

Deciphering the Palestinian Position Within the UN

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Feb 1, 2018

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Brief Analysis

February 01, 2018

The Palestinian refugee issue is of renewed controversy given the Trump Administration's stance on both refugees and the Middle East peace process. It has been an ongoing crisis since Israel's Declaration of Independence on May 14, 1948, which followed fighting at the local level, and led to the subsequent Arab invasion that began the night of May 14th. Simultaneously, World War II had just ended, and the world was dealing with a general problem of international refugees. A number of United Nations Agencies were created to handle these refugee crises and they were later combined. Ultimately, two United Nations Agencies were created to address these refugee crises. The Office of the United Nations High Commissioner for Refugees (UNHCR) was created to deal with the millions of post-WWII European refugees, while the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was created specifically for over 700,000 Palestinian refugees.

It is challenging to distinguish between UN agencies that have similar purposes. The framework and history of these agencies explain why there is a unique UN agency for Palestinian refugees and what the impact of these operations is on those people.

Under UNHCR, some Palestinians are eligible for legal and physical protection, the minimization of the threat of violence – including sexual assault – and assistance, i.e., education and health services. Some fall under the UNHCR refugee mandate, while others may fall under the “statelessness mandate.” Others are eligible for assistance under UNRWA. Clearly, the position of Palestinians under these agencies is multifaceted. This article does not attempt to address all of the complexities of the Palestinian refugee crisis.

Palestinian refugees are the only group of refugees to have a UN relief agency apply exclusively to them. UNRWA does not function or operate under the same mandate or definitions as the UNHCR. This has led to a rapidly growing number of Palestinians who fall under the UNRWA definition of refugee.

There are two key differences between the UNHCR and UNRWA. The UNHCR has a statute with an express reference to provide legal protection while UNRWA only provides assistance. The second discrepancy is the legal definition each agency uses to define the term “refugee,” which then determines the reach of each agency and, in some ways, defines

the crisis itself.

The UNHCR began its operations on January 1, 1951 with a mandate to “protect and find durable solutions for refugees.” The agency draws its definition of a refugee from two cornerstone pieces of international legislation. The 1951 Convention relating to the Status of Refugees defines a refugee as someone who at the time of the passage of the convention “has a well-founded fear of persecution because of his/her; Race, Religion, Nationality, Membership in a particular social group, or Political opinion; is outside his/her country of origin; and is unable or unwilling to avail him/herself of the protection of that country, or to return there for fear of persecution.” The 1967 Protocol relating to the Status of Refugees, which is independent of the 1951 Convention but integrally related to it, “lifts the time and geographic limits found in the Convention’s refugee definition.”

During the formation of UNHCR, the position of Palestinian refugees was extensively debated. A number of Arab governments strongly opposed their inclusion under the UNHCR mandate due to the belief that it would diminish the importance and attention to their plight and the prospect of returning to their homes. As a result, the 1951 Convention excluded any groups receiving “protection or assistance” from any other UN agency, i.e., the Palestinians. One of the key international law differences between the mandates of the two agencies is that UNRWA explicitly provides assistance, but no protection, to those Palestinians under its mandate. Thus, those Palestinians who qualify for UNRWA assistance are not internationally protected refugees. UNRWA may advocate for their protection, but they do not have any legal authority or means to physically protect the Palestinians.

UNRWA began field work on May 1, 1950 directing relief and works programs in its areas of operation; Lebanon, Jordan, the Syrian Arab Republic, the West Bank (including East Jerusalem), and the Gaza Strip. UNRWA’s mandate was expanded following the 1967 war, or the third Arab-Israeli war, when UN General Assembly endorsed UNRWA to “provide humanitarian assistance...on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance.” UNHCR is responsible for those Palestinian refugees outside of UNRWA’s areas of operation that are eligible for international refugee protection like those living in or moving to and from Iraq, Egypt, Libya and elsewhere.

Currently, UNRWA defines a Palestine refugee as “Persons whose normal place of residence was Palestine during the period of 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.”

Originally included in the definition, “need,” to the benefit of Palestinians, was formally dropped in 1993. Additionally, the requirement that a Palestine refugee had to have initially fled to a country within UNRWA’s area of operations was removed. Both of these changes expanded UNRWA’s reach by opening registration to Palestinians who were previously ineligible. UNRWA provides aid to all of those Palestinians who register and are located within their areas of operation, which creates “relief based on status rather than need.” Any Palestinian who is classified under UNRWA’s definition, even a citizen of a country within UNRWA’s area of operation, is considered a refugee and can receive benefits.

Both the UNHCR and UNRWA allow claims of derivative refugee status for family members.

Alternately, UNHCR refugees who are eligible for derivative refugee status from the “Principal Applicant,” the UNHCR officially recognized refugee, include, but are not limited to, the spouse/spouses of and unmarried children under 18 years of age of the ‘Principal Applicant,’ parents of or primary caregivers of a ‘Principal Applicant’ who is under 18 years old, and the minor siblings of a ‘Principal Applicant’ who is under 18 years old. They will lose this status if the family separates or the “child reaches the age of majority,” thus halting the intergenerational cycle.

According to UNRWA rules, descendants of fathers of Palestine refugees as well as the descendants of those Palestinians who do not fully fit UNRWA’s definition because they did not lose both home and means of livelihood, are eligible for registration with the agency. Descendants of the male line, who live outside of the Agency’s areas of

operation, are able to apply for UNRWA refugee status as long as they present supporting documentation. The body of “Palestinian refugees” entitled to assistance is an ever-growing group, according to UNRWA; the number has grown from 700,000 to over 5.3 million as of 2016.

There are two methods to lose refugee and derivative status: cancellation and cessation. However, neither of these appear to apply under UNRWA as those refugees who acquire citizenship in a country within UNRWA’s operation realm are still considered refugees. The 1951 Convention disqualified those refugees who acquire citizenship or a status similar to citizenship of a host country from international refugee status. While this citizenship status would exclude other refugees from the international protection of UNHCR, UNRWA still assists them and considers them refugees.

The UNHCR lists three “durable solutions” for refugees under their mandate. These are voluntary repatriation, resettlement in another country, and integration within the host community. Unlike UNHCR, UNRWA is not mandated to come up with durable solutions for the Palestinian refugees, rather it provides assistance and advocates that the international community has an obligation to provide a just and durable solution for these people. These three solutions do not work for Palestinian refugees since not only can they not return to their former homes but host countries like Lebanon, Syria, Iraq and Jordan have refused to absorb all of the Palestinians. Currently 1.5 million Palestine refugees live in 58 official refugee camps, which are usually categorized as unpleasant. While Jordan has granted millions of Palestinian refugees citizenship and Syria has given Palestinians a status similar to citizenship, in many cases the Palestinians are stripped of political and economic rights while living in host countries like Iraq and Lebanon. Many Palestinians resist the idea of resettlement as they strive to return to Palestine.

While there is a range of reasons that may cause people to find themselves designated as refugees, a common theme is their inability to return home. Palestinian refugees, akin to most refugees in any of these situations, are unable to, or barred from returning to their, or their ancestor’s, homes. There are other cases of refugees that do not fit the “traditional solutions” model: the ethnic Azeris from Nagorno-Karabakh, and the Bosnians, victims of ethnic cleansing by the Serbian nationalists, to name but two examples. Despite these conflicts resulting in prolonged refugee/internationally displaced people crises, no special United Nations agency has been created to help them. Additionally, there are numerous other examples of stateless people. For example, Myanmar is a host to approximately 810,000 stateless persons, Côte d’Ivoire 700,000 and Thailand 506,197, for whom no special agency has been created.

Why, then, since the establishment of the UNHCR, have no other refugee groups had a specific agency set up for themselves besides the Palestinians? One reason may be the lack of funding for the establishment of additional agencies. Another explanation is that the Palestinian refugees came into existence because of a deliberate decision the UN took, Resolution 181 and the recognition of Israel on May 14, 1948, with “full knowledge of the consequences.” Today, Arab states have used the all-time high number of 5.3 million refugees as a way to apply pressure on Israel to allow Palestinians their own state. To their benefit or to their detriment, the legal definitions applicable to them under UNRWA perpetuates an ever widening and rapidly increasing global population of refugee class, that are perhaps more economically diverse, than what would likely be the case under the UNHCR designation. ❖

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