

**UNRWA and the Palestinian refugees:  
Protecting refugee rights while structurally addressing the  
agency's financially unsustainable modus operandi**

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## Background to the paper

This paper is inspired by, and a follow up to the authors' recently published book: [Palestinian Refugees in International Law](#) (Oxford University Press, 2020), and in particular its final chapter. After discussing origins, evolution and legal tenets of the Palestinian refugee question, this chapter discusses the quest for just and durable solutions. Reflecting on the various attempts at and discourse around resolving the Palestinian refugee issue since the late 1940s, and especially since Madrid and Oslo, culminating in the Trump Administration's attempts at obliterating the refugee issue altogether, the authors propose a fundamental and radical paradigm shift in the way solutions for Palestinian refugees are to be approached.

In April 2021, an op-ed by one of the authors (FA) on the resumption of US funding to UNRWA, published by [Jadaliyya](#), underscored that adequate financial and political support to UNRWA represents the minimum of the international community's responsibility toward the refugees until a just and durable solution to their situation is achieved. Meanwhile, it suggested that the upcoming conference on UNRWA be seized as an opportunity for genuine reflection on the agency's mandate and future.

In May 2021, two working papers published by the University of Oxford's Refugee Studies Centre, fleshed out in greater detail some of the above-mentioned ideas, including with respect to a more comprehensive response to the various aspects of the Palestinian refugee question: (1) [Rethinking solutions for Palestinian refugees: a much-needed paradigm shift and an opportunity towards its realization](#) by Albanese and Takkenberg (RSC Working Paper Series 135) and (2) [Palestinian refugees and the Global Compact on Refugees](#) by Damian Lilly, UNRWA's former Chief of Protection (RSC Working Paper 136). The two papers in different ways make the case for revisiting the response to the Palestinian refugee question to date. Jointly, the papers argue that by more closely aligning the response to the Palestinian refugee question with that of the broader global international refugee regime, as this has evolved since the late 1940s and as most recently articulated in the 2016 New York

Declaration on Refugees and Migrants (NYD) and the 2018 Global Compact on Refugees (GCR), the rights of the Palestinian refugees may be better protected and there may be a way to structurally resolve the financially unsustainable modus operandi of UNRWA.

The current paper applies the insights gained in the book and the above papers to UNRWA and makes the case for a radical yet gradual evolution of UNRWA's strategic direction. It is intended as a catalyst for critical reflection in conjunction with the November 2021 international conference on UNRWA and subsequent follow up.

## **Abstract**

The 73 year-long failure to resolve the Palestinian refugee question, and the discourse around it, especially since Madrid and Oslo, combined with the unsustainability of UNRWA's current modus operandi – essentially a means to *manage* the humanitarian dimension of the of the unresolved Israeli-Palestinian conflict – prompt a critical reexamination of the way the Palestinian refugee question has been approached and how UNRWA has interpreted and implemented its mandate over the past decades.

This paper calls for a fundamental paradigm shift in the approach to protection of and solutions for the Palestinian refugees, comprised of three elements: (1) the search for solutions for Palestinian refugees must move from the essentially bilateral approach of the last decades, namely the Madrid/Oslo framework, back to the multilateral arena of the UN; (2) the discourse on solutions must move beyond the current constraints of perceptions or politics, and refocus on the rights of the Palestinian refugees that remain unfulfilled, including both historical rights (self-determination, return, restitution compensation) and the panoply of human rights that for many refugees, especially in UNRWA area of operation, remains suspended; (3) it is necessary to abandon the “politics of suffering”, namely the resisting belief that the refugees must continue to live in substandard conditions with limited advancement of rights and a clear residential status in host countries in order to assert and maintain their right to return. In fact, allowing refugees to have a dignified life may enable them to be political actors determining their present and future.

The 2016 New York Declaration provides a unique opportunity to realize the above paradigm shift. Applicable to Palestinian refugees, it provides an UN-sanctioned – with the broadest possible endorsement of the international community – mandate for the elaboration of a comprehensive response framework for Palestinian refugees, dealing with the various unresolved aspects of the Palestinian refugee situation, and developed through a multi-stakeholder approach.

With respect to UNRWA, the authors propose a radical yet gradual evolution of UNRWA's strategic direction, from providing humanitarian assistance and support for human development to a comprehensive response of all aspects of the Palestinian refugee question, including a more expanded focus on protection and durable solutions. By doing so, the agency would build on its existing mandate in protecting the rights of the Palestinian refugees and address the void left by the demise of the UN Conciliation Commission for Palestine (UNCCP), which critically complements the UN mandate toward them. Palestinian refugees need and deserve, like all other refugees, an international entity engaged not only in supporting their humanitarian needs but equally in upholding their human rights, including to return, restitution and compensation (flowing from the illegality of the ‘ethnic cleansing’ of Palestine), as well as facilitating such other durable solutions as the refugees may want to pursue. These latter rights flow from the illegality of the ‘ethnic cleansing’ of Palestine and have only become stronger with the passing of time and the further advancement of international law.

The development of a CRF for Palestinian refugees (CRF-PR) has the potential to reenergize the discourse in support of unmet Palestinian refugee rights, and reactivating a common front among host countries, refugees, and Palestinian leadership. By generating discussion and awareness, it would shift political attention towards the refugees and create important momentum to ‘federate’ and advocate jointly for a just and durable solution of the refugee question. Giving proper weight to a rights-based approach, centered on the refugees, and advancing the development of a CRF-PR through a multi-stakeholder platform under the aegis of the UN, has the potential to break the current impasse.

Implementing the above shift – including by turning UNRWA’s registration system into a central repository of documentary evidence of the refugees’ historic claims – could gradually pave the way for a broader reconsideration of the agency’s modus operandi, moving away from parallel delivery of some services in some of its “fields” of operations. As a first step, UNRWA may wish to develop a note on its mandate as UNHCR has done in 2013. The reforms and initiatives in this paper should also help inform the imminent development by UNRWA of its new Blueprint and five-year Medium-Term Strategy (MTS) for 2023-28.

## 1. Introduction

For most of the past seven decades, the international discourse with respect to Palestinian refugees has been dominated by its humanitarian dimension: how to cater for the refugees' basic needs and human development, and how to make the agency responsible for this – [UNRWA](#) – survive yet another financial crisis. Discussions on UNRWA's mandate, operations and recurrent financial perils have been devoid of critical thinking on solutions to the unresolved plight of the refugees. Considering the constant worsening of Palestinian refugees' living conditions in UNRWA's area of operations, this stands in stark contrast with the discourse with respect to all other refugee situations. For the latter, assistance, protection, and the pursuit of solutions are *always* pursued in conjunction. Indeed, it is often argued, including by the agency itself, that UNRWA does not have the mandate to pursue durable solutions, as this was uniquely given to the UNCCP (see below); that other actors are responsible for this, and that its role is purely apolitical.

Those engaging with respect to UNRWA, and Palestinian refugees take this context – and the seeming intractability of the Palestinian refugee situation – as a given, something that is rooted in a distant past and that cannot be changed today. The current interpretation of the agency's mandate, which determines scope and modality of UNRWA's services to Palestinian refugees, is largely unchallenged. In fact, UNRWA's mandate has not been static and has been conditioned by a number of factors: first, the existence of the UNCCP as the first body mandated by the General Assembly to resolve the Arab-Israeli conflict including the refugee situation since 1948, whose mandate UNRWA was to support and somewhat complement; second, the expansions of UNRWA's functions facing the de facto demise of the UNCCP as of 1964, and the urge to respond to the evolving needs and living conditions of Palestinian refugees. This has taken place in an interplay between successive Commissioners-General and the UN General Assembly (and occasionally the Security Council), also in line with evolving global developments in the fields of humanitarian action, international development assistance and aid coordination.

Political constraints have also critically shaped UNRWA's articulation of its mandate: Palestinian and host country opposition to the early works programs envisaged by the agency in the 1950s (which were in fact prompted by the intent of pursuing the refugees' local integration or resettlement given the difficulties of ensuring their return); donor pressure to rectify the refugee rolls, to limit beneficiary numbers and contain the agency's budget; as well as, in later decades, Israel and its main supporters' opposition to the agency being seen as feeding the hopes of the refugees to return to their original homeland, thereby allegedly perpetuating the Israeli-Palestinian and broader Arab-Israeli conflicts. Effectively this has made it hard to change (and even discuss) the agency's approach and, by extension, to move it on a sounder financial footing.

Closely connected to this is the perception that, in the absence of an institution that is actively pursuing solutions to their unresolved situation, UNRWA's existence and the services it provides are 'evidence' that the refugees' unresolved plight remains an international responsibility. This perception has been shared by the refugees, the Palestinian leadership and host governments. As a result, any discussion around the agency's mandate and functions that may result in a possible reduction or change in services, almost automatically results in mass opposition from the refugees. At UNRWA's governance level – the agency's donors on the one side, the hosts (including the GOP/PLO/PA) on the other – this means that no significant proposals for adjustment of the agency's programs or modus operandi have been considered.

The authors propose **a radical yet gradual evolution of UNRWA's strategic direction from providing support for humanitarian needs and basic human development to a comprehensive response on all aspects of the Palestinian refugee question, including a more expanded focus on**

**protection and the pursuit of durable solutions.** By doing so, the agency would build on its existing role in protecting the rights of the Palestinian refugees and fill the vacuum left by the UNCCP's de facto demise.

After this introduction, the paper briefly comments on the origins of the Palestinian refugee question as well as the international community's response thereto (Section 2). It then discusses the need to revisit responses provided so far to the Palestinian refugee question and the opportunities that are currently present towards this end (Section 3). The paper then highlights some of the policy implications of pursuing a more comprehensive response to the refugee question for UNRWA and its hosts and donors (Section 4). Section 5 offers some concluding remarks.

The paper is based on the authors combined engagement on the Palestinian refugee question for over forty years. It is written with the aim to inject new thinking into the discourse surrounding UNRWA and the Palestinian refugees, and to stimulate in depth discussion on the future of the agency and the refugee question. The paper is deliberately kept succinct; the various arguments are elaborated in greater detail and with the relevant sources in the above section on the background to the paper.

## **2. Origins of and UN response to the Palestinian refugee question**

Any (re)consideration of the approach towards UNRWA and the Palestinian refugee question must start with getting the facts right. The Palestinians who were uprooted in 1947-9 and, subsequently those who were displaced from the West Bank, including East Jerusalem, and the Gaza Strip and the Golan Heights in 1967, which at present number over 7 million in total, are not a mere accident of war. What the Palestinians knew from bitter experience, and have long denounced, has been confirmed by revelations from Israel's own archives. These were made public by the writings of Israeli 'new historians' and others. They show that the expulsion and 'ethnic cleansing' of much of Palestine's Arab population as of early 1947, their subsequent mass denationalization, dispossession, and denial of refugee return, were the means to the goal of creating a state for Jews alone, with the minimum possible non-Jewish population, who were not to enjoy full rights. According to the applicable norms of international law in force in 1948 – including legal principles which had just been reaffirmed by the Nuremberg and Tokyo war crimes tribunals – the execution of this policy amounted to crimes against humanity and war crimes, triggering not only individual criminal responsibility upon the perpetrators, but also the duty upon Israel to provide remedies to the victims. Arab states' involvement in the 1948-1949 war – in response to the mass exodus of the Arab population – by no means exonerates Israel from this responsibility. The latter has only increased with Israel's settler colonial intent and policies in the occupied Palestinian territory becoming more apparent.

These irrefutable historical facts and the state of the law in 1948 explain the UN response to the Palestinian refugee question in 1948. It was Count Bernadotte, the UN Mediator and former President of the Swedish Red Cross – as such intimately familiar with the laws and customs of war – who first asserted that the refugees have the right to return, restitution and compensation, based on the applicable law at the time. After his assassination by Jewish extremists in 1948, and following considerable deliberation, the UN General Assembly in late 1948 adopted resolution 194 (III), which, applying existing law at the time, incorporated the late UN Mediator's recommendation that: the refugees were entitled to return to their original homes or to resettlement elsewhere with respect to those not willing to return, as well as compensation. These rights and related claims have only become stronger with the passing of time and the further advancement of international law. The claim that the right of return has no foundation in international law is without merit.

When crafting the postwar international refugee regime, the international community committed to deal with the question of Palestinian refugee issue until it is “definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations” as reflected in art. 1D of the 1951 Convention on the Status of Refugees. The latter, in addition to article 7 (c) of the UNHCR Statute, recognizes a distribution of responsibilities among various UN agencies, primarily UNCCP and UNRWA and then UNHCR, in dealing with Palestinian refugees as internationally recognized refugees as of 1948.

In addition to asserting the refugees’ right to return, restitution and compensation, resolution 194 also established the UN Conciliation Commission for Palestine (UNCCP), comprised of France, Turkey and the USA, to pursue an overall settlement of the various issues of the Arab-Israeli dispute (territory, borders, fate of people, holy places, demilitarization, and refugees). UNCCP initially sought to resolve the problem of the refugees through return to Israel and compensation. When despite its efforts it was unable to advance the return of the refugees, it concentrated on collecting Palestinian property records with a view to facilitating restitution and compensation whenever this would become possible. Once the UNCCP had completed its meticulous work on these records, in 1964 it suspended its operations and has been effectively inoperative since. In parallel, the UNCCP was also instrumental in establishing UNRWA, initially with the dual mandate of continuing humanitarian assistance (“relief”) and providing support for local integration and limited resettlement (“works”) as a possible alternative to return (and compensation). Following the failure of the works programs, owing primarily to the manifest hostility of Arab countries and the refugees to any surreptitious attempt to pursue de facto local integration of the refugees, UNRWA refrained from stepping in to fill the void left by the UNCCP. This turned the Palestinian refugees into the only category of forced displaced with no institution responsible for the promotion of durable solutions to their plight. Notwithstanding this void, UNRWA has over time taken up functions that went beyond its original ‘relief and works’ role and has inter alia more explicitly articulated its protection responsibilities towards Palestinian refugees. The strengthened partnership between UNRWA and UNHCR, to ensure the continuity of protection of the Palestinian refugees that the drafters of the 1951 Convention had envisaged, is partially a result of this.

### **3. Revisiting the response to the Palestinian refugee question**

The long-standing funding shortfalls of UNRWA, and especially the unprecedented financial crisis since 2018, make it difficult for UNRWA to focus appropriately on Palestinian refugee rights, as they have evolved in the over 70 years since their original forced displacement. UNRWA has effectively become just a means to manage the humanitarian dimension of the unresolved Israeli-Palestinian conflict. The provision of basic services alone is no longer working, nor financially sustainable (based on voluntary contributions), and not addressing the most fundamental rights and needs of the Palestinian refugees. Even with the resumption of US funding, 2021 is likely to demonstrate that the agency’s ‘much of the same’ approach cannot continue: this is neither what the refugees need nor what donor taxpayers appear willing to support. This reality, and the lacuna that has resulted following the demise of the UNCCP and the collapse of the peace process, prompts a critical reexamination of the way the Palestinian refugee question has been approached and how UNRWA has interpreted and implemented its mandate over the past seven decades.

#### **3.1. A much needed and fundamental paradigm shift**

The 73 year-long failure to resolve the Palestinian refugee question, and the discourse around it since the late 1940s, especially since Madrid and Oslo, combined with the unsustainability of UNRWA’s current modus operandi, call for a fundamental paradigm shift in the approach to solutions for

Palestinian refugees, in line with the broader international response to refugee situations. This paradigm shift consists of three interrelated elements.

Firstly, the search for solutions for Palestinian refugees must be moved from the essentially bilateral approach of the last decades, namely the Madrid/Oslo framework, back to the multilateral arena of the United Nations. The UN (primarily, but not exclusively, through UNRWA) should assume a role with respect to the Palestinian refugee question that the organization (primarily through UNHCR) plays for other refugees, taking the lead in the development of a long-term strategy towards a comprehensive framework for durable solutions in accordance with international law. A super partes role of the UN is a necessary if not sufficient condition for reducing the power imbalance between Israelis and Palestinians. Expecting the UN to play a greater role in support of solutions does not mean side-lining the political players, or the refugees. While respecting the political role and leadership of the former, the current situation is that of an impasse, whereby Israel unilaterally advances its political agenda by force, the Palestinian leadership has limited power to resist, Arab and others' support is subordinated to wider political considerations, and the situation of the refugees and the Palestinian people at large further deteriorates. Hence the UN should intervene to stimulate a healthier, more principled dialogue and process, fully respecting the leading role of the Palestinian leadership on the official side as well as civil society, made up of respectable, authoritative political and intellectual figures, with the involvement of refugees themselves, especially young generations, and in concert with the principal hosts (and other countries hosting large numbers of Palestinian refugees). Being a critical part of this comprehensive process, could give the UN – and UNRWA in particular – the leeway to move beyond the current stalemate.

Secondly, in parallel with the above, the discourse on solutions must move beyond the current constraints of politics, and refocus on the rights of the Palestinian refugees that remain unfulfilled, as is the case with respect to other refugee situations. The international refugee framework guides responses to complex refugee situations which are multidimensional, addressing (1) the refugee status created because of displacement (i.e. individual refugee status), (2) its material consequences (i.e. damage or loss of property and loss of income), and (3) the moral, psychological, and immaterial loss and damage that may have marked it (i.e. collective dimension). It starts with identifying persons in need of international protection, accompanied by support for immediate and ongoing needs, followed by the pursuit of durable solutions, starting with, and not circumventing discussions concerning return and reparations. While no experience has been problem-free, the international community's efforts in effectively addressing large refugee crises as part of political solutions underscore the importance of addressing needs and rights of the refugees as part of ensuring a lasting peace. However, in the Palestinian case the need for the restoration of both individual and collective rights and for solutions that are just and lasting has been sidelined in the name of political considerations. An effective political process (and strategy) to solve the Palestinian refugee question will rather need to have international law as its frame of reference and include checks and balances so that it is not politics that define the limits of the law but applicable law that sets the limits of politics.

Thirdly, another important shift is necessary, away from what Nell Gabiam calls the “politics of suffering”, that is the traditional belief that has been prevalent amongst many in the Arab world, including Arab states and refugees, that in order to assert and maintain their right to return, the refugees must continue to live in substandard conditions, with limited advancement of rights and a clear residential status in host countries, let alone naturalization or resettlement. The historic rights of Palestinian refugees (to self-determination and return, restitution, and compensation) flow from the historical injustice they have suffered and are not conditioned by which durable solution may be preferred and/or attainable for individual refugees. As previously mentioned, the ethnic cleansing of

Palestine has amounted to crimes against humanity and war crimes, triggering not only individual criminal responsibility but also the duty upon Israel to provide remedies to the victims. These rights have not been advanced by decades of refugees' suffering and their realization should not be at the expense of other fundamental freedoms and rights. Nor should other rights be realized at the expense of the refugees' historic rights. On the contrary, allowing the refugees to have a dignified life may enable them to be actors capable to determine their political present and future.

How can this paradigm shift be realized in the face of the current political impasse? Who will speak on behalf of the Palestinians? How can UNRWA be of help and part of the solution, if its interpretation of its mandate prevents it to utilize its vast network and longstanding experience to technically support the pursuit of just and durable solutions? These are some of the questions which the following section and remainder of the paper will address.

### **3.2 The New York Declaration on Refugees and Migrants and the Global Compact on Refugees as an opportunity towards its realization**

The [New York Declaration on Refugees and Migrants](#) (NYD) and the [Global Compact on Refugees](#) (GCR), provide a unique opportunity to realize the above paradigm shift. The Declaration, unanimously adopted by the UN General Assembly in 2016 in response to the largest refugee crisis since WWII, provides a powerful political reaffirmation of the international refugee regime that was put in place after the Second World War, including the centrality of international law in protecting the human rights and fundamental freedoms of refugees, and the approach in promoting durable solutions for refugee situations. This was followed by the adoption of the GCR in 2018 that the NYD called for. Both the NYD and the GCR refer to, and the NYD annexes, a template for a Comprehensive Refugee Response Framework (CRRF). A CRRF is envisaged "for each situation involving large movements of refugees, including in protracted situations."

These documents represent an important high-level commitment to more predictable and comprehensive responses to refugee crises hinging on the rights of the refugees and the central role of the international community – burden-sharing. Their cardinal principles for solutions for refugees include: the importance of preventing and resolving conflict and addressing the root causes that give rise to large refugee movements; the importance of respect for international law; and the need for a multi-stakeholder approach, involving national and international actors, governmental and non-governmental. Neither these nor the principles the documents set out are new; what is new is the emphasis on a holistic and comprehensive approach, and the fact both the NYD and GCR endorse action to "promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable and timely return in safety and dignity" (NYD §75; GC § 85).

Rather than a one size fits all, the CRRF 'template' appended to the NYD, incorporates a set of principles upon which CRRFs for specific refugee situations can be drafted. So far, more than a dozen CRRFs (or elements thereof) have been developed in various regions of the world. The experience to date suggests that each CRRF reflects the specificities of the refugee situation it addresses. The CRRF's nature is twofold: it is a legal document, to the extent it refers to legal commitments and obligations of various stakeholders, but it is also political, as it helps form, structure and advance the political will needed to get out of a political impasse. This is critical as ultimately it will be the various political actors and stakeholders who will work to define the content of the CRRF. In-depth discussion about the CRRF, the opportunities it offers and the risks it may carry is indispensable, especially among refugees and host states.

Nothing in the text of the NYD excludes Palestinian refugees from its ambit. In fact, the texts make clear that they are applicable to all refugees. Moreover, Declaration contains two references to

UNRWA, and thereby refers indirectly to Palestinian refugees: the first in the context of overcoming funding shortfalls for refugees, and the second (in the CRRF) in the context of durable solutions. In addition, the GCR refers to UNRWA as a stakeholder in the context of education for refugees. Because the NYD applies to Palestinian refugees, it provides a UN-sanctioned – with the broadest possible endorsement by the international community – opportunity for the elaboration of a comprehensive response framework for Palestinian refugees (CRF-PR). As already noted, the CRRF template, adopted by all UN member states, is an integral part of the NYD. As such it directs the development of a CRF-PR within the overall framework already endorsed unanimously by all 193 UN member states.

#### **4. Implications for UNRWA**

This section discusses the implications for UNRWA of the proposed paradigm shift and the significance of the NYD and GCR at two levels: firstly, its responsibility to initiate the development of a CRF-PR through the multi-stakeholder approach envisaged by the NYD (Section 4.1) and secondly, the implications of the proposed paradigm shift through the development of a CRF-PR for the agency's own *modus operandi* (Sections 4.2 and 4.3).

##### **4.1 Initiating the development of a Comprehensive response framework for Palestinian refugees**

A CRF-PR, developed under Palestinian leadership, including refugee groups and diaspora networks across the world, has the potential of ending Palestinian exceptionalism and allows for a 73-year-old refugee question to be approached anew. To date no comprehensive response framework has been developed for Palestinian refugees. This lacuna should be addressed at the earliest opportunity, with UNRWA and UNHCR facilitating/coordinating the process together on behalf of the UN, each with respect to the Palestinian refugees for which it is responsible.

In terms of its contents, it is envisaged that a CRF-PR would: (1) set out the legal framework applicable to Palestinian refugees under the various applicable areas of international law; (2) address the root causes of the refugee question including the past, the present and the meaning of self-determination; (3) make provision for the pursuit of durable solutions for Palestinian refugees (return, local integration, resettlement); (4) consider arrangements for restitution and compensation. A detailed discussion of the contents and the modes of development of a possible CRF-PR are discussed [elsewhere](#).

In terms of the CRF-PR's development, as called for by the NYD and the GCR, a multi-stakeholder approach is foreseen, involving the mobilization of a wide and diverse front of supporters of the framework, including the UN, host countries (both in UNRWA's area of operations and other countries that host significant numbers of Palestinian refugees), donors, and civil society. The Palestinian political leadership and the refugees, including through relevant civil society groups, must have a central and leading role in this process.

What would make development of a CRF-PR a worthwhile investment? Firstly, as elaborated in next sub-sections, the development of a CRF-PR could be viewed as "an architecture to reenergize the discourse in support of unmet Palestinian refugee rights" (ARDD 2019). The MEPP has negatively affected host countries' interest in the Palestinian refugees, splintered the Palestinian polity, and fragmented what remains of a front for support. The CRF-PR has the potential to generate discussion and awareness, shift political attention towards the refugees and create important momentum to 'federate' and advocate jointly for a just and durable solution of the refugee question. The framework would rest on a solid foundation, addressing the unfulfilled rights of Palestinian refugees in the context of applicable UN resolutions and provisions of international law that reaffirm them. To date, political considerations have been overriding and the rights of the refugees have been at best a secondary

concern. Giving proper weight to a rights-based approach, centered on the refugees, and advancing the development of a CRF-PR through a multi-stakeholder platform under the aegis of the UN, has the potential to break the impasse. While the situation on the ground in occupied Palestinian territory has worsened, and Western complacency has certainly emboldened right-wing-led Israeli politics, there is today much more widespread criticism of unlawful Israeli policies and practices, including from the Jewish diaspora and civil society around the world. Finally, a CRF-PR may pave the way for a sustainable realignment of UNRWA's modus operandi, thereby overcoming the recurrent financial crises haunting the agency.

#### **4.2 Realigning the Agency's mandate towards a more comprehensive protection function**

UNRWA's self-imposed interpretation of its mandate as excluding the pursuit of durable solutions and the protection of related rights is part and parcel of what has made it so hard to change the agency's approach and, by extension, to move it on a sounder financial footing. Following the demise of the UNCCP and in the absence of an institution that is actively pursuing solution to their unresolved situation, for the refugees, the Palestinian leadership and host governments, the UNRWA services are the 'evidence' that the refugees' unresolved plight remains an international responsibility.

Palestinian refugees need and deserve, as other refugees, an international entity engaged not only in supporting their human development but equally in upholding their full entitlement to human rights, including to return, restitution and compensation, as well as facilitating such other durable solutions as the refugees may want to pursue. Rather than reviving the UNCCP (which theoretically remains an option), the NYD and GCR provide for a strong argument for UNRWA to extend its existing role in protecting the rights of Palestinian refugees by reinterpreting its mandate to incorporate the pursuit of durable solutions. By doing so, UNRWA would be operating under the general mandate that the UN General Assembly has conferred on both the UNCCP and UNRWA to assist and protect Palestinian refugees, including through the pursuit of durable solutions, arguing that with the de facto demise of the UNCCP, it is incumbent on UNRWA to take over some of its functions.

In pursuing this direction, UNRWA would in fact realign itself more closely with its original mandate and some of its practices over the years. Indeed, UNRWA's initial dual mandate reflected a combination of assistance ("relief") and support for local integration and limited resettlement ("works") as a possible alternative to return (and compensation). Whilst gradually abandoning the works programs, the agency has continued to support the socio-economic participation of refugees in host countries through its various programs, especially education and vocational training, in addition to advocating with the host governments for an improvement of their living conditions and access to rights (especially in Lebanon, and with respect to the ex-Gazans in Jordan). Through its Placement Offices, the agency has also provided hundreds of thousands of Palestinian refugees 'alternative pathways' to a better life in Gulf countries. Finally, in exceptional situations, UNRWA has coordinated closely with UNHCR and the PLO to facilitate the resettlement of Palestinian refugees in third countries (e.g. those from Iraq). But there has not been a similar engagement on pursuing concrete steps vis-à-vis the right of return or compensation, which had made its early (implicit, de facto) role with respect to other durable solutions controversial among the refugees.

In many respects the meaning and full potential of the 'continuity of protection', implied in Article 1D of the 1951 Convention, is still to be fully explored. For it to materialize, a comprehensive approach to Palestinian refugees, including proper mapping of their dispersal and protection needs, systematization of data, harmonization of registration procedures and strategic planning to make sure that protection needs are met, is compelling. The UN, through the work of UNRWA and UNHCR, as well as Palestinian authorities has an important role to play to initiate and consolidate this process.

UNRWA has a mandate to protect the full remit of rights (i.e. beyond socio-economic rights through service provision) of the Palestinian refugees in accordance with relevant bodies of international law. UN General Assembly resolutions affirm UNRWA's protection role, referring to the "valuable work done by the Agency in providing protection to the Palestinian people, in particular Palestine refugees" and encouraging the Agency to "make further progress" in addressing the needs and rights of children and women in its operations, in accordance with the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Building on these foundations and since the turn of the century, UNRWA has developed a more explicit focus on protection. It has taken steps to mainstream protection concepts and practice at all levels of the Agency.

Owing to a difficult humanitarian context in most of the areas where it operates, with competing emergencies and priorities, UNRWA has faced increasing challenges even in delivering the services and programs for which it has historically been responsible. As part of the suggested realignment of the interpretation of its mandate, UNRWA should consider addressing this lacuna thereby also supporting the protection of the Palestinian refugees' most critical rights. For example, mapping of protection needs of the refugees – connected to unfulfilled rights – should help determine which issues can be addressed by the agency and which would be more appropriately dealt with by other actors. UNRWA can help support state compliance in ensuring fair treatment under the law, access to justice, personal security in the camps, freedom of movement, access to public services, and freedom from discrimination. UNRWA does have – and regularly uses – the power to raise certain matters with competent authorities and intervene to promote the enjoyment of rights and improvement of living conditions of the refugees, and this should be pursued further. There is a well-recognized need for greater participation of refugees in matters concerning their wellbeing and the realization of their rights. This would be advanced by the establishment of structured consultation mechanisms between UNRWA and refugee grassroots organizations, through opinion polls, surveys, and refugee 'forums' (e.g. preceding meetings of the UNRWA Advisory Commission).

Whilst, like UNCCP before it, UNRWA cannot advance the return of refugees as long as Israel refuses this, the UN officially recalling the refugees' rights on the subject is important for the eventual pursuit of related historic claims. In this context, UNRWA's ongoing reform of its Refugee Registration Information System is a significant development. In particular, a fully integrated registration portal will allow refugees to directly access their historical and other records and download electronic family registration cards and individual service cards. This will also make it possible to link the UNRWA registration records with the property records collected by the UNCCP. The latter – the result of a detailed UNCCP survey that took more than a decade to complete – contain the most accurate data available on properties Palestinian refugees were forced to leave behind in what became the State of Israel. Though originally collected in paper form, with these records stored at the UN Secretariat in New York, they have since been digitized, and the Institute for Palestine Studies is in an advanced state of building a comprehensive database incorporating the records. Linking the UNRWA and UNCCP/IPS databases, combined with access to Israeli and other historical archives, has the potential to dramatically advance the prospect of restitution when possible and compensation where it is not. Gradually turning the current registration system into part of a central repository of documentary evidence of the refugees' historic claims would prepare the ground for future reparations. Furthermore, if Palestinian refugees and their (political) representatives know that a comprehensive record of their rights is securely under UN control, the political importance attached to maintaining

the status quo with respect to UNRWA service provision is expected to gradually diminish, paving the way for a broader reconsideration of the agency's modus operandi.

#### **4.3 A gradual reconsideration of the approach to service delivery**

The NYD and the GCR express a clear preference for delivering assistance to refugees through national and local service providers, such as public authorities for health, education, social services and child protection, moving away from “parallel systems for refugees, wherever possible.” In comparison to NYD's and the GCR's recommended approach, the direct service delivery model of UNRWA is an anomaly: UNRWA is unique amongst UN agencies in having a quasi-governmental service provider status<sup>1</sup> with a mandate from the General Assembly that provides direct responsibility for the delivery of basic services that are broadly comparable to those provided by governments. This includes directly managing education, health, and social services in parallel to national systems of the host countries.

As discussed earlier, there are political reasons why the parallel service delivery model of UNRWA has persisted. Beyond the fact that the GOP/PLO/PA and Palestinians themselves would likely see any transition to national providers away from UNRWA services as an abandonment by the international community, host countries are reluctant to take on more responsibility for Palestinian refugees as they feel this may contribute to relinquishing Palestinian refugee rights and/or perpetuating their presence within their borders. The current scope of services provided by UNRWA are politically convenient for them as they are not forced to address the issue. There is also the erroneous concern, similar to what has been discussed earlier, that any inclusion of Palestinian refugees in the services of host countries would be tantamount to local integration and therefore undermine their historic right to return. For Palestinian refugees, their identity is constantly affirmed by the delivery of UNRWA services that has been such a stabilizing force in their lives.

These political considerations are significant but not determining. The experience of Palestinians in the diaspora across the world show that the rights and status follow the person. **One does not cease to be Palestinian refugee because he or she is not in UNRWA schools:** this has been clear to all Palestinian families whose children went to host government schools, to the Palestinian families who moved to Iraq, Kuwait, Libya, the UAE and beyond, after previously having lived in UNRWA's area of operation, and to the many in the Palestinian diaspora, who have not forgotten the plight of the Palestinian people, and strive every day with their own means to undo their historical injustice. Introducing the provision of refugee assistance through national service providers, as the GRC recommends, is a measure aiming to support inclusivity within the host communities, sustainability in the long-run, and better protection for the rights of refugees.

Any transition of some of its responsibilities (in some of its “fields” of operations) would in no way imply there would not continue to be a role for UNRWA but – like UNHCR in many other contexts – this would shift in focus, with a differential range of services based on the situation and constraints of the different hosts, as well as technical support to host authorities, and providing greater and more effective protection and the pursuit of a just and durable solution. Indeed, for any such transition to succeed, it would be critical for UNRWA to *first* align its mandate and adopt a more comprehensive approach to protection as set out earlier in this section. While extremely politically challenging, such a transition to national service providers and realignment of UNRWA services could provide the sustainable support to Palestinian refugees that is currently lacking.

## 5. Conclusion

Seizing the opportunity afforded by the NYD and GCR will be difficult and face many hurdles. But doing nothing, sustained by the illusion that the Palestinian refugee problem will eventually either miraculously resolve by itself, or alternatively disappear by inertia, whilst the situation of the refugees continues to deteriorate and financing UNRWA's programs and projects is becoming less and less sustainable, carries greater risks. The successful development of a CRF-PR, reaffirming the historical rights of the Palestinian refugees, seeking practical ways for the materialization of such rights, while also allowing solutions that are at present possible to be realized, would give the refugees a more secure present and a more hopeful future. It would support them in advancing their search for justice and accountability and in determining their own destiny, one that they have long been denied. This does not need to await – and could help advance – a more positive outlook for the broader political process.

Short of the development of a (full-fledged) CRF-PR, the paper suggests several changes to UNRWA's current *modus operandi* – a realignment of the agency's mandate towards a more comprehensive approach to protection, and the gradual reconsideration of the approach to service delivery – that the agency may wish to consider. Once again, the two changes are interdependent. A shift of the service delivery model away from the current parallel system will only find the political and refugee acceptance necessary for its successful implementation once the agency has implemented the first change.

As a first step, UNRWA may wish to develop a note on its mandate as UNHCR has done in [2013](#); this would clarify what UNRWA can and cannot do in support of Palestinian refugees and reflect the proposed adjustment in terms of protection and the pursuit of solutions. The General Assembly, when discussing UNRWA's annual report or when considering the extension of the agency's mandate in late 2022, could take note of this development and offer an endorsement thereof, as has previously happened with other significant policy changes promoted by the agency (such as the initial, more explicit, inclusion of protection within UNRWA's remit). The reforms and initiatives in this paper should also help inform the imminent development by UNRWA of its new Blueprint and five-year Medium-Term Strategy (MTS) for 2023-28.

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