govtrack.us/congress/bills/111/hconres29/text (last visited Nov. 7, 2014) (previously offered as H. Con. Res. 428 in 2008, available at www.washingtonwatch.com/bills/show/110_HC_428.html (last visited Nov. 7, 2014)).

2010: House Resolution 5065. The UNRWA Humanitarian Accountability Act. 5 sponsors.⁴² Conditions aid to UNRWA on a determination by the Secretary of State that no person affiliated with UNRWA is “a member of a Foreign Terrorist Organization; has ... disseminated... anti-American, anti-Israel, or anti-Semitic ... propaganda; or has used any UNRWA resources... to propagate or disseminate political materials...; no UNRWA ... facility... is being used by a Foreign Terrorist Organization ...”; UNRWA is subject to comprehensive financial audits by an internationally recognized third party independent auditing firm and has implemented an effective system... to prevent the use... of any UNRWA resources by any foreign terrorist organization.... Also includes a Sense-of-Congress resolution that the President and the Secretary of State should lead a high-level diplomatic effort to encourage other responsible nations to withhold contributions to UNRWA, ... until UNRWA has met the conditions listed in ... this Act; citizens of recognized states should be removed from UNRWA’s jurisdiction; UNRWA’s definition of a Palestine refugee should be changed to that used for a refugee by the Office of the United Nations High Commissioner for Refugees; and... responsibility for those refugees should be fully transferred to the Office of the United Nations High Commissioner for Refugees.

Result: Died in Committee.

2011: House Resolution 2829. The United Nations Transparency, Accountability, and Reform Act of 2011, Section XIII. 142 sponsors. Related Bills: S.1848 12/8/2011: 4 Sponsors.⁴³ Reintroduced in September 2013 as United Nations Transparency, Accountability, and Reform Act of 2013 H.R. 3155 and S. 1313.⁴⁴ Section XIII regarding UNRWA adopts the exact same language as the UNRWA Humanitarian Accountability Act of 2010, which was not enacted. Conditions aid to UNRWA on a determination by the Secretary of State that no person affiliated with UNRWA is “a member of a Foreign Terrorist Organization; has ... disseminated... anti-American, anti-Israel, or anti-Semitic ... propaganda; or has used any UNRWA resources... to propagate or disseminate political materials...; no UNRWA... facility... is being used by a Foreign Terrorist Organization ...”; UNRWA is subject to comprehensive financial audits by an internationally recognized third party independent auditing firm and has implemented an effective system... to prevent the use... of any UNRWA resources by any foreign terrorist organization... Also includes a Sense-of-Congress resolution (Section 803) that the President and the Secretary of State should lead a high-level diplomatic effort to encourage other responsible nations to withhold contributions to UNRWA,... until UNRWA has met the conditions listed in... this Act; citizens of recognized states should be removed from UNRWA’s jurisdiction; UNRWA’s definition of a Palestine refugee should be changed to that used for a refugee by the Office of the United Nations High Commissioner for Refugees; and... responsibility for those refugees should be fully transferred to the Office of the United Nations High Commissioner for Refugees.

Result: Reported by Committee, died on the floor.

2012: First Kirk UNRWA Reporting Requirement Senate Report 112-085 - Department of State, Foreign Operations, and Related Programs Appropriations Bill, 2012.⁴⁵ Directs the General Accounting Office “to submit a report assessing (1) the ability of the Palestinian Authority to assume responsibility for any of the programs and activities conducted by the U.N. Relief and Works Agency in the West Bank; (2) actions required by the Palestinian Authority in order to assume such responsibility; and (3) the opinion of the Department of State and relevant ministries of the Government of Israel, including the Ministry of Defense, on the viability of transitioning such programs and activities from UNRWA to the Palestinian Authority.”

Result: GAO declined to provide the mandated report, and told Senator Kirk’s office it was advised by the State Department that it is not possible to produce such a report.

42. H.R. 5065, 111th Con. (2010) available at www.govtrack.us/congress/bills/111/hr5065/text (last visited Nov. 7, 2014).

43. S. 1848, 11th Con. (2011) available at thomas.loc.gov/cgi-bin/bdquery/z?d112:SN01848: (last visited Nov. 10, 2014).

44. H. R. 3155, 113th Con. (2013) available at beta.congress.gov/bill/113th-congress/house-bill/3155/text (last visited Nov. 7, 2014).

45. S. Rep. 112-085, 112th Con. (2012) available at thomas.loc.gov/cgi-bin/cpquery/?&sid=cp112udiPE&r_n=sr085.112&dbname=cp112&&sel=TOC_140590& (last visited Nov. 7, 2014).

2012: Second Kirk UNRWA Reporting Requirement requiring a report on UNRWA’s “refugee” definition, under the Protracted Refugee Situations subheading in Senate Reports, 112–172, 113–81, and 113-195.⁴⁶ Report language of the Senate Appropriations Committee directing the Secretary of State to submit a report to the Committee indicating the approximate number of people receiving UNRWA services “whose place of residence was Palestine between June 1946 and May 1948 and who were displaced as a result of the 1948 Arab-Israeli conflict” versus the number “who are descendants of [such] persons.”

Result: The State Department has declined to provide the mandated report. In a letter to the subcommittee, Deputy Secretary of State Thomas Nides objected, asserting that this requirement would be “viewed around the world as the United States acting to prejudge and determine the outcome of this sensitive issue.”⁴⁷

2013: H.R.1337 Palestine Accountability Act Introduced in House (03/21/2013) (Rep. DeSantis, Ron [R-FL-6] Mr. Culberson, Mr. Sam Johnson of Texas, Mr. Pitts, Mr. Flores, Mr. King of Iowa, and Mr. Franks of Arizona). Prohibits funds from being obligated or expended for U.S. contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) unless: (1) a U.S. nongovernmental or private entity audits the UNRWA budget and the Secretary submits the audit to Congress, and (2) the Secretary certifies to Congress that UNRWA meets specified requirements. SEC. 5. Prohibition on United States Contributions to UNRWA. (a) In General. --No funds available to any United States Government department or agency for any fiscal year may be obligated or expended with respect to making contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) unless with respect to such fiscal year -- (1) an independent audit of the budget of UNRWA is conducted by a United States nongovernmental or private organization or entity and the Secretary of State submits such audit to Congress; and (2) the Secretary of State certifies to Congress that UNRWA, at a minimum, meets the requirements applicable to the Palestinian Authority under paragraphs (1) to (3), (5), and (7) of section 2(a) of this Act, except that for purposes of meeting the requirements of paragraph (1) of such section, the term “Palestinian Authority” shall be deemed to be “UNRWA.”

Result: Died in Committee.

2014: S. 2766: Palestinian and United Nations Anti-Terrorism Act of 2014, Section 6. Introduced by Marco Rubio on July 31, 2014 and sent to committee.⁴⁸ Amends Section 301(c) to prohibit aid to UNRWA unless the Secretary of State certifies that no employee or beneficiary of UNRWA is a member of Hamas or any terrorist group or has incited anti-Israel or anti-Semitic propaganda; that no UNRWA facility is used for terrorist purposes; and that UNRWA is subject to independent audits.

Result: None yet.

46. *Id.*, and also S. Rep. 113-195, 113th Con. (2014) available at [beta.congress.gov/congressional-report/113th-congress/senate-report/195/1and History of the Kirk Amendment concerning UNRWA](http://beta.congress.gov/congressional-report/113th-congress/senate-report/195/1and%20History%20of%20the%20Kirk%20Amendment%20concerning%20UNRWA), available at www.danielpipes.org/11348/unrwa-kirk-amendment (last visited Nov. 7, 2014).

47. *Supra* note 20.

48. S. 2766, 113th Con. (2013) available at www.govtrack.us/congress/bills/113/s2766/text (last visited Nov. 7, 2014).

Editor's Note: Since Justice 55 is dedicated to exploring various aspects of "UNRWA," we are pleased to include this analysis by Shabtai Shavit, which is based on his presentation at the World Summit on Counter-Terrorism: Terrorism's Global Impact, IDC, Herzliya, September 9, 2014. As such, it is published here partially referenced.

A Tale of Two “Refugee” Organizations: UNRWA vs. UNHCR¹

Shabtai Shavit

Definition of “Who Is a Refugee?”

The UN Refugee Agency (UNHCR – UN High Commissioner for Refugees) defines refugees in accordance with the 1951 Geneva Convention relating to the Status of Refugees:

[a] refugee is a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership or a particular social group or political opinion; and is unable or unwilling to avail him- or herself of the protection of that country, or to return there, for fear of persecution.²



The Convention further stipulates that:

A person may no longer be a refugee when the basis for his or her refugee status ceases to exist. This may occur when, for example, refugees voluntarily repatriate to their home countries once the situation there permits such return. It may also occur when refugees integrate or become naturalized in their host countries and stay permanently.³

UNRWA (United Nations Relief and Works Agency), in contrast, has its own, unique definition: “UNRWA is unique in terms of its long-standing commitment to one group of refugees. It has contributed to the welfare and human development of four generations of Palestine refugees, defined as [any] 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’.”⁴ “The

descendants of Palestine refugee males, including legally adopted children, are also eligible for registration.”⁵

Thus, Palestine refugees eligible for UNRWA assistance are mainly persons who fulfill the above definition and descendants of fathers fulfilling the definition.

Consequently, the UNHCR definition deals with human beings as individuals, without any relation to ethnicity, nationality or territorial factor. On the other hand, the UNRWA definition deals with an ethno-political group that is related to a given territory in a specific and very short period of time (less than two years).

Who Ceases to Be a Refugee?

As for termination of refugee status, according to the UNHCR, a refugee’s right to this status ends when he becomes naturalized in his host country or gets absorbed there. In contrast, according to UNRWA, a Palestinian refugee will cease being a refugee only if and when he will return to his country of origin—Palestine, which since 1946 to this day has not materialized. Thus UNRWA is an organization that perpetuates the problem with which it is supposed to deal.

1. This paper was presented at the ICT at IDC Herzliya, at a panel on Countering Terrorism Propaganda and the Israeli Advocacy, Sept. 9, 2014. See also Shabtai Shavit, *Who is a Refugee?* HAARETZ Supp., Sept. 19, 2014, at 64-66 (Hebrew).
2. Convention relating to the Status of Refugees, 1951, Art 1, Sec. A.
3. *Id.*, Sec. C.
4. UNRWA, available at www.unrwa.org/who-we-are (last visited Dec. 5, 2014).
5. *Id.* Emphasis in the original.

According to the UNHCR, a person is a refugee if he fled from his homeland, and he loses refugee status upon becoming a citizen of another country. Yet neither of these rules applies to Palestinian refugees and their descendants. Palestinians acquire life-long membership as a unique class of refugees. Moreover, their refugee status is transferred to their children.

As stated by the late United States Congressman Tom Lantos, "... I am frankly baffled as to why, more than fifty years after the founding of the State of Israel, there continues to exist a UN agency focused solely on Palestinian refugees." Lantos asked: "Why has an agency that was established on a temporary basis evolved into a permanent institution that is outside the administrative and policy jurisdiction of the other UN voluntary agencies?" Further, he noted that "...No other refugee problem in the world has been treated in this privileged and prolonged manner."⁶

How Many Refugees?

All this explains how the number of Palestinian refugees increased from approximately 700,000 in 1948 to over five million in 2014. This further explains why the number of Palestinian refugees is projected to exceed six million by 2020.

If UNHCR standards were applied to count the number of Palestinian refugees worldwide, the figure would drop to fewer than 50,000. But the Palestinian refugees are not counted according to UNHCR standards; they are counted using a double standard.⁷ Thus, according to the UNHCR definition, the number of refugees declines over time, while under the UNRWA definition, the number of refugees expands over time.

Funding

Funding for UNRWA comes from 27 states that donate a total of approximately \$1.25 billion annually. The United States alone contributes approximately \$250 million each year. This enormous sum of money is not intended for the resettling of refugees, but rather only to sustain them.

UNRWA finances food as well as health, education and employment services to millions of Palestinians in Jordan, Lebanon, the Gaza Strip and the West Bank. For years, American Congressional representatives have been trying to reduce U.S. contributions to the agency, on the grounds that UNRWA was born in sin and that its policies are anti-Israeli.

In 2012, the Senate Appropriations Committee approved an amendment requiring the State Department, for the first time, to conduct a "count" of Palestinian refugees. The amendment (Kirk amendment) required the State Department to specify how many of the five million

Palestinians who receive aid from the United Nations Relief and Works Agency are refugees who were personally displaced from their homes in 1948, and how many are descendants of those refugees.⁸

In 2014, a report made reference to the 2012 Kirk Amendment, and once again called on the U.S. Department of State to deliver the mandated report. As such, it referenced and reaffirmed the earlier requirement.

The Nature of Operations

UNRWA is only responsible for providing services to one group of refugees, the Palestine refugees, in its areas of operation. It is mandated to provide the Palestine refugees with humanitarian assistance. UNRWA is *sui generis*, as it is the only U.N. agency that reports directly to the U.N. General Assembly, and whose beneficiary population stems from one nation-group.

In contrast, UNHCR is responsible for refugees worldwide. UNHCR has the mandate to provide international protection to all refugees who fall within the scope of its Statute and to seek **permanent** solutions for the problem of refugees by assisting governments.

According to Gina Benevento, Chief of the UNRWA Public Information Office in Gaza City,

UNRWA's mandate [is] strictly limited to the delivery of humanitarian services, and then moved progressively into basic and preparatory education, and health and relief assistance... Issues such as the promotion of resettlement and the resolution of the refugee problem clearly do not fall within

6. Letter from Tom Lantos (D-CA), Ranking Democratic Member of the House International Relations Committee, to Kofi Annan, U.N. Secretary-General (May 13, 2002), available at list2.mcgill.ca/scripts/wa.exe?A2=ind0205c&L=paldev&T=0&F=&S=&P=3111 (last visited Dec. 5, 2014).

See Isabel Kershner, The Refugees' Choice, THE JERUSALEM REPORT, Aug. 12, 2002, at 24.

7. Benjamin Sharoni, First Secretary, Israel Ministry of Foreign Affairs, Nov. 7, 2013.

8. See Daniel Pipes, *History of the Kirk Amendment concerning UNRWA*, available at www.danielpipes.org/11348/unrwa-kirk-amendment (last visited Dec. 5, 2014); Barak Ravid, *Israeli MK, AIPAC behind Senate bid to cut total number of Palestinian refugees*, HAARETZ, June 12, 2012. See also details in the article (Appendix) by Steven J. Rosen in this issue of JUSTICE.

this mandate; **they are political rather than humanitarian.**⁹

Benevento explained that “UNHCR is mandated to offer refugees three options: Local integration, resettlement in third countries, or return to their home countries.” However, in her view,

Such choices are not feasible in the Palestinian context, since the first two options are unacceptable to the refugees and their host countries, while the third is consistently rejected by the State of Israel... any one of these options must be accepted voluntarily by the refugees under UNHCR’s care, a principle shared by UNRWA’s mandate.¹⁰

UNRWA Today

UNRWA is now effectively a Palestinian organization controlled by Hamas, under the thinly veiled guise of the U.N. It is dedicated entirely to the perpetuation of the Israeli-Palestinian conflict, with the refugees serving as the primary means of achieving this goal. Hamas controls UNRWA through the appointment of the organization’s staff, with 25 of 27 members of the management team serving as Hamas representatives. The organization has 30,000 employees, of who 10,000 are in Gaza. While the U.N. Refugee Agency (UNHCR) is involved in solving the problems of refugees throughout the world, which result from conflicts between states, UNRWA in practice perpetuates and intensifies the conflict in the Middle East.

UNRWA maintains a school system (700 schools with half a million students) that perpetuates and sanctifies the right of return and the culture of martyrdom. There are two “industries” in Gaza today – welfare and terrorism – and both are interconnected.

The recent international donor conference in Cairo (October 2014) on the reconstruction of Gaza was a depressing display of farce and hypocrisy. Pledges by the participants have reached the sum of more than \$5 billion. It will be very interesting to find out how much of that money will actually reach Gaza.

What percentage of this sum will be allocated to civil reconstruction? What percentage will be allocated to renew and replenish the terrorists’ military capabilities and what percentage will disappear on its way down through the bureaucracy?

As *The New York Times* noted: “What is the point of raising and spending many millions of dollars to rebuild the Gaza Strip just so it can be destroyed in the next war? It’s a harsh question. Given the region’s tragic history, it is also inevitable.”¹¹ Less than two months after Israel’s

2014 summer campaign in the Gaza Strip ended, Hamas militants in the coastal enclave were rebuilding their attack tunnels.¹²

“The situation has become so dire that thousands of residents are willing to risk death to escape the travails of the present, and the hopelessness of the future... This sad development was widely reported by the international media.”¹³ *Haaretz* quoted one Gaza resident as declaring that “It’s better to die at sea than to die of despair and frustration in Gaza...” *Haaretz* also reported that “one woman survivor of [a] ship that sank off the coast of Alexandria related that Egyptian smugglers had rammed it and that they saw people were drowning and offered no help. But, she was quoted as saying: ‘I don’t think even such a terrible incident will stop the phenomenon because people are desperate and want to leave... Gaza’.”¹⁴

“It is time to devise a humanitarian approach to Gaza, in particular, and the Palestinian question, in general, which places the individual and his or her welfare at the center of focus...”¹⁵ “As long as Gaza remains intact, it will be a source of aggression against the Jewish state, and a source of misery for its civilian population. Throwing money at it, over and above the vast amounts already spent there, will do nothing to change the situation. In all likelihood it will only exacerbate the problem.” As was so vividly demonstrated in the past:

Nothing could be more humane, liberal and conducive to stability. Nothing could be less so than compelling the people of Gaza to remain trapped in a tiny enclave, doomed to unending despair deprivation and devastation. The call should go out to the international community regarding the Palestinian Arabs in Gaza: **Let their people go!**¹⁶

9. Gina Benevento, Chief, UNRWA Public Information Office Gaza City, Cited in Martin Sherman, “The Refugees”: UNRWA vs. UNHCR: The Tale of Two Organizations (March 2008) slide 9.

10. *Id.*

11. Editorial Board, *Having to Rebuild Gaza, Again*, N.Y. TIMES, Oct. 10, 2014.

12. Martin Sherman, *Into the Fray: Let Their People Go!* THE JERUSALEM POST, Oct. 23, 2014.

13. *Id.*

14. Jack Khoury, *Thousands of Gazans fleeing to Europe via tunnels, traffickers and boats*, HAARETZ, Sept. 17, 2014.

15. Sherman, *supra* note 12.

16. *Id.*

Human nature drives all human beings to improve their situation and standard of living, reach personal achievements, provide education for their children, and improve the well-being of their family and their society.

UNRWA created a unique humanitarian tragedy in the world: it created a people that exists as professional human parasites from birth until death, dependent on welfare, lacking ambition, lacking prospects and the desire for self-fulfillment, with a fake and delusional dream that has no chance in the world of being realized, namely, the right of return.

The “right of return” is a logical concept when referring to the return of a refugee to his homeland. The 700,000 refugees who were expelled from their homes in 1948, and the four million refugees who were born since then not in the Mandatory land of Israel, but in Arab states (Jordan, Syria, Lebanon and PA-controlled areas), never had a homeland in the form of a sovereign state. In practice, their return to Israel can be realized only after the State of Israel is wiped out, and so there is no chance that this idea will ever materialize.

For the sake of history and transparency, the fact should be recalled that vis-a-vis the 700,000 Palestinians refugees, there were 860,000 Jewish refugees, who were expelled from various Arab states at the same period, deprived of their belongings and properties. All of them were absorbed in the newly founded State of Israel, without any ado.

Hamas exploits UNRWA infrastructure for hiding weapons, arms storage, rocket launchers, training, tunnels, booby-traps, and more. This is the main reason for the vast destruction caused to Gaza and to the victims on both sides.

Recommendations

It would be extremely irresponsible and ineffective to invest in rebuilding the ruins of Gaza and enable UNRWA

to sustain another generation of refugees without humanity or future. Now is the time to take advantage of Operation “Protective Edge” as a springboard for a fundamental historic change of the situation.

The principles of the plan to change the situation should be:

1. The United Nations should decide to shut down UNRWA over the course of three years.

2. The 27 states that donate to UNRWA will establish a body whose role is to finance the resettlement of refugees, who choose to do so of their own free choice, in states around the world that accept migrants.

Many surveys conducted over the years show that, according to the statistical average, at least 50% of refugees were willing to resettle with financial support. A recent poll conducted by the Palestinian Center for Public Opinion during the period of June 16-24, 2014 (i.e., before Operation Protective Edge), covering a random sample of 1012 Palestinian respondents representing the various demographic groups of adult Palestinians (eighteen years and above) living in the “West Bank,” East Jerusalem, and the Gaza Strip, showed that 70% of the Palestinians would like to emigrate if given the opportunity.

3. Donations from these states should be gradually diverted from their current goal of preservation alone, to the goal of resettlement. In other words, the funds should foster the transformation of refugees from parasites with no future to people who create and contribute to their families, communities and society—people who stand tall. ■

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Editor's Note: The following two publications by Bassem Eid are reprinted in Justice to present a variety of sources and perspectives related to UNRWA.

Proud Palestinians Must Lead the Fight to Reform UNRWA

Bassem Eid

Jerusalem Post, Dec. 1, 2014 (reprinted with permission)

We can no longer deny our responsibility for the future of our people.

We Palestinians can no longer deny our responsibility for the destiny of our people. For 26 years I have been devoting my life to the mission of defending human rights. I have seen wars and terror. I live in Jerusalem and was brought up in an United Nations Relief and Works Agency (UNRWA) refugee camp in Shuafat, a refugee camp like 58 other UNRWA refugee camps created for the sole purpose of keep[ing] Palestinian Arab people in “temporary” conditions, for 65 years, under the false pretense and specious promise of the “right of return” to pre-1948 villages that do not exist.

As a proud Palestinian, I must take responsib[ility] for what will happen to our people.

We can no longer deny our respons[ibility] for the future of our people.

UNRWA, to continue its operation, depends on death and the visual suffering of five million Palestinians who continue to wallow in and around UNRWA facilities.

The more Palestinians suffer, the more power goes to UNRWA, which allows it to raise unchecked humanitarian funds and purchase munitions. People ask: Why not abolish UNRWA? Well, this cannot be done.

The only agency that can abolish UNRWA is the UN General Assembly, which has never had the interests of the Palestinian people at heart. After all, the UN rakes in more than \$1.2 billion a year as an “incentive” to continue our status as refugees.

People ask: Why not ask the donor nations to defund UNRWA? Do they not realize that a Western defunding of UNRWA would allow nations like Qatar to enter the vacuum, leaving the West with no leverage over UNRWA policy? The point is to influence donor nations to reform UNRWA and predicate future aid to UNRWA on reasonable conditions:

1. Audit all funds allocated to UNRWA, which operates

with a \$1.2b. budget.

2. Introduce UN High Commissioner for Refugees standards to UNRWA, to encourage permanent refugee settlement.

3. Cancel the UNRWA war curriculum, based on principles of jihad, martyrdom and right of return by force of arms.

4. Demand that UNRWA schools conform to the UNRWA slogan: “Peace Starts Here.”

5. Dismiss UNRWA employees affiliated with Hamas, defined by the donor nations to UNRWA as a terrorist entity.

It is therefore the responsibility of the Palestinian people to rebel against the arbitrary administration of UNRWA, which seeks to perpetuate our refugee status instead of helping our people to strive for a better future.

The Palestinians see that UNRWA is continually cutting back on its activities, devoting most of its budgets to health and education.

UNRWA claims that this is because the contributing countries have not upheld their commitments regarding the transfer of funds. Furthermore, UNRWA provides many more services to the Gaza Strip than it does to the West Bank, and this even further infuriates the residents of the West Bank. Moreover, UNRWA has not raised the salaries it pays to its local workers for years, and, in many cases, has even neglected to pay its workers for months at a time –thus enraging the Palestinians even further and leading to numerous strikes and conflicts.

UNRWA has not conducted a census within the refugee camps for some two decades, and so the organization cannot know how many refugees are living in the camps in the Occupied Territories and in the Diaspora. To this day, the numbers remain unclear. While one source says there are 2.5 million refugees, the Palestinian Authority claims that the number is higher than 6 million. UNRWA, which should be the authoritative source, is silent. So on what figures is UNRWA basing its requests for funds? Do the contributing countries have any idea of what they are

contributing to? The Palestinian refugees have lost all hope that UNRWA will make any effort to return them to their original lands (right of return) and they believe that they will have to settle for compensation. But they are concerned that if they don't bring pressure to bear on UNRWA, these monies, too, will be swallowed up by its vast organizational apparatus.

In my opinion, it is essential to carry out a comprehensive investigation within the refugee camps throughout the entire Middle East, not only to ascertain the precise numbers of refugees, but also to understand what the Palestinian want for themselves, what they wish for, and what they believe they can reasonably expect.

In the eyes of the Palestinians, UNRWA acts [as] a state

with its own foreign policy.

And that foreign policy does not serve the best interests of the Palestinian refugees.

I'm saying this as a loyal Palestinian. I'm saying this because I am concerned about my people's future. ■

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This article will be part of a special presentation to the British Parliament sponsored by the London-based Henry Jackson Society and the Jerusalem-based Center for Near East Policy Research.

An open letter to Nobel Prize Laureate Malala Yousafzai from Bassem Eid, a Palestinian Human Rights Activist [December 2014]

Dear Malala

We see you have received the Nobel Peace Prize this week in honor of your activity for peace in Pakistan.

We congratulate you for your courage and for not being afraid to fight radical Islam in your nation.

I write these words as a proud fellow Muslim.

I know how difficult it is with so many obstacles in your way.

For that reason, we need to support you .

We are very proud of you.

I appreciate your decision to contribute your prize money to the children of Palestinian refugees in Gaza, because they really need your help.

I must advise you that if you want to make such a donation, please come here to do so in person and not through UNRWA (the U.N. Relief and Works Agency).

If you send funds through UNRWA, Palestinian refugee children will never benefit from it, because UNRWA funds in Gaza wind up in the hands of Radical Islam.

You are personally invited to my home and my community in Jerusalem.

We will organize a trip for you to travel to Gaza to meet Gaza school children and help you contribute your gift directly to children who need your help.

Here are the facts at your finger tips:

That rocket launchers were found at U.N. facilities was hardly surprising.

Fifteen years ago, the Gaza-based employees of the U.N. Relief and Works Agency held elections to determine its union leaders.

Hamas took advantage of the campaign and took over the entire school system.

By 2012, more the 90 percent of UNRWA employees had become Hamas supporters.

As a result of the takeover, Hamas created an entire apparatus whose mission was to maintain its grip on all the Gaza-based UNRWA schools.

The organization, Al-Kutla Al-Islamiya (the Islamic Bloc), changed the school curriculum and introduced new textbooks.

Anyone looking at the subject matter would see an organization bent on disseminating its lethal ideology to young Gazans.

The takeover of UNRWA was an "inside job", carried out by the Hamas representatives assigned to each school and whose job is to recruit students to the Islamic Bloc.

This ensures that UNRWA schools have programs that prepare pupils for the armed struggle against Israel.

This involves grooming children as "would-be shaheeds [martyrs]" and brainwashing them on the unachievable "right of return" to Arab villages from before 1948 that no longer exist.

For you to get an idea of the indoctrination that is taking place in Gaza, it would suffice to look at the Islamic Bloc's YouTube clips, which feature UNRWA instructors acting at Hamas' bidding.

The footage clearly shows that Gaza children are not introduced to the values of the U.N. but rather to the values of jihad, "liberation of Palestine" and the "right of return," by force or arms.

Despite all this being an open secret — all of UNRWA's donors are in the know, including the United States and Israel — the organization is still considered a welfare and relief agency that could provide an "alternative to Hamas."

But if you ask Gazans what UNRWA has done for them, they would say "nothing" (that is, except perpetuate their refugee status). Hamas knows the reason.

It has a vested interest in ensuring that conditions of poverty remain unchanged and that the millions of greenbacks keep flowing in.

This keeps the "right of return" relevant.

To state it simply: Donors hand funds to UNRWA officials who are affiliated with Hamas who then act according to principles of Radical Islam, not of the U.N. principles.

Rockets and tunnels had been the most pressing concern from Gaza this past summer.

Over the long haul, it is the Hamas brainwashing of Gazan schoolchildren that should have us worried.

In peace,

Bassem Eid

The UN Human Rights World: Legitimizing Anti-Semitism

Anne Bayefsky

Prime Minister Netanyahu told the U.N. General Assembly on September 29, 2014, that the U.N. Human Rights Council – its top human rights body – is more accurately entitled a “Terrorist Rights Council.”¹ It is a harsh, but accurate conclusion.

Netanyahu is right about the wrongs of the Human Rights Council for at least four reasons:

- the Council’s obsessive demonization of the state of Israel – as opposed to fair criticism of each and every state, Israel included;
- the nature and extent of the criticism of Israel’s exercise of the right of self-defense such that in effect Israel does not have one;
- the Council’s comparative disinterest in the human rights violations of Israel’s enemies, both non-state actors and state sponsors of terrorism; and
- the Council’s response to human rights violations that are far more heinous than those that may be attributable to Israel.

Demonization is the gross exaggeration of criminality and moral turpitude, to such an extent that the perpetrator is a candidate for destruction or termination altogether. It is discrimination that guts the very moral, political or legal legitimacy of the actor.

Consider a few basic facts about the Council’s treatment of Israel:

- The Council has a fixed agenda that governs every regular session, one item to condemn Israel at every session, and one item to consider the human rights situation in any of the other 192 UN member states if the Council happens to decide it “require[s] the Council’s attention.”²
- Thirty-three percent of all resolutions and decisions ever adopted by the Council, that are critical of the rights’ records of specific states, condemn only Israel.³ There has never been a single resolution, for example, on China – where a billion people are denied the most elementary human rights; or Saudi Arabia – where the

entire female population is chattel; or Russia – which just takes what it wants both inside and outside of the country, absent law.

- Thirty-eight percent of the country-specific special sessions and urgent debates ever held by the Council⁴ have been convened to condemn only Israel; there has never been a special session, for instance, on Iran, though its population is systematically brutalized for wanting essential freedoms; there has not been a special session on Sudan for the past eight years⁵ of killing sprees, mass rape and oppression that have affected millions of people.
- In the past twelve months (as is true each year), the Council had before it six written reports on Israel alone. There were three written reports (and two oral updates) on Syria – where the government is engaged in mass murder and the use of chemical weapons.



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1. Statement by Israeli Prime Minister Benjamin Netanyahu, General Debate, U.N. GAOR 69th Session, (Sept. 29th, 2014).
 2. U.N. Human Rights Council Res. 5/1, Institution-building of the United Nations Human Rights Council, Item 7. *Human rights situation in Palestine and other occupied Arab territories*; Item 4. *Human rights situations that require the Council’s attention*; U.N. Doc. A/HRC/RES/5/1, (June 18, 2007).
 3. Sixty-six out of 200 country-specific critical resolutions in total, as to October 25, 2014.
 4. Seven special sessions on Israel out of a total of nineteen country-specific special sessions. One urgent debate on Israel out of a total of two urgent debates, as of October 25, 2014.
 5. UNHRC, 4th Special Session, *Situation of human rights Darfur*, Dec. 12-13, 2006.

- The Special Rapporteur on Israel is the only country-specific rapporteur that does not require renewal or reconsideration.⁶ (The mandate is only to investigate Israel's violations of law – and as the new rapporteur has already said – violations suffered by Palestinian victims.⁷)

In short, the Council treats Israel differently – wildly differently – than every other state. And this is not because there are more dead or dying, or the female population is enslaved, or nobody can say what is on his or her mind without risking life and limb, or heads and hands and feet are getting chopped off with judicial approval.

The Council story is not, however, simply about Israel.

The U.N.'s top human rights body has no human rights conditions for membership. On October 21, 2014, elections were held at the General Assembly for membership to the Council. Three of the fifteen states elected did not even bother to provide the customary pledge to protect human rights.⁸ This election takes the number of “fully free” democracies – on the Freedom House scale – to a mere 42% of Council members.⁹ In other words, the Council majority is composed of states that know how to violate rights better than how to protect them: countries like Algeria, China, Côte d'Ivoire, Gabon, Russia, and Saudi Arabia.

From the time it was created in 2006 through 2014, the members of the Organization of Islamic Cooperation (OIC) have held the balance of power. OIC members have been a majority on each of the African and Asian regional groups – the two groups that taken together comprise the Council majority.¹⁰

Of course, the composition of the Council negatively affects its output.

A case in point is Sudan. A country run by an indicted genocidal thug can obstruct successive Council rapporteurs from doing their job, prompting them to quit one after another¹¹ in dismay at the Council's kid-glove treatment of the country. And yet Sudan can then succeed in setting aside the selection of a new special rapporteur that it fears might be too tough – as has happened on November 6, 2014.¹²

Another example is China. In September 2013, China arrested human rights activist Cao Shunli as she was about to board an airplane for Geneva, where she planned to engage with the Council. Rather than interacting with the Council, Shunli was kept in prison and denied desperately-needed medical attention by Chinese authorities until she died on March 14, 2014. A week later, an NGO attempted to yield its speaking time at the Council for a moment of silence in her memory. China then demanded and obtained a majority vote from the Council denying even silence – a moment to remember a human rights defender murdered for attempting to attend the very same Council.¹³

Or consider Qatar and the Council's flagship Universal Periodic Review (UPR) process. Qatar bankrolls the terrorist organization Hamas, which targets and kills Israeli children, in addition to using Palestinian children as human shields. On May 7 and September 19, 2014, at Qatar's UPR, countries like Iran lined up to say it “welcome[ed] the decision made by Qatar...to promote and protect the rights of children.”¹⁴ During its UPR, Qatar rejected a recommendation to “take effective actions to ensure that women are fully protected from discrimination and violence, including by criminalizing domestic violence against women...” Qatar explained its rationale this way: “...women are fully protected.” As for recommendations to “guarantee the exercise of freedom of religion,” and “respect the right to freedom of opinion and expression,” Qatar said they were “already implemented.” All this was duly recorded in the Council's UPR report, gaveled through with no further action like every other UPR – no inquiry established, no expert assigned, no substantive resolution adopted.¹⁵ And the reward for financing 50

6. U.N. Commission on Human Rights Res. E/CN.4/RES/1993/2, *Question of the violation of human rights in the occupied Arab territories, including Palestine* (Feb. 19, 1993).
7. U.N. GAOR, Rep. of the Special Rapporteur on the situation of the human rights in the Palestine territories occupied since 1967, A/69/301, 69th Session., paras. 5 and 24.
8. Botswana, India, Nigeria, available at www.un.org/en/ga/69/meetings/elections/hrc.shtml (last visited Nov. 27, 2014).
9. Twenty out of 47 states.
10. Thirteen from the African Group, 13 from the Asian Group. The Council has 47 members.
11. Mr. Mohamed Chande Othman from Tanzania (2009-2012), Mashood Adebayo Baderin from Nigeria (2012-2014).
12. On Nov. 6, 2014, Aristide Nononsi of Benin was appointed. See: *Sudan getting away with murder with the help of the UN "Human Rights" Council*, HUMAN RIGHTS VOICES (Nov. 3, 2014), available at <http://www.humanrightsvoices.org/site/developments/?d=12348> (last visited Nov. 27, 2014).
13. See video: *UN Human Rights Council UPR of China, fate of Cao Shunli*, March 2014, HUMAN RIGHTS VOICES, available at <https://www.youtube.com/watch?v=aHBzi-6upyM> (last visited Nov. 27, 2014).
14. Sept. 19, 2014
15. Human Rights Council, Report of the Working Group on the Universal Periodic Review - Qatar, U.N. GAOR 27th Sess., A/HRC/27/15 (June 27, 2014); Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, U.N. GAOR 27th Sess., A/HRC/27/15/Add.1, (Aug. 15, 2014).

days of terror abroad just a couple of months earlier, ravaging fundamental rights at home, and lying about it all to the Council? Qatar was elected as a member of the Human Rights Council in October 2014.¹⁶

Iran, the leading state sponsor of terrorism, is so pleased with the Council's preeminent human rights reform that during its UPR on October 31, 2014 the chief of its "High Council for Human Rights" stated: the "UPR is [a] fantastic place where we can engage in serious substantial discussion." An instance of such discussion: the Iranian Deputy of Judiciary blithely told the Council: "In Iran no one is arrested for their point of view or beliefs..."¹⁷

What other clues might support the nomenclature of a "terrorist rights council"?

Every member of the OIC has ratified the 1999 OIC terrorism convention, which states: "Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination ... shall not be considered a terrorist crime."¹⁸

This concept is constantly repeated. At the U.N. General Assembly's Sixth Committee session on October 7, 2014, Egypt, speaking on behalf of the OIC, and Iran, speaking on behalf of the 119 U.N. member states of the Non-aligned Movement, reiterated that terrorism exemption clause.¹⁹ This position has been the number one stumbling block preventing the adoption by the General Assembly of a Comprehensive Convention against Terrorism since the year 2000. On November 7, 2014, the Chairman of the Sixth Committee Working Group on the Convention once again explained the failure to reach agreement, highlighting the OIC demand "to distinguish between acts of terrorism and the legitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self-determination."²⁰

The legal claim by the world's leading state sponsor of terrorism – Iran – that "terrorism should not be equated with legitimate struggle"²¹ has been echoed by the Human Rights Council's rapporteurs on Israel over the years.

John Dugard told the Council in March 2008: "a distinction must be drawn between acts of mindless terror... and acts committed in the course of a war of national liberation." The acts perpetrated upon Israeli civilians by Palestinians were the second kind of terror, the "inevitable consequence of occupation" and analogous to "the German occupation resisted by European countries in the Second World War."²²

Richard Falk, who succeeded Dugard and concluded his six-year term in May 2014, defended Ahmed Jabari, Hamas military leader and mastermind of the kidnap and detention of Israeli soldier Gilad Shalit. Shalit was held incommunicado and denied visits by the Red Cross

for over five years, in gross violation of international law. But Falk reported: Jabari "kept Shalit... in good health."²³ Falk also claimed that more than five million Palestinians had a "right of return"²⁴ – which would obviously end what Falk has called "the Zionist project."²⁵ And Falk wrote that Hamas' use of "indiscriminate weaponry" was their only alternative to "giving in," likening them to "resistance fighters" "during the Nazi occupation."²⁶

16. *Supra* note 8.

17. U.N. Human Rights Council UPR of Iran, Oct. 2014, available at www.youtube.com/watch?v=aQsu1j4Lg8 (last visited Nov. 27, 2014).

18. Convention of the Organization of the Islamic Conference on Combating International Terrorism, July 1, 1999.

19. General Assembly, Sixth Committee, Oct. 7, 2014.

20. Oral report of the Chairman of the Working Group on the Measures to eliminate international terrorism, General Assembly, Sixth Committee, HUMAN RIGHTS VOICES, Nov. 7, 2014, available at www.humanrightsvoices.org/site/developments/?c=130&li=1&u=314&t=26&d=12400&id=12400 (last visited Nov. 27, 2014).

21. Press Release, Speakers Urge that Differences Be Resolved in Draft Comprehensive Convention on International Terrorism, as Sixth Committee Begins Session, U.N. Press Release GA/L/3475 (Oct. 7, 2014), available at <http://www.un.org/press/en/2014/gal3475.doc.htm> (last visited Nov. 27, 2014).

22. John Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/HRC/7/17 (Jan. 21, 2008), available at unispal.un.org/UNISPAL.NSF/0/F71BE9FAE0ABBE1C852573EC006DDE2E (last visited Nov. 27, 2014).

23. Richard Falk, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/HRC/23/21 (June 3, 2013).

24. Richard Falk, *Invisible Horizons of a Just Palestine/Israel Future*, LIBERAL DEMOCRAT FRIENDS OF PALESTINE, Nov. 9, 2013, available at www.ldfp.eu/2013/11/09/invisible-horizons-of-a-just-palestineisrael-future/ (last visited Nov. 27, 2014).

25. Richard Falk, *Understanding Hamas after Khaled Meshaal's Gaza speech*, LIBERAL DEMOCRAT FRIENDS OF PALESTINE, Jan. 22, 2013, available at www.ldfp.eu/2013/01/22/understanding-hamas-after-khaled-meshaals-gaza-speech/ (last visited Nov. 27, 2014); see also: Two Types of Anti-Semitism, Sept. 1, 2014, available at richardfalk.wordpress.com/2014/09/01/two-types-of-anti-semitism/ (last visited Nov. 28, 2014).

26. Understanding Hamas, *supra* note 25; see also: Richard Falk, *Slouching Toward A Palestinian Holocaust*, Countercurrents.org, July 7, 2007, available at www.countercurrents.org/falk070707.htm (last visited Nov. 28, 2014).

In 2005, the European Monitoring Center on Racism and Xenophobia labeled “drawing comparisons of contemporary Israeli policy to that of the Nazis” – a penchant of the Council’s Israel rapporteurs – anti-Semitism.²⁷

Then there are the terms of Council resolutions themselves. Notwithstanding the 8,000 rockets and mortar shells directed at Israel’s civilian population from Gaza between the years 2000 and 2008, when Israel finally decided to strike back in self-defense, the Council created an inquiry with an expressly one-sided predetermined mandate “to investigate all violations of international human rights law and international humanitarian law **by the occupying Power, Israel, against the Palestinian people**” (emphasis added).²⁸ No jurist who cared about the rule of law would have taken the job – which is exactly why the Council hand-picked four individuals who had already declared Israel guilty before they started.²⁹ No self-respecting lawyer would take the inevitable conclusions seriously – including its own lead author Richard Goldstone, who subsequently retracted the central libel that Israel deliberately targeted civilians.³⁰

The Council has now decided to repeat the charade, launching another inquiry in the summer of 2014. This time the mandate is: “to investigate all violations of international humanitarian law and international human rights law **in the Occupied Palestinian Territory**, including East Jerusalem, particularly in the occupied Gaza Strip, **in the context of the military operations conducted since 13 June 2014...**” (emphasis added).³¹ Why June 13? Because Hamas terrorists kidnapped three Israeli teenagers on June 12th. Tunnels carrying terrorists and weapons built by Hamas **in Israel** evidently are intended to be excluded. The “independent” expert carefully chosen by the Council to head the investigation – the one charged with “identify[ing] those responsible, [and] mak[ing] recommendations...on accountability measures” – Bill Schabas – has already said: “my favorite would be Netanyahu in the dock of the International Criminal Court.”³²

Another set of facts bears itemizing in the context of the Council’s latest “investigation:”

- The Hamas Charter states: “Israel will exist and will continue to exist until Islam will obliterate it” “O Muslim! There is Jew...come on and kill him!”³³ In other words, Hamas is committed to genocide.
- Hamas leader, Ismail Haniyeh, has said repeatedly: “The gun is our only response to [the] Zionist regime” and “Palestine is from the sea to the river...We will not recognize Israel.”³⁴
- Hamas fired 4,564 rockets and mortars at Israel during 2014’s 50 days of war.³⁵
- Hamas and its partners launched 1,600 rockets **from**

civilian sites inside Gaza into civilian sites in Israel.³⁶

- Hamas used hospitals and schools and U.N. facilities as either headquarters, or as places to hide weaponry, or as cover for rocket launchers.

27. Working Definition of Antisemitism, first adopted in 2005 by the European Monitoring Center on Racism and Xenophobia (EUMC), (though not its successor, the European Union Agency for Fundamental Rights (FRA)), available at <http://www.european-forum-on-antisemitism.org/working-definition-of-antisemitism/english/> (last visited Nov. 28, 2014); see also: U.S. Department of State: available at www.state.gov/documents/organization/156684.pdf (last visited Nov. 28, 2014).
28. Human Rights Council Res. S-9/1, *The Grave Violations of Human Rights in the Occupied Palestinian Territory Including the Recent Aggression in the Occupied Gaza Strip*, U.N. GAOR, A/HRC/RES/S-9-1 (Jan. 12, 2009).
29. *The Goldstone Report: The UN Blood Libel: The Judges – Israel Is Already Guilty*, HUMAN RIGHTS VOICES, available at www.humanrightsvoices.org/EYEontheUN/antisemitism/goldstone/?l=47&p=984 (last visited Nov. 28, 2014).
30. Richard Goldstone, *Reconsidering the Goldstone Report on Israel and war crimes*, THE WASHINGTON POST, Apr. 1, 2011.
31. Human Rights Council Res. S-21/1, *Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem*, U.N. GAOR, A/HRC/RES/S-21/2 (July 23, 2014).
32. Note, the resolution refers to “military operations” (that is, operations of Israel) “...to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after...”
33. The Covenant of the Islamic Resistance Movement, Aug. 18, 1988.
34. Eight years, eight quotes by Hamas leader Ismail Haniyeh, IDF (Feb. 19, 2014), available at www.idfblog.com/hamas/2014/02/19/8-years-8-quotes-hamas-leader-ismail-haniyeh/ (last visited Nov. 28, 2014).
35. Ben Hartman, *50 days of Israel’s Gaza operation, Protective Edge – by the numbers*, THE JERUSALEM POST, Aug. 28, 2014, available at www.jpost.com/Operation-Protective-Edge/50-Days-of-Israel-Gaza-operation-Protective-Edge-by-the-Numbers-372574 (last visited Nov. 28, 2014).
36. IDF, *New Declassified Report Exposes Hamas Human Shield Policy*, Aug. 20, 2014, available at www.idfblog.com/blog/2014/08/20/new-declassified-report-exposes-hamas-human-shield-policy/, slide on page 2/44 (last visited Nov. 28, 2014).

- Hamas discouraged and actively prevented Palestinian civilians from heeding warnings by Israel to leave areas containing legitimate military targets.
- Hamas was discovered as having diverted concrete intended for Gaza development, to the construction of an underground maze of 32 tunnels, created for the sole purpose of attacking Israeli population centers.
- Of eleven ceasefires accepted by Israel from July 15, 2014 to the end of the war [August 26, 2014], Hamas rejected one, refused to renew one, and violated the rest – all of which would have saved Palestinian lives.

Despite all that, the Human Rights Council resolution creating the Schabas “investigation” never once mentions the word “Hamas” or “tunnel,” or names Palestinian perpetrators as responsible for any international law violation, while replete with statements like “condemns in the strongest possible terms the widespread, systematic and gross violations arising from the Israeli military operations...”³⁷

Some other names for this phenomenon might be – “legal lynch mob,” “kangaroo court,” or “legal pogrom.”

But “terrorist rights council” fits too, because the message sent and received is that terrorism pays off. Why negotiate an end to a state of war, or choose dialogue, when aggression demonizes and delegitimizes the aggressor’s opponent? Why not take civilians as human shields when the lives lost are successfully blamed on the terrorist’s enemy?

The broader tragedy of the Human Rights Council is that terrorists motivated by religious bigotry are not unique to the Arab-Israeli conflict, as the shocking events in Canada – where a massacre of parliamentarians was narrowly averted³⁸ – make plain. The failure to recognize and confront such hate excuses and empowers it, literally threatening the way of life of Western societies in general. And not just the Western way of life, but the way of life of the kidnapped Yazidi woman – whose story was reported via the Iraqi Peshmerga in October 2014. Raped by Islamic State terrorists “30 times before lunch-time,” she begs to be bombed so that she can die.³⁹ How would one explain to her that the fundraisers for her captors are operating from a country elected to the UN Human Rights Council? Indeed, a “terrorist rights council.”

The question must therefore be asked: who gives this Council legitimacy? The answer is an unhappy one: the United States. The Bush administration refused to join the Council when its efforts to include human rights-respecting pre-conditions for membership failed in the 2006 “reform” of the Human Rights Commission.⁴⁰ Joining the Human Rights Council, however, was one of the very first foreign policy moves of the Obama administration. In so doing, the Obama administration promised that a

change to the Council’s agenda would be its top priority. It has completely failed to accomplish this goal; the proposed fix – along with every other substantive change the administration sought during the five-year review of the Council⁴¹ – was resoundingly rejected. Nevertheless, the administration sought and obtained another three-year term in November 2012. In fact, the Obama administration is one of the Council’s lead champions. As recently as September 26, 2014, the State Department stated that the Council was “at the forefront of international efforts to promote and protect human rights.”⁴² At the same time, there are no shortages of statements by administration officials that the treatment of Israel is regrettable – and tolerable. On November 17, 2014, the administration’s representative in the General Assembly’s Third Committee said: “The US places great importance on the work of the Human Rights Council... [T]he past years have ... led to marked improvement of the work of the Council but we remain concerned over some actions, especially a myopic focus on Israel.”⁴³ The treatment of Israel is evidently unfortunate collateral damage to a larger, more important project.

37. *Supra* note 31, operative para. 2

38. “Canada Parliament gunman had planned to travel to Syria: police,” REUTERS, Oct. 23, 2014, available at www.reuters.com/article/2014/10/23/us-canada-attacks-shooting-idUSKCN0IB1PY20141023 (last visited Nov. 28, 2014).

39. John Holl, *I’ve been raped 30 times and it’s not even lunchtime: Desperate plight of Yazidi woman who begged West to bomb her brothel after ISIS militants sold her into sex slavery*, THE DAILY MAIL, Oct. 21, 2014, available at www.dailymail.co.uk/news/article-2801353/i-ve-raped-30-times-s-not-lunchtime-desperate-plight-yazidi-woman-begged-west-bomb-brothel-isis-militants-sold-sex-slavery.html (last visited Nov. 28, 2014).

40. G.A. Res. 60/251, 60th Sess., U.N. Doc. A/RES/60/251 (Apr. 3, 2006), vote : 170 for, 4 against (Israel, Marshall Islands, Palau, United States), 3 abstentions.

41. G.A. Res. 65/281, Review of the Human Rights Council, U.N. GAOR, 65th Session, U.N. Doc. A/RES/65/281, (June 17, 2011), 154 for, 4 against (Canada, Israel, Palau, United States), 0 abstentions.

42. U.S. Department of State, *Key U.S. Outcomes at the UN Human Rights Council 27th Session*, Fact Sheet, , Sept. 26, 2014, available at www.state.gov/r/pa/prs/ps/2014/09/232210.htm (last visited Nov. 28, 2014).

43. Jill Derderian (United States). *See also*: Press Release, Human Rights Council ‘Victim of Its Own Success’ as Non-State Actors Create Added Burden, Top Official Tells Third Committee, U.N. Press Release GA/SHC/4121, (Nov. 17, 2014).

This calculation is really the key to appreciating the two quite different angles of attack that Israel faces from international human rights lawfare. In the first, human rights *abusers* manufacture victimhood and cow the ‘dumb and dumber’ into believing them. In the second, human rights *supporters* are prepared to tolerate the demonization of Israel and anti-Semitism against the few, for the sake of the protection of human rights of the many.

U.S. Ambassador to the U.N. Samantha Power gave a speech at the OSCE on anti-Semitism on November 14, 2014, in which she rightly claimed: “...when we promote and defend universal human rights around the world, we must ensure that these efforts always include the human rights of Jews.”⁴⁴ But relegating Jews to the back of the international human rights bus by promoting and defending the U.N. Human Rights Council – Power herself having played a central role in the administration’s decision to join the Council – is not inclusivity. Power continued:

With respect to anti-Semitic rhetoric and attacks that occur in the context of pro-Palestinian or anti-Israeli rallies ...protests can never be an excuse for anti-Semitism or incitement to violence. The violence in Gaza in recent months was devastating, and it generated strong reactions from many governments and individuals.... [T]here [is] a way to express criticisms of Israel’s policies and actions without making anti-Semitic remarks.

Setting aside her failure to mention that the violence in *Israel, and against Israelis*, in the 2014 Gaza war was devastating, and her invocation of the imaginary straw man who supposedly objects to any criticism of Israel, Power missed the main point about modern anti-Semitism altogether. The point is not that – to use her words and those of the OSCE⁴⁵ – international developments or politics in Israel never justify anti-Semitism, but that the politics of terrorism directed at Israel is itself anti-Semitism – dots which the killing of rabbis, at prayer, in a synagogue, in Jerusalem, painfully connect.

The failure to link – expressly and repeatedly – terrorism against Israelis to anti-Semitism must come to an end. Palestinian mouthpieces never speak without drawing attention to the alleged “root cause” of violence – “occupation.” The actual root cause of Palestinian terrorism is anti-Semitism, hate, intolerance, xenophobia.

The United Nations Global Counter-Terrorism Strategy has four pillars. Pillar number one is “Measures to address the conditions conducive to the spread of terrorism.”⁴⁶

These are said to include “youth unemployment... marginalization and the subsequent sense of victimization that propels extremism and the recruitment of terrorists.”⁴⁷ Defeating terrorism and terrorists – in Israel and elsewhere – necessitates a crucial shift away from the U.N.-driven tale of the poor terrorist to the reality of the violent bigot.

Unfortunately, in Israel’s case, the violent bigots have at their disposal the global megaphone of the United Nations. In November 2014, the Fourth Committee of the General Assembly spent four days⁴⁸ listening to the various spokespersons for 119 countries – led by UNRWA, the Palestinian Authority and Iran. They declared Israel guilty of “an onslaught against the Gaza strip,” “ethnic cleansing,” “inhumane blockade,” “torture,” “massacres,” “racism,” “barbarism,” “a policy of terrorism,” “genocide,” “apartheid,” “savagery,” “beating and torturing juveniles,” and “crimes against humanity,” in addition, to analogizing Israelis to Nazis. Lebanon, for instance, said: “From 1948 until today, many Palestinian young girls and boys are just as determined as Anne Frank to conquer their fear of the occupier...”⁴⁹ Four days of orchestrated hate-mongering included not a single solitary mention of the word “tunnel,” except by the Israeli diplomat.

The outcome of this sickening demonization was more demonization. Nine resolutions condemning Israel were

44. U.S. Permanent Representative to the United Nations, Remarks by Ambassador Samantha Power at the 10th Anniversary of the OSCE’s Berlin Conference on Antisemitism, Samantha Power, Nov. 13, 2014, available at <http://usun.state.gov/briefing/statements/234009.htm> (last visited Nov. 28, 2014).

45. ‘Our nations pledged to uphold the clear distinction between anti-Semitism and legitimate acts of political expression when we signed the Berlin Declaration, which states unambiguously that: ‘international developments or political issues, including those in Israel or elsewhere in the Middle East, never justify anti-Semitism.’ Ten years later, our job as governments is still to guard that distinction vigilantly.’ *Id.* See: The Berlin Declaration, OSCE, 2004, Bulgaria, available at www.osce.org/cio/31432?download=true (last visited Nov. 2014).

46. U.N. Action to Counter-Terrorism, www.un.org/en/terrorism/strategy-counter-terrorism.shtml (last visited Nov. 28, 2014).

47. G.A. Res. 60/288, U.N. GAOR 60th Sess., U.N. Doc, A/RES/60/288 (Sept. 20, 2006), Sec. 1, para. 6.

48. Nov. 4, 5, 6, 7, 2014.

49. Lebanon, Fourth Committee, 23rd Meeting, 69th General Assembly, Special Political and Decolonization Committee, Nov. 6, 2014.

subsequently adopted by overwhelming numbers – including one resolution that demanded Israel return the Golan to Syria now – the place where U.N. peacekeepers and lucky Syrians run for safety.⁵⁰ By the end of 2014, the General Assembly will have adopted twenty times the number of resolutions condemning Israel for violating human rights than any other country in the world.⁵¹

- We must and we can respond:
- We cannot change the U.N., but we can discredit it.
- We can delegitimize the delegitimizers.
- We can disseminate the facts.
- We can mount an immediate, publicly-accessible response to the legal pogrom unleashed by the Human Rights Council and other U.N. human rights-related fora.
- We can anticipate and prepare for the coming assault by the International Criminal Court.
- We can be far more willing to identify and name anti-Semitism when we see it.
- We can encourage the United States Congress to cease funding the Human Rights Council.
- We can encourage Congress to adopt a law to withhold serious sums of money from the international organizations budget for U.N. bodies and agencies that

support terrorism and anti-Semitism or are associated with U.N.-accredited NGOs that support terrorism and anti-Semitism

- Finally, we can refuse to be satisfied with the prevailing wisdom, and paucity of global imagination, and begin to build support for a new international institution serving genuine human rights victims in the 21st century.

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50. Press Release, Fourth Committee, Concluding Work, Sends Draft of Resolutions to General Assembly on Information, Israeli Practices Committee, Middle East Refugee Relief Agency. U.N. Press Release, GA/SPD/576, (Nov. 13, 2014).

51. In 2013 there were 27 resolutions of the General Assembly critical of the human rights record of specific states: nineteen on Israel, two on Syria, and one each on Afghanistan, Democratic People's Republic of Korea, Georgia, Iran, Myanmar/Burma, and the United States.

Editor's Note: As this issue of Justice goes to press, we draw attention to the op-ed by Christopher Gunness, UNRWA Spokesperson, published in The Jerusalem Post, December 18, 2014:

"UNRWA spokesman in op-ed says body welcomes legitimate discussions, as well as critical reviews, with stakeholders, including members of the media – such as 'The Jerusalem Post'."



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צדק

ENGLISH: 1. justness, correctness. 2. righteousness, justice. 3. salvation. 4. deliverance, victory. [**ARAMAIC:** צדק (he was righteous), **SYRIAC:** זרק (it is right), **UGARITIC:** *šdq* (= reliability, virtue), **ARABIC:** *šadaqa* (= he spoke the truth), **ETHIOPIC:** *šadaqa* (= he was just, righteous)] Derivatives: צדקה **POST-BIBLICAL HEBREW:** alms, charity. Cp. **ARAMAIC** צדקתה (= justice). **PALMYRENE** צדקתה (= it is right). צדק 1. just, righteous. 2. pious.

After Ernest Klein, A Comprehensive Etymological Dictionary of the Hebrew Language for Readers of English. 1987: Carta/University of Haifa

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