COMMENTARY | REFUGEES

UNRWA in a Time of Crisis: Separating the Red Herrings from Legitimate Shortcomings

By: Ardi Imseis · October, 2019

The United Nations Relief and Works Agency for Palestine Refugees has faced much turmoil in the past few years. In August 2018, the US announced that it would no longer fund UNRWA, withdrawing the more than $300 million it had formerly supplied annually. Though others, such as the EU, Qatar, and Japan, provided new or more funding to fill the gap, the Agency is still experiencing a shortfall. Vital services for Palestine refugees in the Occupied Palestinian Territory (OPT), Syria, Lebanon, and Jordan, such as primary education and health care, have experienced devastating cuts as a result.[1]

To make matters worse, in July 2019 news of an internal UNRWA ethics report emerged, detailing alleged abuses of authority by the Agency's top management. In response, Belgium, the Netherlands, and Switzerland have suspended their funding contributions, and the Trump Administration and its allies have used the report as an opportunity to further denigrate the organization as a whole, based on spurious claims and red herrings designed to obfuscate what they really loathe: UNRWA as an inconvenient reminder of the legitimate historical, legal, and political rights of the Palestine refugees and, more broadly, the UN's permanent responsibility for the question of Palestine. Former US Ambassador to the UN Nikki Haley, for instance, proclaimed on Twitter, "This is exactly why we stopped…funding [UNRWA]."

While these events, and the news cycle that covers them, are important to understand UNRWA's current dilemmas, they do not provide a proper understanding of the Agency's more fundamental challenges and problems. This commentary sheds light on news of the ethics report, UNRWA's actual challenges, and why the Agency's mandate should be expanded with a view to arriving at durable solutions for Palestine refugees in line with international law and practice.

Understanding the Ethics Report

The ethics report is of course disconcerting. But far from being evidence of a level of alleged corruption that requires the most drastic response of depriving UNRWA and the Palestine refugees it serves of badly needed humanitarian assistance, it actually demonstrates UNRWA's corporate professionalism. The very fact the report was undertaken and issued is evidence that UNRWA's regulatory framework governing staff behavior is alive and well in holding all of its staff to account, including its most senior personnel.

On the presumption that member states of the UN have a legitimate interest in ensuring the integrity and accountability of the UN operations they support, the decision of the small number of states who have suspended their funding of UNRWA seems hasty at best and cynical at worst. We would do well to recall that the allegations made in the report are still under investigation by the UN's Office of Internal Oversight Services, which means they have yet to be finally established by the UN's internal justice system. Until such time as that process has been completed, it would be unwise and irresponsible to jump to conclusions about the present governance of the Agency, let alone call for it to be done away with altogether.

Even if the allegations made in the report were found to be true, it appears that a small number of individuals would be implicated at most, at least two of whom

have already separated from the Agency. To put things in perspective, in terms of staff numbers UNRWA is the largest UN operation in the world, providing protection and assistance to over 5.5 million registered Palestine refugees. Approximately 33,000 individuals work for the Agency, including thousands of teachers, doctors, sanitation workers, social workers, and others. To suggest that the vital life-giving humanitarian services performed by UNRWA should be massively defunded and therefore ground to a halt because of the alleged acts of a few people beggars belief. It simply cannot withstand serious scrutiny.

Legitimate Shortcomings

Of course, no organization, including UNRWA, is above critique. For criticism to be legitimate, however, it must be accurate and placed in context. The present context must account for the vital humanitarian and human development work UNRWA and its personnel have performed since 1950. Indeed, it is not an overstatement to say that but for this work, the Palestinian people as a whole would be in far worse condition than they are today, if that can even be imagined. Having said that, beyond the skewed focus on the ethics report and other red herrings, two shortcomings of the Agency are clear.

The first is the ongoing gender discrimination practiced by UNRWA in its rules governing eligibility for registration as a Palestine refugee. In line with universally applied international refugee law and practice, the Agency's internal registration rules correctly provide that in the absence of a resolution of their plight, eligibility for Palestine refugee status may pass to descendants of registered refugees. The problem rests in the fact that under UNRWA's regulations this right only applies to descendants of *male* registered refugees. As a result of this gender discrimination, hundreds of thousands of individuals – four generations of men, women, and children – have been deprived both of the right to be registered, and therefore counted as refugees, as well as the right to receive Agency-dispensed services. No

similar gender discrimination applies in the international law and practice relevant to other prolonged refugee crises.

Given the dire circumstances in which Palestine refugees live in UNRWA's areas of operation, the impact of this has been immense. The Agency hasn't been oblivious to the need to correct this, however. From the early 2000s, efforts to garner support of key stakeholders, among them major donors and host states, led to an eventual amendment of the Agency's rules, rendering affected individuals eligible for Agency services. However, such eligibility remains subject to available funds, which have, in practice, not materialized or have been in short supply, including for reasons cited above. As such, affected individuals still do not have any right to be registered as Palestine refugees, and many others still go without desperately needed Agency services.

UNRWA's detractors often erroneously deride the Agency for inflating the number of Palestine refugees. What the above demonstrates is that, in fact, the opposite is true. But for the systematic and legalized gender discrimination practiced by UNRWA over the past seven decades, the number of registered Palestine refugees would be far greater than the present figure of 5.5 million.

The second of UNRWA's shortcomings has to do with the fact that it is not mandated to find what international lawyers call "durable solutions" for Palestine refugees. Durable solutions concern the need to actively seek a resolution to a refugee crisis in line with international law and best practice. This law and practice is epitomized by the work of the United Nations High Commissioner for Refugees (UNHCR), for whom durable solutions consist of the following three options, in order of priority: 1) voluntary repatriation; 2) local integration; and 3) resettlement. Instead, UNRWA's mandate only covers humanitarian aid and assistance through its core programming – primary education, primary health care, and relief and social services.

Unlike the combined humanitarian and durable solutions mandates vested in UNHCR, in 1949 the UN General Assembly split these functions as they pertained to the Palestine refugees. Provision of humanitarian aid was vested in UNRWA, while the search for a durable solution was impliedly left to the UN Conciliation Commission for Palestine (UNCCP), which was tasked with facilitating a negotiated political solution to the Arab-Israeli conflict. The reasons for this are detailed, but at base the UN record demonstrates that it was rooted in the General Assembly's keen awareness that it played a pivotal part in the unmaking of Palestine and the creation of the Palestine refugee problem through its mishandling of the end of the Palestine mandate and its attempted partition of the country against the express wishes of its indigenous majority population in 1947. At the time, of course, no one could reasonably foresee that a negotiated peace would remain elusive, and that the Palestine refugees would remain in forced exile for generations. This durable solutions gap would become particularly evident when UNCCP political efforts effectively dried up in the early 1960s. In the event, UNRWA's temporary humanitarian mandate has been continually renewed by the General Assembly without any comparable renewal of a durable solutions mandate for the people it serves.

The above shortcomings are not directly attributable to present-day UNRWA or its personnel. Because the Agency is a subsidiary organ of the General Assembly, that responsibility lies squarely with UN member states, and in particular with UNRWA's major donors and its Advisory Commission. What this means is that until enough pressure is brought to bear upon these states to increase UNRWA's funding base and constructively broaden the Agency's mandate, there is little hope that these shortcomings will be remedied. In the end, the issue goes to the willingness of the General Assembly to lend greater support to UNRWA in line with its self-declared "permanent responsibility for the question of Palestine until it is resolved in all of its aspects in accordance with international law."

The UN and the Question of Palestine: Rule By Law

Far from being discreet one-off issues, the shortcomings set out above are part of a larger problem with the UN's management of the question of Palestine. As one of the longest-running disputes on the United Nations' agenda, the conventional wisdom holds that the UN's position on Palestine offers the only normative basis of a just and lasting peace between Israelis and Palestinians grounded in international law. Contrary to this position, my research – which will be discussed in detail in a forthcoming book – shows that there has been a continuing though vacillating gulf between the requirements of international law and the position of the UN, which has helped frustrate rather than facilitate the search for a just and lasting peace.[2]

To this end, the book examines a number of areas in which the UN has assumed a leading role in the question of Palestine since 1947, including, in addition to the Palestine refugee problem, the impact of the inter-war international legal order on Palestine as inherited by the UN, the General Assembly's 1947 Plan of Partition, the UN's treatment of the OPT since 1967, and membership of the state of Palestine in the organization. Critically exploring the tensions that exist between the positions adopted by the UN on these areas on the one hand, and various requirements of international law on the other, reveals that the received wisdom regarding the UN's fealty to the international rule of law can more accurately be described as an international rule *by* law. Through the actions of the organization, Palestine and its people have been committed to a state of what I call International Legal Subalternity, according to which the promise of justice through international law has been repeatedly proffered under a cloak of political legitimacy furnished by the international community, but its realization interminably withheld.

When it comes to the matter of UNRWA and the Palestine refugees, this critical examination matters. Not least because it is required if we are to better

understand both the prospects and limits of the UN and international law in pressing their legitimate collective and individual rights. It further matters in this time, where it has become commonplace for reasons of political expediency for some Western politicians to question the very existence of these rights as they pertain to the Palestine refugees, going so far as to attack the integrity of those within the UN humanitarian community mandated to serve them.

1. To read this piece in French, please click here. Al-Shabaka is grateful for the efforts by human rights advocates to translate its pieces, but is not responsible for any change in meaning.
2. *Those interested in learning more about the research underpinning the forthcoming book may consult the following: 24376, The United Nations and the Question of Palestine: A Study in International Legal Subalternity, 2019. (doctoral thesis)*

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