



universität  
wien

# DIPLOMARBEIT

Titel der Diplomarbeit

“The Evolution of UNRWA’s Mandate – its Role in  
Development and the Protection of Palestine  
Refugees“

Verfasserin

Sophie Sutrich

angestrebter akademischer Grad

Magistra der Philosophie (Mag. phil.)

Wien, 2008

Studienkennzahl lt. Studienblatt:

A 057 390

Studienrichtung lt. Zulassungsbescheid:

Internationale Entwicklung

Betreuer:

Univ.-Doz. Dr. John Bunzl



"When you call yourself an Indian or a Muslim or a Christian or a European, or anything else, you are being violent. Do you see why it is violent? Because you are separating yourself from the rest of mankind."

- Jiddu Krishnamurti



## Content

1. Introduction.....	3
2. The History and Work of UNRWA in the Light of the Arab-Israeli Conflict .....	6
2.1. Conflict over Palestine.....	7
2.2. UNRWA's Work as a Humanitarian Actor.....	10
2.3. Definition of Palestine Refugee.....	11
2.4. How Many Refugees Are there?.....	13
3. International Organisations and UNRWA in International Law .....	16
3.1. The Extension of Competencies in International Law .....	16
3.2. UNRWA: A Subsidiary Organ of the United Nations .....	18
3.3. The Mandate of UNRWA .....	20
3.4. Reasons for the Extension of Competencies within UNRWA.....	21
4. UNRWA's Role as a Development Agency.....	25
4.1. From Technical Assistance to Fully Integrated Development Programmes .....	27
4.2. Today's Development Work .....	31
4.3. Nahr El-Bared.....	33
4.4. Assessment of UNRWA's Work towards Development .....	37
4.5. Criticism .....	40
4.6. Conclusion .....	46
5. UNRWA's Role in the Protection of Refugees .....	47
5.1. What is Protection? .....	48
5.1.1. The United Nations and Human Rights .....	48
5.1.2. Definition of the Term Protection .....	49
5.1.3. Temporary Protection .....	53
5.2. Palestine Refugees in International Law .....	54
5.2.1. Reasons for a Special Regime for Palestinian Refugees .....	54
5.2.2. The Applicability of Human Rights in the OPT.....	58
5.2.3. The Right of Return.....	62
5.2.4. The Applicability of Humanitarian Law.....	65
5.2.5. The Legal Status of Palestinians in Lebanon, Syria and Jordan .....	69

5.2.6.	Law Relating to Stateless Persons.....	74
5.3.	UNRWA's Protection Mandate .....	76
5.3.1.	Historical Origin.....	77
5.3.2.	The RAO-Programme .....	80
5.3.3.	The OSO-Programme .....	82
5.3.4.	Efforts towards Durable Solutions .....	84
5.3.5.	Advocacy .....	85
5.3.6.	Co-operation between UNRWA and UNHCR .....	87
5.3.7.	Critical Thoughts on the Actual Effects of an Explicit Protection Mandate .....	88
5.3.8.	Criticism in the New Millennium.....	89
5.3.9.	The Evolution of the Term Protection within UNRWA .....	90
5.3.10.	International Reactions to UNRWA's Protection Efforts .....	92
5.3.11.	Recent Developments: The Responsibility to Protect (R2P) .....	93
5.4.	Identification of Protection Gaps.....	94
5.4.1.	Violations of Human Rights and Humanitarian Law in the OPT .....	95
5.4.2.	Existing Mechanisms to Fight for Human Rights .....	102
5.5.	Conclusion on UNRWA's Role in Protection .....	106
6.	Conclusion.....	109
7.	Bibliography .....	113
8.	Annex .....	130
8.1.	Glossary.....	130
8.2.	Abstract (English) .....	131
8.3.	Abstract (German) .....	132
8.4.	CV of the Author (German) .....	134

# 1. Introduction

Why does the United Nations Relief and Works Agency (UNRWA) still exist today? Almost 60 years after it was established by the General Assembly as a temporary agency, it remains active today, and one might argue that it is more established in the Near East than ever. In its day-to-day work there is not much evidence of temporary characteristics of the agency. Indeed, from being responsible for basic relief and humanitarian services only it has developed into a provider of quasi-public services including education and health care.

During an internship with UNRWA in its Geneva office in 2007, I was placed in the role of representing UNRWA to interns and employees of other UN agencies. For the first time I was confronted with criticism of the agency, and I was unable to craft a response to those who questioned the legitimacy of UNRWA. Why is it necessary to single out one particular refugee problem when there is the Office of the UN High Commissioner for Refugees (UNHCR), which has a mandate to care for every refugee in the world *except the ones receiving services from UNRWA*? Critics – less within the UN but more so in the press - go as far as to describe UNRWA as a “cancerous” organisation that spreads in the region to make refugees ever more dependent on foreign aid and to perpetuate the refugee problem into eternity. Although my initial reaction was to see this criticism as exaggerated I still could not find the right arguments in favour of UNRWA’s prolonged existence.

For my thesis I developed a set of questions that are more feasible, but are motivated by the basic question, “why does UNRWA still exist today”? In order to respond to this question I first had to explain the reasons for its establishment, as well as to identify the most prominent developments concerning its mandate and its operations in the last 6 decades until today. While this is a rather descriptive process, my research was always guided by the more interesting questions of “why did the agency change?”, “who initiated the changes?”, and “whose interests does UNRWA serve?”

First, the sole fact that UNRWA still exists today indicates that the stakeholders concerned welcome the agency’s existence. Despite criticism the agency has never actually been threatened with dissolution. The countries and organisations concerned must have an interest in keeping UNRWA and its services to the Palestine refugee population – and even in expanding UNRWA’s response to changes on the ground.

Making these interests visible is also an aim of my thesis, which furthers the goal of understanding the agency's development.

The next step is to ask in how far UNRWA is an active player in these developments. Is it, as a subsidiary organ of the UN, just responsible for the execution of decisions that were taken elsewhere, or is it an active creator and designer of its work?

I chose two elements of UNRWA's work in order to find answers to the above-mentioned questions: *development* and *protection*. The evolution of these concepts will be explained, changes will be made visible and again questions will be asked on the motives of these changes.

The two aspects *development* and *protection* offer ground for research because they have clearly developed in history and are still developing. The concept and the implementation of development have changed considerably – a change that can be documented and shown. The agency's engagement in protection issues has changed as well and discussions within the agency on its protection role are still ongoing.

UNRWA calls itself a *human development agency* rather than only a *development agency*. Nonetheless, this thesis argues that most if not all of UNRWA's work can be described as being development work, since this term over time has come to include most parts of human life in addition to the classic development projects such as the construction of infrastructure. This restrictive view of development, which was common some decades ago, is today out-dated. Therefore, the focus on development allows me to depict fundamental changes and the evolution of UNRWA's day-to-day work.

Protection is a concept widely discussed within the UN. Nonetheless a concrete definition of the term is often difficult to find. UNHCR has issued a number of documents on the issue, which focus on the aspect of human rights. Protection is generally understood as making sure the rights of individuals and groups are respected. Thus it is easy to see why the question is relevant to Palestine refugees and UNRWA. Considering the difficult and protracted situation of the Palestine refugees it will be easy to prove that huge protection gaps exist, without a clear answer of who is responsible for addressing these gaps. In contrast to UNHCR, UNRWA does not have an explicit mandate for protection. This is due to political and historical reasons, which will be explained in this thesis.



For years authors have focused on the protection gap and on the fact that UNRWA does not have this explicit mandate. But recent developments within the UN and within UNRWA have changed this focus fundamentally. Today UNRWA takes it as a given that it possesses a protection mandate. Instead of focusing on the lack of an explicit mandate and a comparison with UNHCR, UNRWA now argues that protection is like an implicit power, which is inherent to every UN agency. This argument stems from larger UN reforms, which have considerably changed international law especially in respect to humanitarian intervention and state sovereignty, creating a responsibility to protect, which is binding not only on states but also on the UN and all of its agencies as well.

An additional issue that dazzled me during my time with UNRWA and illuminates the agency is the isolation of the agency within the UN system. UNRWA is widely unknown even to UN personnel, despite the fact that it is one of the biggest agencies in terms of employees: almost 28,000 in UNRWA's area of operation.<sup>1</sup> Furthermore, it is also not directly included in any of the efforts to improve coherence within the UN. It is not part of the United Nations Development Group (UNDG). It is not a member of the Inter-Agency Standing Committee (IASC), which was created in the framework of the humanitarian reform, and which states on its website that it is a "unique forum involving the key UN and non-UN humanitarian partners."<sup>2</sup> And while there is a Protection Cluster Working Group headed by UNHCR, which meets regularly, and UNRWA has considerable experience in the field of protection, as shown in this thesis, it attends these meetings as an observer only. A result of this isolation is the fact that UNRWA enjoys relative autonomy within the UN and can take important decisions without receiving much internal UN attention. In addition to UNRWA's unique mandate, which will be explained later on, this is a special characteristic of the agency, which has important implications for the functioning of the agency. This blind spot towards UNRWA by the wider public but also within the UN further added to my interest to write about the agency.

Finally, when writing about UNRWA the manifold criticism that is brought against the agency must be addressed. In addition to the accusation that UNRWA is biased and indirectly supports terrorism, voices of criticism are directed towards UNRWA's

---

<sup>1</sup> UNRWA in figures, 30 June 2008. UNRWA's five fields of operation are Gaza, the West Bank, Lebanon, Syria and Jordan.

<sup>2</sup> IASC-Website <http://www.humanitarianinfo.org/iasc/content/default.asp> (Download 15 October 2008).

existence itself. These voices state that UNRWA perpetuates the refugee problem and that without its assistance the refugees might have been absorbed into the Arab host countries. However, the refugee problem in itself depends on a multitude of actors, UNRWA being just one of them, and arguably not the most powerful. Answers to this political deadlock are beyond the scope of this thesis. While criticism of the agency is certainly valid, UNRWA was created by the General Assembly and can therefore not be made responsible for its own existence. What remains to be addressed is the question if UNRWA did everything to make itself dispensable and prepare for the time when it will no longer be needed. It is sometimes stated that UNRWA as an organisation tries to secure its own existence instead of preparing for dissolution. But was it really dynamics *within* UNRWA that ever more expanded its mandate, therefore ensuring that Palestine refugees have remained dependent on its services? This is also one of the underlying questions, which this thesis seeks to answer.

This thesis will explore the ways in which the real role of the UNRWA is more complicated than the critics make it out to be. UNRWA has to be understood as an agency that is directly connected to a broader problem, the impossible situation of the large group of Palestine refugees. One major hallmark of this refugee problem is the situation of limbo in which they find themselves, due to political reasons. For 60 years, Palestinian refugees have lived in temporary arrangements due to the fact that there is no solution that can be agreed upon by all parties concerned.

Much of UNRWA's work is handicapped by the fact that it operates in a field of such political tensions, and that it has no impact on many of the factors that influence its work. On top of that, the frequent instability in the political situation forces UNRWA to continuously adapt its strategies.

## **2. The History and Work of UNRWA in the Light of the Arab-Israeli Conflict**

Especially in the aftermath of World War Two the international community acknowledged that refugees deserve special protection under international law. The creation of the United Nations High Commissioner for Refugees (UNHCR) and the 1951

Convention relating to the Status of Refugees are symptoms of this acknowledgement. It was decided that there was to be only one particular group of refugees excluded from the UNHCR as well as the 1951 Convention: refugees from Palestine.<sup>3</sup>

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established under General Assembly resolution 302 (IV) of December 1949 and began operations in May 1950.<sup>4</sup> Since the creation of UNHCR, UNRWA has been the only United Nations agency set up for one specific refugee problem.<sup>5</sup> The reasons for this will be subject of chapter 5.2.1. In the present chapter the reader will be provided with information about the events that led to the creation of UNRWA, as well as with a brief overview of UNRWA's work, a definition of the term *Palestine/Palestinian refugee* and the numbers of these refugees.

## 2.1.Conflict over Palestine

In the course of history the territory that is now Israel/Palestine has been ruled and owned by a number of different peoples. The Jewish people ruled the Land of Israel between 1200BCE and the second century AD. The Romans conquered the land and renamed it Palaestina.<sup>6</sup> From 636 AD until 1099 Palestine was under Arab rule. Then the Crusaders ruled for nearly 100 years until the Mamluks took over followed by the Turks, who made Palestine part of their Ottoman Empire for the next 400 years. During the First World War the British captured it from the Turks. During the Ottoman Empire Jewish immigration was allowed, but because their numbers were small the Arab population showed “little resentment”<sup>7</sup> towards them. In 1881, there were about 450,000 Arabs in Palestine (90% Muslim, 10% Christians) and about 25,000 Jews.<sup>8</sup>

In 1897, Theodor Herzl organized the First Zionist Congress in Basel which intended to create a sovereign state for the Jewish people.<sup>9</sup> But this effort was not taken seriously by

---

<sup>3</sup> Takkenberg, Lex: *The Status of Palestinian Refugees in International Law*, Claredon Press, Oxford, 1998, p.6.

<sup>4</sup> UNRWA Website, [www.un.org/unrwa](http://www.un.org/unrwa) (Download 2 September 2008).

<sup>5</sup> Takkenberg, 1998, p.29.

<sup>6</sup> Morris, Benny: *1948*, Yale University Press, New Haven/London 2008, p.1.

<sup>7</sup> Takkenberg, 1998, p.8

<sup>8</sup> Morris, 2008, p.2.

<sup>9</sup> The exact wording was to establish a “publicly and legally secured home [Heimstätte]”. According to Morris the reason for this wording was that the Congress did not want to alarm the Ottoman rulers, but the intent to create a sovereign state existed. Morris, 2008, p.5.

the Arabs until much later. In 1917, the Balfour Declaration made it impossible for the Arabs to further ignore the possible establishment of a Jewish state. A.J. Balfour, the Foreign Secretary in the British wartime cabinet at the time declared to Lord Rothschild, the British Jewish leader that Britain would support the establishment of a “national home for the Jewish people” in Palestine.<sup>10</sup>

In the first two decades of settlement there was little Arab violence against the Zionists, except occasional acts of violence of criminal nature. According to Morris, this was due to the fact that the “Arabs lacked political, nationalist awareness and were thoroughly disorganized.”<sup>11</sup> First anti-Jewish rioting occurred in 1921 and 1929. British attempts to restrict Jewish immigration lead to Jewish riots in 1933, the same year that the Nazi government in Germany came into power, which gave the Zionist cause further leverage and urgency.<sup>12</sup> In the interwar period a Palestinian national movement emerged, which led to riots and a full-scale revolt against Britain and the Jews from 1936 until 1939.<sup>13</sup> In 1937, the Peel Commission suggested dividing Palestine into a Jewish and an Arab state. This plan was accepted by the Zionists but rejected by the Arabs.

Tensions were ongoing, including Jewish terrorism against Britain. Britain, therefore, wanted to withdraw from Palestine and “dumped the matter in the lap of the United Nations”.<sup>14</sup> In 1947, the General Assembly presented a partition plan in resolution 181 (II).<sup>15</sup> It called for the creation of an Arab and a Jewish state by October 1948. The division plan was a “much more sophisticated version of the one suggested by the Peel Commission ten years earlier”.<sup>16</sup> The British mandate should be terminated and there should be a progressive withdrawal of British forces and the establishment of a Jewish state and an Arab state. Jerusalem should be under international regime.<sup>17</sup> The Arab state should comprise a much larger version of what is now the West Bank, a longer and L-shaped Gaza Strip as well as the land west and north-west of the Sea of Galilee up to the Lebanese border.<sup>18</sup> The rest would have become the Jewish state and Jerusalem would

---

<sup>10</sup> Cit. in Takkenberg, 1998, p.9.

<sup>11</sup> Morris, 2008, p.7.

<sup>12</sup> Takkenberg, 1998, p.9

<sup>13</sup> Shlaim, Avi: *The Iron Wall: Israel and the Arab World*, Penguin Books, London/New York, 2000, p.10.

<sup>14</sup> Morris, Benny: *The Birth of the Palestinian Refugee Problem, 1947-1949*, 1987, p.6.

<sup>15</sup> United Nations General Assembly Resolution 181 (II) (A+B), *Future Government of Palestine*, of 29 November 1947.

<sup>16</sup> Takkenberg, 1998, p.12.

<sup>17</sup> Shlaim, 2000, p.25.

<sup>18</sup> Takkenberg, 1998, p.12.

have received international status. The United Nations Palestine Commission was also established through this resolution and charged with carrying out the Assembly's recommendations. The Security Council was requested to take the necessary measures to implement the partition plan. The partition plan was accepted by the Jewish Agency despite criticism on issues such as limited Jewish migration and territorial limits.<sup>19</sup> The plan was not accepted by the Arab population of Palestine and the Arab states because they argued that it meant a violation of the United Nations Charter with respect to the right of people to decide their own destiny.<sup>20</sup> They claimed the resolution was illegal and announced that they would resist its implementation by force.<sup>21</sup>

The adoption of resolution 181 led to outbreaks of violence in many parts of Palestine. Just one day after the last British troops had withdrawn war broke out when a number of Arab states joined the conflict.<sup>22</sup>

The war ended with the signing of the armistice agreements in 1949; yet, formal peace agreements didn't follow immediately.<sup>23</sup> Already in December 1948, the United Nations Conciliation Commission for Palestine (UNCCP) had been created by General Assembly resolution 194 (III) – which also contained the right of return of Palestine refugees – to provide protection and facilitate durable solutions for the displaced as a result of conflict and war from 1947 to 1948. The Commission is composed of the United States, France and Turkey. It is the only body explicitly charged with the protection of Palestine refugees, but has been dysfunctional since the early 1950s.<sup>24</sup> One of the commission's sub-organs was the Economic Survey Mission for long and short term economic relief. The conclusions of this mission resulted in the creation of UNRWA by the General Assembly as a reaction to the great humanitarian need of the Palestine refugees.<sup>25</sup>

---

<sup>19</sup> Takkenberg, 1998, p.12.

<sup>20</sup> Takkenberg, 1998, p.12.

<sup>21</sup> Shlaim, 2000, p.27.

<sup>22</sup> Takkenberg, 1998, p.12.

<sup>23</sup> Morris, 2008, p.416.

<sup>24</sup> Rempel, Terry M.: *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*, BADIL Information & Discussion Brief no.5, June 2000. See also chapter 3.5.1.

<sup>25</sup> Rempel, *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*, 2000, and United Nations Press Release PAL/534, *Gordon Clapp speaks on the work of the UN Economic Survey for the Middle East*, 13 October 1949.

## 2.2.UNRWA's Work as a Humanitarian Actor

UNRWA was founded in 1949 by General Assembly resolution 302 (IV) to carry out direct relief and works projects for Palestine refugees in the Near East. Today UNRWA operates in Gaza, the West Bank, Jordan, Lebanon and Syria. It divides its operations into five categories: Education, Health, Relief and Social Services, Microfinance and Microenterprise Programme, and Operational and Technical Services.<sup>26</sup> Education is its biggest programme with around 60% of UNRWA's budget and two-thirds of staff. There are 663 elementary and preparatory schools providing education for nearly half a million refugee children.<sup>27</sup> The Agency is also the prime health care provider for Palestine refugees.

Today there are about 4.4 million Palestine refugees registered with UNRWA.<sup>28</sup> The agency employs around 28,000 people, the majority of which are Palestine refugees themselves. Only around 113<sup>29</sup> employees are international staff, who are on the payroll of the general UN budget.<sup>30</sup>

Development work and humanitarian assistance are two different concepts that may overlap in some instances. In this paper the difference between the two will be defined in the following way: humanitarian assistance (such as relief) addresses basic and acute needs that occur from a current crisis or an ongoing situation of poverty – in contrast to development work/assistance, which tries to achieve long lasting improvement of a situation. UNRWA was created as a relief agency in response to the acute needs of Palestine refugees in 1949. In addition it should provide some work for the people affected, therefore the name *relief and works agency*. Since its creation the functioning has changed significantly. According to the above definition, four of UNRWA's five categories of services fall under development work, as opposed to humanitarian assistance. Today relief and social services make up for 10% of the total budget, as compared to nearly two thirds in 1950 when the Agency started operations in May 1950.<sup>31</sup> Still the agency remains a crucial actor in this respect, providing a safety net and

---

<sup>26</sup> The last category contains housing and infrastructure projects. UNRWA, Medium Term Plan 2005-2009, p.34.

<sup>27</sup> UNRWA: *UNRWA in 2006*, Gaza, September 2007, p.16.

<sup>28</sup> UNRWA in 2006, p.8.

<sup>29</sup> UNRWA in figures, December 2007.

<sup>30</sup> The general UNRWA budget is made up of voluntary contributions. UNRWA in 2006, p.8.

<sup>31</sup> UNRWA, General Fund Appeal 2008-2009, p.9 and 22.

responding to the various crises in its fields of operation – especially in the OPT and in Lebanon. In the OPT dependency on UNRWA aid handouts has reached unprecedented levels.<sup>32</sup> In Gaza 35 percent of the population live on less than two US dollars a day, and 80 percent receive humanitarian assistance.<sup>33</sup>

### 2.3. Definition of Palestine Refugee

One has to differentiate between the term *Palestinian refugee* and *Palestine refugee*. The term *Palestine refugee* relates to any person who resided on the territory which was Mandate Palestine at the time, who had to flee this territory, and their descendants – irrespective of the person's nationality. *Palestinian refugee* on the other hand refers only to the Arab population.<sup>34</sup>

Whereas UNRWA always talks about *Palestine* refugees, others, like Takkenberg, use the term *Palestinian* refugees in their studies. Takkenberg argues that in international law it is only the people who fled Palestine who had an Arab background and who were not nationals of other states who fulfil the characteristics of this special group of refugees who lack international protection.<sup>35</sup>

In the theoretical discussion of the status of the refugees this distinction is important. To UNRWA's practical work it is less relevant, because only 1.5 per cent of those registered have a different national background.<sup>36</sup>

In this study the author will use the term *Palestinian refugee* in Chapter three, which covers the issue of protection, because protection is mostly related to legal issues in which the characteristics discussed apply to the former Arab population of Palestine and their descendants and not to the small group of *Palestine* refugees who belong to other

---

<sup>32</sup> UNRWA, Emergency Appeal 2008, Gaza, November 2007, p.5.

<sup>33</sup> Koning AbuZayd, Karen: *This brutal siege of Gaza can only breed violence*, The Guardian, 23 January 2008, [http://www.un.org/unrwa/news/articles/2008/Guardian\\_23jan08.html](http://www.un.org/unrwa/news/articles/2008/Guardian_23jan08.html) (Download 11 September 2008).

<sup>34</sup> Takkenberg, 1998, p.41.

<sup>35</sup> Ibid., p.51.

<sup>36</sup> Takkenberg, 1998, p.50.

nationalities. The rest of the study will mostly<sup>37</sup> use the term Palestine refugee because that is the term used by UNRWA.

No official document has defined who is a Palestine refugee, in the sense that he or she should be provided services by UNRWA.<sup>38</sup> Therefore, UNRWA has come up with its own definition which reads as follows:

“Under UNRWA's operational definition, Palestine refugees are persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict. UNRWA's services are available to all those living in its area of operations who meet this definition, who are registered with the Agency and who need assistance.”<sup>39</sup>

The terms *registered refugees* or *UNRWA registered refugees* refers to the group of refugees that fall under this definition.

Although this definition relates exclusively to persons displaced as a result of the 1948 conflict, UNRWA has extended its assistance to refugees displaced during 1967 as well as internally displaced persons (IDPs) in emergency situations and even to non-refugees.<sup>40</sup>

The refugee status is passed on to the descendants of Palestine refugees, which is the reason for the stark increase in the number of refugees since the creation of the problem. This has been a matter of criticism because with other refugee groups this is not the case and it means that the refugee population does not automatically dissolve with the death of the population which originally had to flee. Daniel Pipes, in an article in the New York Post in 2003, states that for the Palestine refugees, “the refugee status continues from one generation to the next, creating an ever-larger pool of anguish and discontent.” He goes

---

<sup>37</sup> Since many sources use the term *Palestinian refugee* the exclusive use of the term *Palestine refugee* cannot be guaranteed.

<sup>38</sup> Lapidoth, Ruth: *Legal Aspects of the Palestinian Refugee Question*, Jerusalem Center for Public Affairs, Jerusalem Letter No.485, 1 September 2002.

<sup>39</sup> UNRWA Website, *Who is a Palestine Refugee?*, <http://www.unrwa.org/refugees/whois.html> (Download 11 September 2008).

<sup>40</sup> Report of the Commissioner-General of UNRWA to the General Assembly, 16 September 1988, par.32. Henceforth annual reports by the Director or Commissioner-General of UNRWA will be referred to as *UNRWA, Annual Report*, followed by the year, which it covers. Until 2006 the period of reporting went from 1 July to 30 June of the following year. Since 2006 it covers the period between 1 January and 31 December.



on to call for the dismantling of UNRWA. “It's high time to help these generations of non-refugees escape the refugee status so they can become citizens, assume self-responsibility and build for the future.” Of course this argumentation leaves out that the deprivation of refugee status would by no means lead to the end of the refugee problem. Furthermore he does not state of what country they should become citizens, therewith neglecting the fact that no country is willing to provide the refugees with citizenship.<sup>41</sup>

Criticism also included the accusation of gender-based discrimination, since in the case of children from one refugee and one non-refugee parent, only the children of refugee fathers were considered refugees.<sup>42</sup> In 2006 it was decided to extend UNRWA services to women who are married to non-refugees and their children, resulting in an increase of 360.000 new beneficiaries across the five fields.<sup>43</sup>

## **2.4.How Many Refugees Are there?**

Palestine refugees today make up the biggest group of refugees worldwide.<sup>44</sup> At the same time this issue is one of the longest-standing refugee problems in history.<sup>45</sup> Today Palestinian refugees (about 5 million) represent approximately 18% of the total number of refugees in the world.<sup>46</sup> The largest group of refugees were displaced during the 1948 war following the creation of the State of Israel.<sup>47</sup> UNRWA registered refugees represent approximately three quarters of Palestinian refugees world-wide. Roughly every second Palestinian in the world is a recipient of UNRWA services.<sup>48</sup> The majority of them reside in the neighbouring Arab countries and the OPT, about one third of UNRWA registered refugees live in refugee camps in Lebanon, Syria, Jordan, Gaza, and the West Bank.<sup>49</sup>

The number of refugees who fled Palestine between 1947 and 1948 is much contested and ranges between 520,000 and 900,000. The first is the number Israeli spokesmen referred

---

<sup>41</sup> Daniel Pipe: *The Refugee Curse*, New York Post, 19 August 2003.

<sup>42</sup> Cervenak, C.M.: *Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status*, Human Rights Quarterly; vol.16, No.2 p.300-374 (1994), p.302.

<sup>43</sup> UNRWA, General Fund Appeal 2008-2009, p.18.

<sup>44</sup> Farah, Randa: *The Marginalization of Palestinian Refugees*, in: Steiner/Gibney/Loescher: Problems of Protection: The UNHCR, Refugees, and Human Rights, Routledge, New York/London, 2003, pp. 155-178, p.155.

<sup>45</sup> Rempel, Terry M.: *UN General Assembly Resolution 194(III) and the framework for durable solutions for 1948 Palestinian refugees*, Paper prepared for the BADIL Expert Forum, 22-23 May, 2003, p.2.

<sup>46</sup> UNRWA: *statistical profiles: general*, p.1.

<sup>47</sup> Rempel, 2003, p.3.

<sup>48</sup> UNRWA: *statistical profiles: general*, p.1.

<sup>49</sup> UNRWA in figures, December 2007.

to in public whereas the second is the number Arab spokesmen used from 1949 onwards.<sup>50</sup> Even within UNRWA the numbers are not used in a consistent manner. Initially, the Agency together with the United Nations Economic Survey Mission put the figure at 726,000.<sup>51</sup> Today UNRWA talks of “about 800,000” who fled between 1947 and 1948.<sup>52</sup>

A well-known and detailed account of the numbers and the events around the exodus was provided by Benny Morris, an Israeli historian in 1987, after State archives of Israel had been made accessible to historians.<sup>53</sup> Morris is part of a group of Israeli historians whose work is referred to as *revisionist historiography* or *new historiography* (a term preferred by Morris)<sup>54</sup> because they brought to light new insights into the history of the 1948 war and the creation of the state of Israel. He contributed a great deal to the dismantling of much of the official Israeli versions about the exodus as propaganda and gave credibility to the much higher number of expelled Palestinians that was alleged by Palestinian historians. Nonetheless some of his theses are also being contested especially by Palestinian historians (for example Walid Khalidi and Nur Masalha<sup>55</sup>), who claim that there were Zionist transfer plans that aimed at expelling the Palestinian population, whereas Morris states that there had been no such plans.

“The Palestinian refugee problem was born of war, not by design, Jewish or Arab. It was largely a by-product of Arab and Jewish fears and of the protracted, bitter fighting that characterised the first Israeli-Arab war.”<sup>56</sup>

According to Ilan Pappé, Morris “wishes mainly to convey a complicated and multi-causal explanation for the flight, trying to put forward a version which on the one hand rejects the Israeli claim of voluntary flight and on the other, the Palestinian narrative of mass expulsion.” But, he goes on, “this position is rejected by several Palestinian

---

<sup>50</sup> Morris, 1987, p.297.

<sup>51</sup> Morris, 1987, p.297.

<sup>52</sup> Morris, 1987, p.297 and UNRWA in 2006, p.8.

<sup>53</sup> Morris, Benny: *The Birth of the Palestinian Refugee Problem 1947-1949*, 1987.

<sup>54</sup> Masalha, Nur: *A Critique on Benny Morris*, in: Pappé, Ilan (editor): *The Israel/Palestine Question: Rewriting Histories*, Routledge, London/New York, 1999, pp.211-220, p.212.

<sup>55</sup> Masalha, 1999, p.211.

<sup>56</sup> Morris, 1987, p.286.

historians as well as by my own work. So, while the “new history” of Israel comes close to the Palestinian historical narrative, fundamental gaps still remain.”<sup>57</sup>

UNRWA itself stated in 1950:

“An accurate statement of the number of genuine refugees resulting from the war in Palestine is unlikely to be provided now or in the future. In fact, it is almost impossible to define closely the word "refugee," as applied to the work of the Agency, without leaving certain groups of deserving people outside those accepted, or conversely, including groups who probably should not be in receipt of relief.”<sup>58</sup>

The Palestine-based NGO Badil makes the following estimate for the year 2003:

“It is estimated that there were more than 7 million Palestinian refugees and displaced persons at the beginning of 2003. This includes Palestinian refugees displaced in 1948 and registered for assistance with the UN Relief and Works Agency (UNRWA) (3.97 million); Palestinian refugees displaced in 1948 but not registered for assistance (1.54 million); Palestinian refugees displaced for the first time in 1967 (753,000); 1948 internally displaced Palestinians (274,000); and, 1967 internally displaced Palestinians (150,000).”<sup>59</sup>

The number of refugees remains a political one because the refugee issue is one of the major bones of contention concerning a just solution to the conflict. It is connected to the right of return and to questions of compensation.<sup>60</sup>

---

<sup>57</sup> Pappé, Ilan (editor): *The Israel/Palestine Question: Rewriting Histories*, Routledge, London/New York, 1999, p.193.

<sup>58</sup> UNRWA, Interim Report, 6 October 1950, par.13.

<sup>59</sup> Badil-Website: <http://www.badil.org/Refugees/facts&figures.htm> (Download 21 September 2008).

<sup>60</sup> For a discussion of the right of return see chapter 5.2.3.

### 3. International Organisations and UNRWA in International Law

#### 3.1. The Extension of Competencies in International Law

This paragraph gives an overview of the competencies of International Organisations and their potential to adapt their mandates and competencies to up-coming challenges. Questions to be answered include the following: Do international organisations and subsidiary organs have to stick exactly to the ideas of the institutions or countries that created them or are they allowed to be independent in certain ways? Are they competent to change and expand their own mandate or is that illegitimate? The author wants to put the question of the evolution of UNRWA's mandate in perspective by giving some examples where the competencies of international organisations were expanded or more clearly defined.

The status of international organisations in international law has changed over time and has been subject of wide discussion. In various events the legal status has been re-evaluated therefore changing international law in this respect.<sup>61</sup> Already in 1949 after the death of Count Bernadotte, who was assassinated during the exercise of his functions as UN mediator for Palestine, the famous advisory opinion of the International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations*,<sup>62</sup> had to face the issue if the United Nations Organisation was in the position to pursue a claim or if only the mediator's nation state was in the position to do so. The Court stated that up front it had to decide whether the UN was an international person. It gave an affirmative answer, stating that in order to fulfil its mandate this was necessary. It further went on to declare what the implications of this decision were.

“This is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is a “super-State,” whatever that expression may mean. (...) What it does mean is that it is a subject of international

---

<sup>61</sup> Alvarez, José E.: *International Organizations as Law-makers*, Oxford University Press, Oxford/New York, 2005, p.601.

<sup>62</sup> International Court of Justice: *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949.

law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.”<sup>63</sup>

This is an example where the status of an international organisation was not entirely clear when it was founded, but had to be determined when the issue came up. Another citation of the same advisory opinion adds further clarification to the reasoning of the court.

“Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.”<sup>64</sup>

This principle had already been applied to the International Labour Organisation (ILO) in an advisory opinion by the ICJ in 1926.<sup>65</sup> It is commonly referred to as the principle of *implied powers*. It is based on the notion that the rules that are laid down in any treaty presuppose the existence of certain other rules without which the treaty could not be reasonably applied.<sup>66</sup>

UNHCR has successfully adapted its mandate in a couple of instances. Originally, the 1951 Geneva Convention extended its protecting function only to refugees who were uprooted by events relating to the Second World War in Europe. The 1967 protocol to the Refugee Convention achieved the abolition of this restrictive definition, concerning the date and the geographical area.<sup>67</sup> Later on, world-wide political developments created changing realities concerning the refugee situation. More people became refugees in their own land – so-called internally displaced persons (IDPs). These do not fulfil the conditions for being included in the traditional definition of a refugee, still they are needy persons and in many instances do not enjoy the protection of their nation state. UNHCR took up this task – and was supported by the international community.<sup>68</sup>

---

<sup>63</sup> Ibid., p.8.

<sup>64</sup> Ibid., p.12.

<sup>65</sup> International Court of Justice: *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949, p.12.

<sup>66</sup> Alvarez, 2005, p.92. See also Neuhold/Hummer/Schreuer (editors), *Österreichisches Handbuch des Völkerrechts*, Band 1, Textteil, 4.Auflage, 2004, p.64.

<sup>67</sup> UNHCR Website: <http://www.unhcr.org/protect/3c0762ea4.html> (Download 11 September 2008).

<sup>68</sup> See for example Conclusion No.75 (XLV) by UNHCR’s Executive Committee on Internally Displaced Persons, 1993, par (k): (The Executive Committee) “*Encourages* the High Commissioner to continue the efforts of her Office to put into action its internal criteria and guidelines for UNHCR involvement in situations of internal displacement, as an important contribution towards a more concerted response by the international community to the needs of the internally displaced.”  
<http://www.unhcr.org/publ/PUBL/3d4ab3ff2.pdf> (Download 11 September 2008). In addition resolution

These examples show that in fact evolution and change within international organisations is not rare and illicit but happen frequently and can constitute a necessary means in order to face changing realities.<sup>69</sup> It will have to be determined whether UNRWA's adaptations concerning development and towards more protection are an example of this necessary change or if they go beyond the need to adapt, in order to fulfil its functions and reach its goals.

### **3.2.UNRWA: A Subsidiary Organ of the United Nations**

The UN charter contains explicit provisions creating the competency for the General Assembly, the Security Council and the Economic and Social Council to create subsidiary organs. Article 7 is the general provision and article 22 specifies the case for the General Assembly – the organ that created UNRWA. A large number of subsidiary organs have been created. In its first 20 sessions the General Assembly exercised this right more than 180 times.<sup>70</sup> Subsidiary organs are classified into five broad categories: 1. Study committees to facilitate the consideration of subjects by the Assembly; 2. Political commissions and other organs having active political responsibility; 3. Organs of administrative assistance; 4. Operational agencies; and 5. Judicial bodies.<sup>71</sup> Their size varies considerably. In some of them all member states of the UN are represented, which is the case for UNCTAD for example, and others consist of one single person, such as the United Nations Mediator for Palestine.<sup>72</sup> UNRWA, as well as for instance UNICEF, UNHCR and the WFP, fall under the fourth category of operational agency. One has to distinguish between a subsidiary organ of the UN, like UNRWA, and specialized agencies. Many of the latter have existed on their own terms and were later associated

---

48/116, adopted by the United Nations General Assembly on 20 December 1993 “reaffirmed support for the High Commissioner’s efforts, on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations (...) in providing humanitarian assistance and protection to persons displaced within their own country in situations calling for the Office’s particular expertise, especially where such efforts could contribute to the prevention or solution of refugee problems.” par 12.

<http://daccessdds.un.org/doc/UNDOC/GEN/N94/152/58/PDF/N9415258.pdf?OpenElement> (Download 11 September 2008).

<sup>69</sup> The fact that this is a frequent practice does not prevent it from being criticized. These changes stem also from different interpretations of treaties, depending on the time. This “evolutionary dynamic” in charter interpretations is not contained in the Vienna Convention on the Law of Treaties (1969) and scholars have pointed out that, even in their relatively brief history, International Organisations have tended to seek more and more power. See Alvarez, 2000, p.104.

<sup>70</sup> Dale, William: *UNRWA: A subsidiary organ of the United Nations*, International and Comparative Law Quarterly, 23, p.576-609, Cambridge University Press, 1974, p.576.

<sup>71</sup> According to the Repertory of United Nations Practice, cit. in Dale, 1974, p.576.

<sup>72</sup> Dale, 1974, p.576.

with the UN. Other specialized agencies have been created under article 57 of the UN Charter. They differ from the subsidiary organs in the respect that they were created *by treaty* as opposed to *by resolution*. This difference is significant for a number of arguments. The treaty defines characteristics and powers of the agency. In addition, parties to a treaty have agreed to these rules when they signed the treaty. In regard to subsidiary organs this consent might be absent, for instance when they were created by majority decision.

According to Bale, subsidiary organs, “being founded by mere resolution of a principal organ, usually drawn up in wide and general terms, are placed at some disadvantage. This is especially true of the operational agencies. There may well be no instrument defining with any particularity the powers of such an agency in the countries in which it operates, and nothing to state the obligations towards it of the government of those countries, save for the very broad provision of Article 2, paragraph 5, of the Charter, which requires all members to give to the “United Nations” every assistance in any action it takes in accordance with the Charter.”<sup>73</sup>

In addition, treaties might provide for sufficient funding of the agency. In fact it is a distinctive feature of operational agencies that they are financed through voluntary contributions by states or other institutions.<sup>74</sup> This puts them in a financially fragile situation – an issue that has been problematic for UNRWA from the start.<sup>75</sup>

Being a subsidiary organ does not prevent UNRWA itself from having legal personality. Legal personality “is a prerequisite for the capacity to bear rights and obligations.”<sup>76</sup> Without this personality UNRWA would be unable to be party to treaties, present claims against other international persons, or possess any other rights or duties. UNRWA has repeatedly been in front of national courts,<sup>77</sup> has made legally binding agreements and commercial contracts with host countries, it has acquired pieces of land, and frequently

---

<sup>73</sup> Dale, 1974, p.578.

<sup>74</sup> Dale, 1974, p.579.

<sup>75</sup> In UNRWA’s first interim report in 1950 it was stated that “(t)he Agency’s financial situation has never been a happy one” par.57.

<sup>76</sup> Alvarez, 2005, p.129.

<sup>77</sup> Reinisch, August: *International Organizations before National Courts*, Cambridge Studies in International and Comparative Law, Cambridge University Press, Cambridge, 2000, p.127, 172f, 183, 227, 273.

claims compensation for the violation of agreements by the host countries, especially Israel.<sup>78</sup> Therefore it had been concluded that UNRWA does possess legal personality.<sup>79</sup>

### **3.3.The Mandate of UNRWA**

The mandate of UNRWA can be drawn from a series of General Assembly resolutions, but a clear and official description of what this mandate entails is absent. While it was originally founded with the mission to “to carry out (...) direct relief and works programmes (...)”,<sup>80</sup> different wording was included in later resolutions.<sup>81</sup> In UNRWA’s annual report presented to the General Assembly in 1973 the Commissioner-General pointed out some of the difficulties that result from this situation.

“It is against this background of General Assembly resolutions that UNRWA must carry out its mandate, with little specific guidance from the resolutions conferring that mandate, which, in effect, has come to consist of maintaining, to the extent UNRWA’s resources permit, the programmes it has gradually developed over the years.”<sup>82</sup>

Later on, referring to considerable cuts that had to be made in the education programme he continued:

“A decision with such serious political consequences and such ominous implications for peace and security is not an administrative matter to be dealt with by an appointed official. It is a decision that ought to be taken at a governmental level, and in the absence of a governing body for UNRWA with executive responsibilities, the Commissioner-General must seek and receive guidance and directions from the General Assembly.”<sup>83</sup>

This call for guidance from the General Assembly is an example for difficulties that can arise from this lack of a clear mandate. The internal structure of UNRWA is not one of an

---

<sup>78</sup> For Example the 1967 Comay-Michelmores agreement between UNRWA and the Government of Israel, by which the Government of Israel is obligated to “facilitate the task of UNRWA to the best of its ability, subject only to regulations or arrangements which may be necessitated by considerations of military security”. Cit in UNRWA, Annual Report, 2007, par.51. See also par.64, 65, and 66 of the same report.

<sup>79</sup> Dale, 1974, p.590.

<sup>80</sup> General Assembly resolution 302 (IV), 8 December 1949, par.7a.

<sup>81</sup> See a more thorough discussion of UNRWA’s mandate concerning protection in chapter 5.3.

<sup>82</sup> UNRWA, Annual Report, 1972/1973, A/9013, 30 June 1973, par. 3. Cit. in Dale, 1974, p.586.

<sup>83</sup> UNRWA, Annual Report, 1972/1973, A/9013, 30 June 1973, par. 47. Cit. in Dale, 1974, p.586.



autonomous international organization where a clear decision-making process is likely to be determined by the founding treaty, with a voting procedure including the votes of Member States. UNRWA, as a subsidiary body and operational agency of the UN, is supposed to carry out a mission previously defined by the organ which founded it, the General Assembly. But, as expressed in the above example, UNRWA's work is not always free from political decisions, leaving the Commissioner-General in a powerful and sometimes difficult situation, which might exceed the competencies to which he/she was meant to be entitled by the General Assembly.

### **3.4.Reasons for the Extension of Competencies within UNRWA**

In this section focus will be on the reasons for change in the work of UNRWA and for the change of its mandate and/or its competencies. The underlying questions are: why did UNRWA change? Who initiated this change? Was it a natural process of adaptation or was it forced by one of the actors concerned? Is UNRWA a passive player in this setting reacting to facts on the ground or is it the designer of its own structure and functioning? What are the interests involved?

Already in 1950 the mandate of UNRWA had been subject to change by the General Assembly. In resolution 393 of 2 December 1950 the General Assembly included the issues *repatriation and resettlement*,<sup>84</sup> which meant an involvement of UNRWA in the search for a durable solution. Yet, this engagement was of very short duration, because of strong opposition and controversy concerning the engagement of UNRWA in this difficult field.<sup>85</sup>

Following the six-days-war in 1967 UNRWA was asked by the General Assembly to extend its services also to groups of refugees that are not “registered refugees”, that is 1948 refugees. In resolution 2252 of 4 July 1967, in paragraph 6, the General Assembly

“*endorses, (...) the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to provide humanitarian assistance, as far as practicable, on an emergency basis and as a*

---

<sup>84</sup> General Assembly resolution, 393 (V), 3 December 1950, par.4.

<sup>85</sup> UNRWA, Annual Report, 1961/1962, par.12.

temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities.”<sup>86</sup>

Following the invasion of southern Lebanon by Israel the General Assembly passed a series of resolutions calling for increased efforts by the UN towards protection of Palestine refugees in the occupied territories. General Assembly resolution 38/83 “urges the Secretary-General, in consultations with the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to undertake effective measures to guarantee the safety and security and the legal and human rights of Palestine refugees in all the territories under Israeli occupation.”<sup>87</sup> As a result of these resolutions the Commissioner-General of UNRWA had to draw attention to the fact that, in his eyes, responsibility should go with power and that under international law it is for the occupying power to ensure that the civil and other rights of the inhabitants of the territory are safeguarded.<sup>88</sup> As we can see, in the two cases mentioned above it was clearly the General Assembly who called for the enlargement of UNRWA’s mandate.

Also, the advisory commission of UNRWA welcomed the extension of UNRWA competencies in many instances. In 1988 the Chairman of the Advisory Commission was in favour of increased services to Palestine refugees in the occupied territory following the outbreak of the first intifada.

“The members of the Commission were gratified to learn of the steps the Agency has already taken to increase its ability to respond quickly to the need for providing additional assistance and protection to refugees in the occupied territories through the assignment of additional international staff to the UNRWA Field Offices in Jerusalem and Gaza. They urge the Commissioner-General, in co-ordination with other international organizations and voluntary agencies, to seek ways to assist in monitoring the maintenance of basic civil and human rights there.”<sup>89</sup>

In some instances UNRWA took emergency measures on its own initiative, which were subsequently approved by the Advisory Commission and the General Assembly.

---

<sup>86</sup> General Assembly resolution 2252 (ES-V), 4 July 1967, par.6. Many following resolutions repeated this call. See for example General Assembly Resolution A/RES/42/69, 2 December 1987, section C.

<sup>87</sup> General Assembly resolution 38/83 I, 15 December 1983, par.1.

<sup>88</sup> Takkenberg, 1998, p.282.

<sup>89</sup> UNRWA, Annual Report, 1987/1988, section A.

“The members (of the Advisory Commission) believe that the emergency measures UNRWA has already taken in the West Bank and the Gaza Strip to alleviate hardships resulting from recent developments should be continued for as long as they are found to be needed.”<sup>90</sup>

Examples can be found where UNRWA took a critical position towards its own existence and work. In the annual report of 1953 concerns were raised on the nature of UNRWA’s relief services in its host countries.

“There is something incongruous in the presence of an alien organization, however well-intentioned, furnishing the basic necessities for a large proportion of the population of a country, particularly when--as in the commendable case of Jordan--the refugees have been made full citizens of the State. The period of acute emergency is past, when the efforts of the international community were gladly accepted, and the Agency is becoming something of an embarrassment to the host governments.”<sup>91</sup>

In its early years the agency advocated the restriction of its role to financial and technical assistance and was in favour of referring responsibility for its relief programme to the host governments.

“It would (...) be more appropriate for the governments to relieve themselves of the complications inherent in the presence of UNRWA and to assume the responsibility for the administration of the relief programme. The suggestion is not a new one: the three-year plan itself anticipated the withdrawal of the Agency from an active role into one of financial and technical assistance to governments.”<sup>92</sup>

So far it can be concluded that the most important changes in the mandate of UNRWA were initiated or endorsed by the General Assembly and/or the Advisory Commission. And that UNRWA itself at times was not afraid to question its own mandate. It did assume new responsibilities without mandate in case of emergencies, but it does not seem to be the one who initiated these steps. None of the above-mentioned incidents can serve as an example of UNRWA trying to maintain its existence and therefore violating its

---

<sup>90</sup> UNRWA, Annual Report, 1987/1988, section A.

<sup>91</sup> UNRWA, Annual Report, 1952/1953, par.18.

<sup>92</sup> UNRWA, Annual Report, 1952/1953, par.19.

commitment to work towards a solution where it would no longer be needed. It will have to be discussed if the same holds true for the aspect of protection. But, what could be the reasons for the general support of UNRWA and the extension of its mandate by the General Assembly during the last 6 decades? The rest of this chapter will address this question.

It will be shown that despite widespread criticism of the Agency there are a multitude of reasons why many of the actors concerned are in favour of the work of UNRWA. These interests vary considerably, and sometimes their motives can be put into question, still it can be argued that service to Palestine refugees and maybe more generally the care for the relative well-being of this group is important for various political reasons – in addition to the obvious humanitarian reasons.

Palestine refugees constitute a heavy economic and social burden, to a different extent in Lebanon, Syria and Jordan. Also to a different extent are these countries opposed to a complete integration of the refugees in the host societies.<sup>93</sup> As a consequence, although many Palestine refugees have become self-sufficient, others remain in need of humanitarian assistance. Roughly every second Palestinian in the world is a recipient of UNRWA services.<sup>94</sup> It is in the Arab countries' interest that UNRWA provides basic services for many Palestine refugees because it takes the edge off the criticism of those governments addressing discrimination and the lack of integration. Furthermore, without UNRWA the governments themselves would have to provide for these basic services, which would increase the burden of the refugees.

In December 1949, when the UN passed resolution 302 creating UNRWA, Israel voted in favour of this resolution.<sup>95</sup> Not denying the existence of moral reasons for this decision, one can argue that also for political reasons the creation of UNRWA was in the interest of the State of Israel. It meant the international community paying for basic services to the refugees who had fled the area of mandate Palestine following the creation of Israel and the 1948 war. Israel did not and still does not allow the refugees to return. This decision caused and still causes strong protest among the refugees but also among various pressure groups, NGOs and concerned individuals and governments all over the world. It is safe to say that it is in Israel's national interest to ensure the well-being of the refugees because it

---

<sup>93</sup> See chapter 5.2.5.

<sup>94</sup> UNRWA in figures, 2007.

<sup>95</sup> Dale, 1974, p.579.

might diminish their determination to return to their homelands. Of course, resettlement or integration of the refugees would be welcomed even more, but since this has not been realized due to the opposition of host countries and refugees, the relative well-being of the refugee population in this “interim” situation is still welcome in as far as it has a pacifying effect.

The western donors, especially the USA and the European Union, have been in favour of the existence of UNRWA and are its main donors.<sup>96</sup> Political reasons are less obvious concerning these countries. The contributions might be founded on humanitarian reasons, or follow a broader foreign policy that includes geopolitical interests in the region. Still it is not unjustified to suppose that financial contributions to the “Palestinian side” might function as compensation for the inability to help to resolve the conflict or possibly for one-sidedness in favour of the State of Israel.

The motives of the United Nations have been questioned as well. For example by Giorgio Giacomelli, Commissioner-General of UNRWA in 1988:

“Ever since the adoption of resolution 302 (IV), the (General) Assembly has looked upon UNRWA as an organ by which it seeks to discharge part of its responsibilities concerning the Palestine question.”<sup>97</sup>

UNRWA has existed for almost 60 years and efforts to dissolve it have never been serious. This, again, is due to the fact that over-all the actors involved have reasons to keep the agency alive.

#### **4. UNRWA's Role as a Development Agency**

UNRWA describes itself as a “human development” agency.<sup>98</sup> The reason for this might be to stress its focus directly on humans as opposed to infrastructure. In the author’s view there is no doubt that the agency can be labelled *development agency* due to the fact that 89 percent of its budget are directed towards the achievement of goals that are labelled

---

<sup>96</sup> In 2006 out of a total of pledges of US\$ 569,854,500 the European Commission pledged US\$ 143,253,616 and the USA US\$ 137,000,000. UNRWA Website: [http://www.un.org/unrwa/finances/pledges\\_dec06.html](http://www.un.org/unrwa/finances/pledges_dec06.html) (Download 12 September 2008).

<sup>97</sup> UNRWA, Annual Report, 1987/1988, par.1.

<sup>98</sup> See for example UNRWA, Annual Report, 2007, par.2. In the annual reports the term has frequently been used since 2003.

with this term.<sup>99</sup> One could assign one of the Millennium Development Goals to almost all of UNRWA's activities. Still they are not perceived as being a development agency. This is reflected in the fact that UNRWA is not a member of the United Nations Development Group.<sup>100</sup>

In history the term *development* was used in a slightly different way by UNRWA. Today's general understanding of the term is based on a wholesome approach, where almost all aspects of life are included. Today, the label *human development agency* is generally accepted to be appropriate for UNRWA, in the annual report of the year 1962 the term development is only used in connection with "large scale development projects". In these early years of the agency's work, these development projects stood also for the Agency's efforts to provide a long lasting solution for the refugees through resettlement. These efforts were only of a short duration because they "were in principle unacceptable to the refugees and Arab opinion generally."<sup>101</sup>

All of UNRWA's areas of operation are recipients of Official Development Aid (ODA). UNRWA occupies first place in the list of donors to the OPT, second to Jordan, third to the Syrian Arab Republic, and fourth to Lebanon.<sup>102</sup> It is therefore safe to say that the agency is a major development actor in the region. But how did it come to this evolution? Who initiated this adaptation over time?

The purpose of this chapter is to illustrate the change that took place within UNRWA concerning its development work. From basic relief and humanitarian services the agency developed into a provider of quasi-public services. This term should not mislead the reader: UNRWA has no mandate for public administration whatsoever. Still especially education and health care are traditionally the responsibility of the public authorities of a state.

---

<sup>99</sup> In 2006 eleven percent of the budget was directed towards relief and social services. See UNRWA in 2006, p.30.

<sup>100</sup> UNRWA is also not a member of the IASC (Inter-Agency Standing Committee) of the UN, which tries to improve the coordination of humanitarian agencies within the UN and with other actors.

<sup>101</sup> UNRWA, Annual Report, 1961/1962, par.96.

<sup>102</sup> OECD Website, Development Assistance Committee (DAC), Country list, [http://www.oecd.org/countrylist/0,3349,en\\_2649\\_34447\\_25602317\\_1\\_1\\_1\\_1,00.html#O](http://www.oecd.org/countrylist/0,3349,en_2649_34447_25602317_1_1_1_1,00.html#O) (Download 28 July 2008).

Jordan and Syria are listed as Lower Middle Income Countries while Lebanon was listed as Upper Middle Income Country in 2006.<sup>103</sup> In general Arab responsibility for the Palestine refugee plight should not be overlooked.<sup>104</sup> At the same time difficult economic situations in the Arab countries and the impact of the Palestine refugees in the respective countries have to be taken into account.<sup>105</sup> This consideration emphasises the urgency for UNRWA services.

There has been an evolution over time towards a more integrated development approach. Still there are also signs that indicate that from the outset UNRWA's creators had intended to include elements of development as the term is understood today. This was stated by Commissioner-General Peter Hansen on a high-level conference in Geneva in 2004:

“In a stroke of vision and good sense, a component was introduced of what today is called “development”, “income-generation” and “self-reliance” – the antithesis of welfare. This led to the “works” part of our name.”<sup>106</sup>

#### **4.1.From Technical Assistance to Fully Integrated Development Programmes**

In 1950, five months after the beginning of UNRWA operations the director stated that much of UNRWA's work can be understood as “technical assistance”.<sup>107</sup> Therefore the Agency was never completely restricted to humanitarian services.

The original focus on technical assistance understood the agency as a consultant. Too strong engagement was not desired because hand-over of all the programmes to the governments was envisaged within a short period of time. This understanding is reflected

---

<sup>103</sup> OECD Website, DAC, List of ODA Recipients: <http://www.oecd.org/dataoecd/23/34/37954893.pdf> (Download 28 July 2008).

<sup>104</sup> See also chapter 5.3.4.

<sup>105</sup> UNRWA expressed its concerns in its Annual Report, 1953, par.16: “It is doubtful whether, given the full co-operation of the host countries, it would have been possible wholly to absorb the refugees in those countries in the five years that have elapsed since their flight. The absorption, even temporarily, of one million persons into a community of five and a half millions (excluding Egypt) requires a digestive capacity far beyond the economic possibilities of the area as they exist today.”

<sup>106</sup> Peter Hansen, speech at UNRWA's Geneva Conference.

<sup>107</sup> UNRWA, Interim Report, 6 October 1950, par.56.

in the following citation from UNRWA's annual report covering the period 1 July 1951 to 30 June 1952:

“Rather than attempt to assemble international teams of experts, the Agency prefers to provide technical assistance through the co-operation of bilateral government programmes or specialized agencies and by contracting with private firms. *It seeks to ensure that the United Nations will not directly administer loans, operate schools, or engage in construction.* The Agency, in consultation with governments, favors contractual arrangements and the use of governmental agencies or intermediate corporations” (emphasis added).<sup>108</sup>

This stands in stark contrast to UNRWA's work today. One of UNRWA's hallmarks, which distinguishes it from most other UN agencies, is that it delivers most of its services directly, without subcontracting to other agencies. It employs a vast number of staff, runs its own schools giving primary education to almost half a million students, runs health care centres and hospitals, offers social security, and has its own construction and microcredit programmes.

Education has been the first area where this change took place. When the United Nations first began to budget funds for the Palestine refugees, budgetary efforts were not directed to education, since the problem was considered to be a temporary one. It took the UN some months without political progress to realize that “something had to be done to continue the education of refugee children.”<sup>109</sup> From the start high unemployment among the refugee population in exile posed difficulties on the younger generation. Children of unemployed parents are comparably unlikely to acquire work-related skills from their parents. In addition to this, Commissioner-General Davis pointed out in 1962 that many of the young refugees had lower self-discipline, because they could not see this attitude in their parents' daily life.<sup>110</sup> UNRWA identified this problem and its risk for the future of the refugee population and consequently enlarged its role in education. In the early 1960s UNRWA held its relief services on the same level, and “concentrated all available resources on the expansion and improvement of its education programme”.<sup>111</sup>

---

<sup>108</sup> UNRWA, Annual Report, 1951/1952, par.58.

<sup>109</sup> UNRWA, Annual Report, 1950/1951, par.203.

<sup>110</sup> UNRWA, Annual Report, 1961/1962, par.12.

<sup>111</sup> Ibid., par.14.



This emphasis and redistribution of sources had been explained in two consecutive sessions of the General Assembly and had not met any objections.<sup>112</sup> As mentioned above UNRWA's role is also defined by decisions and abilities of host countries. The emphasis on education resulted from the fact that these countries found it "virtually impossible to provide sufficient educational opportunity for refugee children, and it is for this reason that UNRWA has found it necessary to engage in and support education for the refugee children".<sup>113</sup> According to the annual report of 1962 "UNRWA has assumed this role with considerable reluctance".<sup>114</sup> The trend continued over the years. Until 1967, before the outbreak of the 1967 war, costs for relief services and health had stagnated (despite rising costs and an increasing number of registered refugees) but the budget for education rose from US\$ 14 million in 1963 to 16.5 million in 1967.<sup>115</sup> We may conclude that education was introduced in UNRWA's work due to necessity and the lack of other options. UNRWA did not actively seek this new mandate but it did continue actively by expanding the education programme massively over the years.

Another aspect of UNRWA's work where changes took place are the *works programmes*. One reason for the need for these programmes were the difficulties Palestine refugees faced integrating into their host country's economies. In 1948 the majority (70 percent) of the Arab population of Palestine were farmers. Of the urban population about two thirds possessed skills, that enabled them to find employment in the host countries. These workers, and their descendants, (about 20 percent of those displaced), never became dependant of UNRWA's services. The remaining 80 percent, who again were mostly farmers, small businessmen and unskilled workers became dependant on UNRWA.<sup>116</sup> In 1962 the Commissioner-General of UNRWA, John H. Davis, pointed out that the situation of the young refugees, who achieved adulthood in the refugee community was matter of great concern to the future of the refugee population. Many of them were not only unemployed but as Davis put it "unemployable", due to the lack of work related and social skills.<sup>117</sup> The works programme has been under scrutiny because it was closely connected to the issue of resettlement and integration into the host countries. In the 1962

---

<sup>112</sup> Ibid., par.23.

<sup>113</sup> Ibid., par.31.

<sup>114</sup> Ibid., par.31.

<sup>115</sup> UNRWA, Annual Report, 1966/1967, par.4.

<sup>116</sup> UNRWA, Annual Report, 1961/1962, par.7.

<sup>117</sup> Ibid., par.9.

Commissioner-General's report to the General Assembly, Davis made the following recommendation:

“(F)or as long as there is no substantial progress towards the implementation of paragraph 11 of General Assembly resolution 194 (III), *UNRWA should not again attempt works projects designed to settle the refugees*”(emphasis added).<sup>118</sup>

He came to this conclusion by stating that previous efforts had been “virtually fruitless”, because resettlement was unacceptable to the host governments. Additionally, referring to the opposition towards resettlement he states that these “feelings of the Arab people run as deeply today as at any time in the past”.<sup>119</sup> Still economic development was wanted, but in Davis' eyes, not if it's related to refugee resettlement. This marks a clear change in UNRWA's policy of conducting its works programmes.

New programmes have been introduced, such as the microfinance and microenterprise programme, which was established in 1991 and today operates in Gaza, West Bank, Jordan and Syria. In general it can be stated that UNRWA's operations have become more diversified. In 1993 following the signing of the Declaration of Principles, the Peace Implementation Programme (PIP) was introduced. It contained a number of development projects, such as the construction of schools and health care centres, and was related to the supposed hand-over of competencies to the Palestinian authority in the framework of the peace process.<sup>120</sup> Operations such as the RAO or the OSO programme, which will be explained later on, cover a multitude of tasks. Health care today addresses also psychological problems, new topics such as gender-mainstreaming have found its way into the agency's policy, to name just a few more changes that took place. Many of them reflect a general change in the understanding of development assistance, and the introduction of certain principles into the world-wide discussion.

It can be concluded there has been a major shift in the Agency's functioning between 1950 and today. While the original mandate focused on humanitarian relief, the Agency took the liberty to put its own emphasis on certain programmes and to introduce new ones. Especially the focus on education shows UNRWA's early acknowledgement of the fact that the Palestine refugee problem and its own existence was likely to be a long-

---

<sup>118</sup> Ibid., par.12. Paragraph 11 of res 194 refers to the right of return.

<sup>119</sup> UNRWA, Annual Report, 1961/1962, par.12.

<sup>120</sup> Farah, 2003, p.168; UNRWA annual report 1999/2000, par.75, 76.

lasting situation. They understood the importance of this field for the future development of the refugee population. Education is one of the central and universally accepted instruments towards sustainable human development. The goal of education is to provide the students with the knowledge and the skills that will be necessary for including them into the economic life in any society. This is hoped to lead to a situation where future generations are less dependant on foreign assistance. Additionally, original efforts have been focused on technical assistance, therefore taking the role of a consultant. This attitude has also changed considerably. Today UNRWA stresses that it provides most of its services directly.

#### **4.2.Today's Development Work**

Education is UNRWA's largest programme. It accounts for over 50 percent of the Agency's budget and three quarters of its staff. In its five fields of operation UNRWA runs 668 elementary and preparatory schools, educating nearly half a million students. In the 1960 UNRWA achieved equal enrolment of boys and girls in its elementary schools, as the first in the region. Education also includes technical and vocational training, work placement and career guidance, measures that are aimed at improving the employability of Palestine refugees.<sup>121</sup>

For many years UNRWA's budget has not met the increasing demands of the growing community of Palestine refugees, resulting in a range of new challenges to the programmes. Like in most programmes, the education programme is showing signs of a downward trend in quality. The teacher/student ratio is deteriorating and double-shifts in UNRWA schools are becoming normality. In 2006 circa 77 percent of UNRWA schools were operating on double-shifts. Double-shifting refers to a practice in which two consecutive streams of students attend the same facility in one day. Double-shifting often leads to shortened school days, puts pressure on facilities and staff and leads to lack of time for extracurricular activities.<sup>122</sup> This phenomenon can only be addressed through the construction of more schools. In this context it has to be mentioned that in 2006 there were 46 Agency construction and infrastructure projects in Gaza and the West Bank that were delayed or stopped due to the restrictions by the Government of Israel on the

---

<sup>121</sup> UNRWA, General Fund Appeal 2008-2009, p.8.

<sup>122</sup> Ibid., p.10.

movement of construction material, vehicles and personnel into the OPT. These projects had an overall budget of US\$ 16.9 million.<sup>123</sup>

UNRWA remains the primary health care provider for Palestine refugees in the Near East.<sup>124</sup> The health programme is UNRWA's second largest area with 19 percent of its total general budget.<sup>125</sup> UNRWA runs 127 clinics, where almost 9 million consultations take place every year. UNRWA's health care system has made important achievements in its five fields of operation during the last six decades. The infant mortality rate dropped considerably from 160 per 1000 live births in the 1960s to 22 in 2006. Additionally they have provided the population with comprehensive vaccination, resulting in the fact that there have been no incidents of polio or tetanus in the agency's area of operation.<sup>126</sup>

The challenges UNRWA faces in its health system include a rise among non-communicable diseases like hypertension, diabetes and cancer and wide-spread anaemia in areas where there is an increase in poverty. In the OPT there are now twice as many refugees seeking help from UNRWA health care facilities than in 2000.<sup>127</sup> This stands in relation to the stark increase in poverty since that year. Whereas 20 percent were living below the poverty line in 2000, this number has risen to 80 percent in 2007.<sup>128</sup> The nutritional status of some refugees has shown signs that are worthy of concern. Incidences of low birth-weight of infants have doubled within one year (January and March of 2007 compared to January 2006). Due to conflict situations in the OPT and Lebanon, post-traumatic stress disorder and other psychological problems have increased sharply.<sup>129</sup> As well as in the other programmes UNRWA is having difficulties due to budgetary constraints.

Furthermore, ten percent of the budget is directed towards relief and social services, which focuses on 250,000 refugees who have been identified as so-called special hardship cases (SHC).<sup>130</sup>

---

<sup>123</sup> UNRWA, Annual Report, 2006, par.50.

<sup>124</sup> UNRWA, General Fund Appeal 2008-2009, p.16.

<sup>125</sup> Ibid., p.9.

<sup>126</sup> UNRWA, General Fund Appeal 2008-2009, p.16.

<sup>127</sup> In the Gaza Strip more than 1 million, which makes up about two-thirds of the population are UNRWA registered refugees. UNRWA in figures, June 2008.

<sup>128</sup> UNRWA, General Fund Appeal 2008-2009, p. 17.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid., p.9 and 22.

The Microfinance and Microenterprise Programme is not financed from the general fund but provides its running cost from its credit operations. This programme was introduced in 1991 with the aim to help small business-owners, sustain jobs and reduce unemployment and poverty.<sup>131</sup>

Prior to 2004 there was no coherent strategy for camp rehabilitation. In that year participants of the Geneva Conference urged UNRWA to develop comprehensive solutions for infrastructure and the housing situation in the camps. The Infrastructure and Camp Improvement Unit was established, studies were conducted on the need of the camps trying to include camp representatives and NGOs in the process.<sup>132</sup> This meant also a more fundamental change in UNRWA's involvement in infrastructure projects in the refugee camps, although it has to be stressed that UNRWA still does not administer these camps. Without this change it can be put into question if UNRWA had stepped up as the lead agency in the rebuilding of the Nahr el-bared refugee camp in the north of Lebanon, which was destroyed in 2007.

### **4.3.Nahr El-Bared**

The reconstruction of Nahr el-Bared is a development project in the classical sense, including infrastructure and construction work. This undertaking manifests UNRWA as a development agency in the region. There is cooperation with the government of Lebanon and other UN and NGO actors, but UNRWA took the lead in the reconstruction efforts. Taking into account the already mentioned evolution from a policy of technical assistance in the early 1950s this can be regarded as clear opposite of that policy and expression of a fundamental change within UNRWA. It also stands for a new dimension of involvement by the agency into development issues concerning the Palestine refugee population. In June 2008 a donor conference took place in Vienna where costs of the reconstruction were presented and donors informed about the processes involved.<sup>133</sup>

The Nahr el-Bared is a Palestinian refugee camp situated 16 kilometres north of Tripoli near the coastal road. From May to September 2007, a conflict took place between Fatah

---

<sup>131</sup> Ibid., p.29.

<sup>132</sup> Ibid., p.31.

<sup>133</sup> Austrian Foreign Ministry, Website, <http://www.bmeia.gv.at/en/foreign-ministry/news/presseaussendungen/2008/plassnik-zur-wiener-geberkonferenz-ziel-erreicht-wiederaufbau-beginnt-im-herbst.html> (Download 12 September 2008).

al-Islam and the Lebanese army, which resulted in the total destruction of the camp. More than 30,000 people were displaced from the Nahr el-Bared Camp (NBC) and the area surrounding the camp.

There are 31,303 registered refugees in Nahr El Bared camp but UNRWA estimates the numbers of those who actually lived in the camp before the events of 2007 at around 27000.<sup>134</sup> Among those refugees 8627 persons are registered as special hardship cases.

The situation has started to escalate in February 2007, when two buses were bombed in Ain Alak, a predominantly Christian village near Bikfaya. Fatah al-Islam militants who were based in the camp were blamed. They were believed to have between 150-200 armed men. The Lebanese military was banned from entering the camp under a 1969 Arab accord.<sup>135</sup> It is important to once again point out that UNRWA does not administer the camp and was therefore not responsible or capable of ensuring that there are no militant groups within the territory of the camp.<sup>136</sup> Fighting started on 20 May 2007 first outside the camp, when militants began shooting at the Lebanese security forces after a police raid on a house used by Fatah al-Islam. Later the militants attacked a Lebanese military post at the gate of the camp and seized several vehicles. The Lebanese reacted by sending reinforcements, including heavy machinery, such as tanks. Thousands of refugees fled the camp, most of them found shelter in Baddawi camp, which is around 10 kilometres away from Nahr al-Bared – a situation that is still ongoing today (September 2008). UNRWA and Lebanese officials emphasized that the militant group does not represent the Palestine refugees in the camp, and that the refugees became innocent victims caught in the middle of the fighting. Also refugees at Baddawi camp showed support towards the Lebanese Army and its attack against Fatah Al-Islam.<sup>137</sup>

Reconstruction of the camp is supposed to also lead to more general improvements of the political and social situation within the camp. The Government of Lebanon states in its report about the reconstruction of Nahr al-Bared camp:

---

<sup>134</sup> UNRWA, Website, <http://www.un.org/unrwa/refugees/lebanon.html> (Download 12 September 2008).

<sup>135</sup> The Guardian Online, *Lebanese troops shell Palestinian refugees*, 21 May 2007, <http://www.guardian.co.uk/world/2007/may/21/syria.marktran> (Download 12 September).

<sup>136</sup> UNRWA, Website, <http://www.un.org/unrwa/overview/ga.html#d> (Download 12 September 2008).

<sup>137</sup> UNRWA, Lebanon Emergency, Situation Report 21 May 2007, (on file with the author).

“(…) the camp will not return to the previous environmental, social and political status quo that facilitated its takeover by terrorists. This reconstruction process is understood as an opportunity to improve both the camp and its environment.”<sup>138</sup>

According to the Government of Lebanon, “UNRWA is the lead agency for the provision of housing and basic socio-economic services to the refugee population in the Nahr el-Bared and Beddawi Camps. (...) It will continue to be the lead agency on the provision for Relief throughout the completion of the recovery process in and around NBC.”<sup>139</sup> UNRWA extends its relief efforts also to the population surrounding the camp.

Efforts have been made to improve coordination between NGOs and UN organizations. The UN formed a cluster system to centralize information, identify gaps in response and avoid duplication of activities within various sectors.<sup>140</sup>

The Nahr el-Bared Reconstruction Commission for Civil Action and Studies (NBRC) and UNRWA’s Infrastructure and Camp Improvement Programme have jointly developed the Preliminary Master Plan for the reconstruction of the camp. There are reconstruction guidelines that have been developed in cooperation with the refugee community to reflect their needs and aspirations. Interviews were conducted by the NBRC starting in July 2007.<sup>141</sup>

Due to the territorial restrictions of Nahr el-Bared refugee camp, and population increase the living situation of most of the inhabitants of the camp was difficult. Many of the families resided in housing that could be described as sub-standard. Water supply as well as the sewage system was inadequate. UNRWA and other actors involved have made it their aspiration to systematically improve living conditions in the newly constructed camp.<sup>142</sup>

---

<sup>138</sup> Government of Lebanon: *A Common Challenge – A shared Responsibility*: The International Donor Conference for the Recovery and Reconstruction of the Nahr el-Bared Palestinian Refugee Camp and Conflict-Affected Areas of North Lebanon, Vienna, 23 June 2008, p.18.

<sup>139</sup> Ibid., p.23.

<sup>140</sup> Ibid., p. 27.

<sup>141</sup> UNRWA, *Preliminary Master Plan and Guidelines for the Reconstruction of Nahr el-Bared Palestine Refugee Camp*, April 2008, Conference Paper: The International Donor Conference for the Recovery and Reconstruction of the Nahr el-Bared Palestinian Refugee Camp and Conflict-Affected Areas of North Lebanon, Vienna, 23 June 2008, p.4.

<sup>142</sup> Ibid., p.7.

The following seven guidelines have been developed:<sup>143</sup>

1. Extended family building type: Extended families will be living in the same building, in keeping with traditional Arab housing patterns. According to the UNRWA Master Plan this encourages strong family support mechanisms.
2. Recreating the old neighbourhoods: New housing blocks will be arranged similar to the way they were before the conflict. This shall enhance social cohesion.
3. Replicating the camp's landmarks: Mosques, kindergartens and other public landmarks will be rebuilt in their original location in order to enhance the sense of identity and to encourage acceptance of the new camp design among the refugee community.
4. Building better housing: New buildings will have stronger foundations in order to support up to four stories. This shall prevent overcrowding in the camp. Previously sub-standard housing will be rebuilt according to a minimum acceptable standard adopted by UNRWA.
5. Improving the camps environment: A higher percentage of the territory shall be reserved as public space in order to improve natural light, airflow and access. Courtyards within the compounds are planned in order to create semi-public spaces and to provide light to the back rooms of the buildings.
6. Improving the infrastructure: This will include water and sewerage networks, street lighting and storm water drainage channels.
7. Improving access: Finally, wider roads, more parking space and more pedestrian walkways shall provide the camp with better access including for emergency services. Road congestion shall be reduced.

According to UNRWA sustainability and governance of the future camp depend on a number of factors that still have to be addressed. UNRWA emphasises the importance of better coordination of all stakeholders involved.<sup>144</sup> By doing so it implicitly states that UNRWA will not be the major addressee for complaints regarding issues relating to questions of sustainability and governance. These include future ownership of the new buildings, regulation of future urban growth, inclusive and community-based management structures, the sustainability of the camp's utility running costs (electricity,

---

<sup>143</sup> Ibid., p.10, 11.

<sup>144</sup> Ibid., p.21.



telecommunications), good waste management and other measures that will address security concerns of the refugee population as well as the Government of Lebanon.<sup>145</sup>

This comprehensive approach, again, reflects the change that took place within UNRWA: from a consultancy role in the 1950s to an active player who does not shy away from being perceived as a major development actor in the region.

#### **4.4. Assessment of UNRWA's Work towards Development**

UNRWA's annual report 2007 contains the following description of UNRWA's purpose: "The purpose of UNRWA is to contribute to the human development of Palestine refugees in the Gaza Strip, the West Bank, Jordan, Lebanon and the Syrian Arab Republic until a just solution is found to the refugee issue." It further reads "The Agency fulfils this purpose by providing a variety of essential services within the framework of international standards."<sup>146</sup>

Despite extensive research on this topic including personal inquiry with UNRWA, the author could not establish which international standards the commissioner-general was referring to. As of the author's knowledge no official guidelines exist concerning UNRWA's performance in development. While the wording indicated UNRWA's willingness to adhere to international standards, this happens on a rather voluntary basis, because the agency is in many respects isolated from the broader UN regime. The fact that it did not become member of the United Nations Development Group (UNDG) is the expression of this fact.<sup>147</sup> The UNDG adhered collectively to the Paris Declaration for Aid Effectiveness, which creates monitoring and evaluation measures, which in the author's view are appropriate for UNRWA as well. The Paris Declaration is a world-wide effort to improve the quality of development assistance. The fact that UNRWA is not part of this development further perpetuates its isolation. According to Commissioner-General Karen AbuZayd one of the benefits of the organisational development and the improved management capacity would be the ability to "explain its (the agency's) work to the rest

---

<sup>145</sup> Ibid., p.21.

<sup>146</sup> UNRWA, Annual Report, 2007, p.1.

<sup>147</sup> The United Nations Development Group (UNDG) was established in 1997 by the Secretary-General to improve the effectiveness of the UN System in development cooperation at the country level. The UNDG is made up of 25 operational agencies involved in development activities, plus five observers. It is chaired by the Administrator of the United Nations Development Programme (UNDP). [www.undg.org](http://www.undg.org) (Download 17 October 2008).

of the world.”<sup>148</sup> The need to explain UNRWA’s work originates from this isolation, and could be diminished by the engagement in world-wide initiatives. The advantages would be more international visibility and more awareness about UNRWA’s mandate and work.

By adhering to the Paris Declaration countries or organisations agree to 56 partnership commitments and 12 indicators of progress. They also pledge to monitor and assess their progress in the light of agreed targets that were set for 2010.<sup>149</sup> One of the major messages that came from the Paris Conference in 2005 was that “Development assistance works best when it is fully aligned with national priorities and needs”.<sup>150</sup> The Paris Declaration is part of the broader Millennium Development goals (MDG) movement, which was initiated following the passing of the Millennium Development Declaration in September 2000, and was part of the preparations of the international community for the review of both the Millennium Declaration and the MDGs.<sup>151</sup> According to the *Action Plan towards the Implementation of the Paris Declaration on Aid Effectiveness* by the UN Development Group the Paris Declaration has “major implications for the work of the UNDG and UN country teams (...)”.<sup>152</sup> The UNDG has defined three points as central to achieving the Paris commitments: “1. putting national development plans at the center of UN country programming, 2. strengthening national capacities, 3. increasingly using and strengthening national systems.”

UNRWA was established in a unique historical setting, and is therefore different from most other development agencies – including its relation to the countries where it operates. Therefore, the above three indicators will have to be addressed in a different manner. Yet, serious commitment and monitoring in the light of these guidelines, *in accordance to UNRWA’s capabilities*, would provide the agency with more credibility. In addition some of UNRWA’s special characteristics can be compared to development efforts in fragile states, which is mentioned in the Paris Declaration (par. 37-39) and as discussed by the OECD.<sup>153</sup>

---

<sup>148</sup> Karen Koning AbuZayd, Press Conference on *Situation of Palestine Relief Agency*, 7 November 2007, <http://domino.un.org/UNISPAL.NSF/9a798adbf322aff38525617b006d88d7/fc9aa495d8f34fbd8525738d0050382f?OpenDocument> (Download 12 September 2008).

<sup>149</sup> OECD Website, Development Co-operation Directorate (DCD-DAC), Adhesion procedure, <http://www.oecd.org/dataoecd/57/30/36083092.pdf> (Download 28 July 2008).

<sup>150</sup> UNDG: *Implementing the Paris Declaration on Aid Effectiveness: Action Plan of the UN Development Group*, p.1.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> OECD: *Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons*, 2008.

Despite this lack of guidelines and transparency UNRWA's performance in development seems to be good. The UNRWA director of health stated the following in his report to the World Health Assembly in 2008:

“UNRWA is the largest humanitarian operation in the region, providing assistance to almost half the population of the occupied Palestinian territory. Despite the increasingly unstable operational environment, it continues to provide one of the most cost-effective and efficient health systems in the region.”<sup>154</sup>

Rex Brynen sees UNRWA's general performance in a rather positive light as well:

“After 50 years of refugeehood, minor differentials exist between the living conditions of the Palestinian refugee population and their neighbours in the host countries. This means that the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the international community and the governments of the host countries have provided adequate assistance to cover their basic socioeconomic needs. Compared to other Middle East and North Africa (MENA) countries, living condition indicators compare well.”<sup>155</sup>

UNRWA's work is hampered by serious gaps in funding. While the refugee population is ever-increasing, budget did not keep up with this challenge. Therefore austerity measures are being introduced, which are felt by the refugees. UNRWA effectively competes for budget with the UNHCR and the Red Cross.<sup>156</sup> Already in 1997 Charles Petrie, the then Special Assistant to the Commissioner-General stated, "we often hear complaints in the camps that people feel abandoned by the international community as they perceive services cut and a decrease in Agency activity."<sup>157</sup>

UNRWA's financial situation has always been difficult. Even though its regular budget has increased considerably during the last decades, this increase could not keep pace with the increasing needs of a fast-growing refugee population.

---

<sup>154</sup> UNRWA: *Report of UNRWA's Director of Health to the World Health Assembly*, 2008, par.8.

<sup>155</sup> Brynen, Rex: *The future of UNRWA: an agenda for policy research*, PRN/IDRC/RIIA workshop on the future of UNRWA, [http://www.arts.mcgill.ca/mepp/new\\_prn/research/papers/brynen\\_000219.htm](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/brynen_000219.htm) (Download 20 October 2008).

<sup>156</sup> Palestinian Refugee Research Net, *UNRWA: Cutting the Fat or Heading for Starvation?*, Palestine Economic Pulse, Vol II. No.4, July-August 1997, pp21-22, [http://www.arts.mcgill.ca/mepp/new\\_prn/research/papers/pep.htm](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/pep.htm) (Download 29 July 2008).

<sup>157</sup> Ibid.

At a New York press conference in November 2007 UNRWA Commissioner-General Karen Koning AbuZayd said that without significantly more resources, UNRWA would not be able to continue its work and deliver the quality of basic services that refugees were entitled to.<sup>158</sup>

#### **4.5.Criticism**

This chapter will present some of the criticism UNRWA is faced with. Criticism includes many different aspects. These can only be scratched upon within the framework of this thesis, knowing that a more profound discussion of all points of concern is needed in order to come to a final conclusion on the value of the criticism. In addition to the presentation of the concerns, counterarguments will be presented without fully dismissing the criticism, but leaving room for own reflection. The author still judges this chapter as important for the discussion of the topic, because it provides the reader with an understanding of the controversy about UNRWA.

Although not all of the points focus on UNRWA's performance in development, many of the arguments are indirectly part of the broader development discourse. Accusations to be biased, to create dependency or the perpetuation of the refugee situation, problems with efficiency and high overhead costs are of concern to most development agencies. Therefore, the discussion of these can be found in the present chapter on UNRWA's role in development.

From the beginning UNRWA has had to confront criticism from different sides. Some very strong opposition came from Arab countries and the refugee population itself. The Agency came into being right after a large scale war in the region. Suspicion ran high also towards the United Nations which was partly made responsible for the refugee problem. This can be seen in a remark by the Director of UNRWA in 1950 referring to a visit to Arab countries in the region:

---

<sup>158</sup>United Nations Department of Public Information, News and Media Division, New York, *Press Conference on Situation of Palestine Relief Agency*, 7 November 2007, [http://www.un.org/News/briefings/docs/2007/071107\\_UNRWA.doc.htm](http://www.un.org/News/briefings/docs/2007/071107_UNRWA.doc.htm) (Download 16 September 2008).

“A cordial reception was accorded the Agency in all capitals, though it was evident that its motives and possibilities were generally not clearly appreciated and in some instances were even under suspicion.”<sup>159</sup>

The Agency was under suspicion also from the side of Palestine refugees themselves. Right after the start of UNRWA operations in 1950 “camps involving some 30,000 relief recipients (roughly 3 per cent of the total) called food strikes on the pretext that the Agency was a tool of capitalist governments, but well before the end of the month all of the refugees settled down and accepted their rations at the normal distribution period.”<sup>160</sup>

The Arab press engaged in a campaign of harsh criticism of the Agency in August 1950. In Lebanon and Syria UNRWA workers were threatened and hindered to fulfil their duties. In Syria the UNRWA office in Damascus was destroyed by explosives and a bomb was thrown at a truck load of UNRWA workers.<sup>161</sup>

The initial perception of the conflict and of UNRWA by the Palestinian refugee community was also described in the first interim report by the Director of UNRWA in 1950.

„It is (...) a fact that the refugee, individually and collectively, is tired of his present condition. Above all, he wishes to return to his former home and means of livelihood. He has been repeatedly told, and generally believes, that his present condition is due to the interference of the Western world in his affairs. He is resentful of the fact that he is forced to live away from his former home and that he has received no compensation for his losses. He is also resentful of the fact that his money in banks in Israel is withheld from him. He considers the United Nations mainly responsible for his plight. He expresses little, if any, gratitude for the Agency's efforts to maintain or improve his condition.”<sup>162</sup>

UNRWA is accused of increasing dependency of Palestine refugees. While services are important for many refugees, under normal circumstances only 5.7 percent of the refugees receive food aid or other direct assistance.<sup>163</sup> Since its main activities are education and

---

<sup>159</sup> UNRWA, Interim Report, 6 October 1950, par.9.

<sup>160</sup> Ibid., par.12.

<sup>161</sup> Ibid., par.27.

<sup>162</sup> Ibid., par.28.

<sup>163</sup> UNRWA Website, Setting the record straight:

[http://www.un.org/News/briefings/docs/2007/071107\\_UNRWA.doc.htm](http://www.un.org/News/briefings/docs/2007/071107_UNRWA.doc.htm) (Download 29 July 2008).

health care services it is difficult to argue that dependence is increased. On the contrary one could argue that the Agency's services enable people to become more self-sufficient.

Giorgio Giacomelli, confronted with this criticism, took position in UNRWA's annual report 1987.

“There have also been misconceptions about the kind of assistance the Agency provides under, its mandate. Initially, the Agency provided the refugees with emergency relief assistance such as food, clothing and shelter. With the passage of time, however, the needs of the refugees changed and the Agency adapted its services to meet, those changing needs. Today, it (...) devotes the bulk of its efforts and resources to the productive developmental tasks of educating children, furnishing advanced training, maintaining an effective public health care service and providing a basic welfare service to a population (...) that is largely industrious and self-supporting. Yet, in some quarters, UNRWA continues to be portrayed as an Agency concerned with distributing food to refugees who sit idly in camps, relieved of the need to earn a living. Such a portrayal is grossly unfair both to the Agency and to the refugees.”<sup>164</sup>

According to Benjamin Schiff, “attacks against UNRWA come in three varieties. First, critics charge that UNRWA inappropriately aids one or the other side. Second, they assert that it is inefficient and ineffective. Third, they charge that the agency's operations and its very existence undermine the possibilities for positive change by entrenching an undesirable status quo.”<sup>165</sup>

The following statement further illuminates the difficulties UNRWA faces in the OPT.

“While Israelis charge that UNRWA allows Palestinians to use the agency for their purposes, Palestinians charge that it sometimes cooperates too much with the occupation.”<sup>166</sup>

Anachronistic training programmes had been detected in the 1990. For example in 1997, the Agency still offered training courses on the repair of manual type writers.<sup>167</sup>

---

<sup>164</sup> UNRWA, Annual Report, 1986/1987, par.5.

<sup>165</sup> Schiff, Benjamin N.: *Between occupier and the occupied: UNRWA in the West Bank and the Gaza Strip*, Journal of Palestine Studies, Vol.18, no.3 (spring 1989), pp.60-75, p.64.

<sup>166</sup> Ibid., p.66.

“Most of the criticism concerns the UNRWA showing the pathology of aging, including symptoms of inflexibility, resistance to adjust to the changing political environment and refusal to phase out and transfer its responsibilities to the Palestinian Authority.”<sup>168</sup>

Today it is safe to say that “the pathology of aging” is no longer an issue. The comprehensive management reform introduced following the Geneva Conference in 2004 led to an agency-wide reassessment of operations and addresses its shortcomings in a convincing way.<sup>169</sup>

Although agency officials stress that UNRWA is only in place as long as it is needed, due to the lack of a just solution, the lack of a concrete strategy about how the agency would be withdrawn in the region, leads to doubts about this statement. In favour of UNRWA one could argue that solution of the problem seems distant and UNRWA is therefore more concerned about the imminent needs of the refugees under its mandate. In addition, when the conflict was seen in a more hopeful way, in the beginning of the Oslo Peace Process, the Agency took measures to prepare for its withdrawal. In the annual report 1993/1994 the Commissioner-General makes the following statement:

“The historic developments that took place during the year under review - 1 July 1993 to 30 June 1994 - had a profound impact on the work and responsibilities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). With the establishment of the Palestinian Authority in the Gaza Strip and the Jericho area and the anticipated extension of self-rule to the rest of the West Bank, UNRWA entered a new era in its relationship with the Palestinian people. Thenceforth, in addition to maintaining the services that it had provided for over 40 years, the Agency would soon begin a process of preparing for the eventual hand-over of its installations, services and programmes to the Palestinians in the West Bank and Gaza Strip.”<sup>170</sup>

---

<sup>167</sup> Palestinian Refugee Research Net, *UNRWA: Cutting the Fat or Heading for Starvation?*, Palestine Economic Pulse, Vol II. No.4, July-August 1997, pp21-22, [http://www.arts.mcgill.ca/mepp/new\\_prn/research/papers/pep.htm](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/pep.htm) (Download 29 July 2008).

<sup>168</sup> Emanuel Marx and Nitza Nachmias: *Dilemmas of Prolonged Humanitarian Aid Operations: The Case of UNRWA (UN Relief and Works Agency for the Palestinian Refugees)* <http://www.jha.ac/articles/a135.htm> (Download 29 July 2008).

<sup>169</sup> See also chapter 5.3.10.

<sup>170</sup> UNRWA, annual report, 1993/1994, par.1.

Also UNRWA is aware of this problematic situation. According to Olof Rydbeck, Commissioner- General of UNRWA between 1979 and 1985, “Either dissolving UNRWA or making it permanent would be an admission by the United Nations that there was no solution to the Middle East struggle. That leaves us with a permanently jerry-built structure to keep the fiction alive.”<sup>171</sup>

UNRWA is accused of teaching hatred of Israel in its text books. In the OPT UNRWA used Egyptian and Jordanian text books in Gaza and the West Bank respectively. Only after 1994 the Palestinian Authority started to replace the text books with new ones. On its website UNRWA cites studies that have been conducted showing that “the new books have removed the anti-Semitism present in the older books”, that they “must be seen as a tremendous improvement” and that they don’t compare unfavourably compared to Israeli text books.<sup>172</sup>

High overhead cost is a problem of many international organizations and other actors engaged in humanitarian or development work. UNHCR, urged by donors, had to introduce an extensive internal reform in order to reduce its costs in headquarters and on staff in general.<sup>173</sup> Of UNRWA’s biennial budget 2008/2009 of US\$ 1,093,252,000, staff cost amounts to US\$ 773,269,000. This constitutes about 70 % of the total budget.<sup>174</sup> Still the two organisations function in a different way and UNRWA’s internal structure is somewhat special. Therefore, change of policy is not to be expected. UNRWA’s role as an employer should also not be underestimated, with 13,922 staff in the OPT.<sup>175</sup> The number of international staff has been reduced – but not the number of general staff.<sup>176</sup> This indicates that there is consent for this practice. In contrast to UNHCR and UNICEF it provides its services directly, therefore employing a much higher number of persons. Therefore a direct comparison to either of these organizations does not lead to the seemingly obvious conclusion that UNRWA’s bureaucracy is less efficient. The question

---

<sup>171</sup> Viorst, Milton: *UNRWA and Peace in the Middle East*, Washington DC, The Middle East Institute, 1984, p.6.

<sup>172</sup> UNRWA Website, *Setting the record straight*, <http://www.un.org/unrwa/allegations/index.html> (Download 30 September 2008).

<sup>173</sup> See for example: UNHCR, *Structural and management change process, Progress Report*, September 2006, <http://www.unhcr.org/excom/EXCOM/450eb2702.pdf> (Download 16 September 2008).

<sup>174</sup> UNRWA, *General Fund Appeal 2008-2009*, p.32.

<sup>175</sup> UNRWA, *UNRWA in Figures*, June 2008.

<sup>176</sup> UNRWA, *Annual Report, 1966/1967*, par.5. The idea to limit the number of international staff to a minimum by giving preference to Palestine refugees has been inherent to the Agency since the start. In its first interim report in 1950 the agency reports: “International administrative personnel has been reduced from 264 to 117 by substitution of Palestine refugees wherever it has been possible to do so.”, UNRWA, *Interim Report*, 6 October 1950, par.11.



whether it is reasonable to employ that many people or if it would be more desirable to delegate operations to local NGOs or other actors is a different one, but as it stands the high overhead costs of the agency result to a great extent from the way UNRWA is organised and does not necessarily indicate inefficiencies.

In 1989, Benjamin Schiff had the following to say in regard of accusations that the agency was inefficient and ineffective:

“Good scores on the *tawjihi* exams and falling disease and mortality rates imply that UNRWA is effective, even if its efficiency can be questioned. Its lack of funding for maintenance and construction, and consequently poor facilities serving large numbers of clients seem to indicate that it is in fact stretching its finances quite far. UNRWA is a labor-intensive organization, because health and education are labor-intensive activities. The majority of its employees are teachers, and average class sizes are large. The inefficiency claim is very unlikely.”<sup>177</sup>

The perpetuation of the refugee problem is an issue that is frequently raised in relation to UNRWA's work.<sup>178</sup> Some authors suggest that if UNRWA was to dissolve the Palestinian Authority as well as Israel and the Arab host countries would have to take up responsibility for the well-being of the refugees and would be forced to enhance efforts towards a durable solution. While it is difficult to forecast the effects of a withdrawal of the agency, one could see the issue from a different perspective. UNRWA is a product of the international community established and maintained in order to reduce the negative effects of the long-lasting refugee problem. Therefore it lies not in UNRWA's responsibility to “force” the actors involved to engage in efforts towards a just solution, but it is the responsibility of the states to take those steps and to encourage a disengagement of UNRWA when this is feasible.

Commissioner-General of UNRWA, Giorgio Giacomelli, complained about a widespread misconception of UNRWA's mandate in his annual report presented to the General Assembly in 1987.

---

<sup>177</sup> Schiff, Benjamin N.: *Between occupier and the occupied: UNRWA in the West Bank and the Gaza Strip*, Journal of Palestine Studies, Vol.18, no.3 (spring 1989), pp.60-75, p.68.

<sup>178</sup> Ibid., p.69. See also Emanuel Marx and Nitza Nachmias: *Dilemmas of Prolonged Humanitarian Aid Operations: The Case of UNRWA (UN Relief and Work Agency for the Palestinian Refugees)* <http://www.jha.ac/articles/a135.htm> (Download 29 July 2008).

“UNRWA was set up to provide assistance to the Palestine refugees pending the implementation of the solution agreed upon by the General Assembly. It was not given the responsibility of implementing that solution; that task was given to a political body of the United Nations system, the United Nations Conciliation, Commission for Palestine. (...) Unfortunately, outside United Nations circles, this tends to have been forgotten. The result has been that UNRWA has been attacked for not seeking durable solution and has been accused of perpetuating the problem.”<sup>179</sup>

## 4.6. Conclusion

We have seen in this chapter that considerable adaptations have taken place in the course of time. The *works projects* were tried to be installed in the very beginning of the Agency's existence, though shortly after it was decided that they were not welcomed by the refugees or the host governments. The shift towards education has been the first major change in the agency's programmes now aimed at a more sustainable development in the region. This resulted from the realization in the early 1950s that a durable solution to the refugee problem might not be imminent and that if it wasn't for UNRWA, no other actor in the field wanted to take on the tasks of education and health care. This change has continued over the decades, including the introduction of new programmes, such as microfinance and initiatives in the framework of the Peace Implementation Programme. This resulted in today's situation where 90% of UNRWA's budget is used for projects that can be labelled development projects, and only 10% go towards relief services, which according to the 1950's understanding of the term *development* do not fall in this category.

The reasons for this change happened mostly passively within UNRWA as a reaction to the realities on the ground. Examples have shown that UNRWA was sometimes even reluctant to take on new tasks, but resolutions by the General Assembly many times welcomed an extended engagement of the Agency in the region – also in development projects.

The example of the planned reconstruction of the Nahr el-Bared Camp in northern Lebanon has shown today's criteria and principles in a classical development/construction

---

<sup>179</sup> UNRWA, Annual Report, 1986/1987, par.4.

project, and is a milestone in UNRWA's engagement in infrastructure and camp development.

In the author's eyes it would be helpful if UNRWA were part of the United Nations Development Group, and consequently also party to the Paris Declaration on Aid Effectiveness, which includes indicators in order to evaluate development projects according to standardized principles.

UNRWA faces criticism concerning a great number of issues. Whereas some of this criticism is unfounded and based on negligence of some basic facts, others, especially the ones concerning management and efficiency issues, have to be taken seriously. An all-embracing management reform has been introduced within the Agency following UNRWA's high level conference in Geneva in 2004. Outcomes are already visible and more improvement is being promised.<sup>180</sup> Another set of criticism addresses UNRWA's existence in itself. In this respect responsibility of UNRWA is limited in its function as a subsidiary and non-political organ of the United Nations.

## **5. UNRWA's Role in the Protection of Refugees**

Refugees are a particularly vulnerable group and deserve international protection. One of the defining characteristics of refugees is that the country of origin doesn't provide for their protection, or they might be stateless persons, and therefore don't have a national authority they could turn to as a citizen. And even though article 26 of the International Covenant of Civil and Political Rights states that all persons are entitled without any discrimination to the equal protection of the law, Palestinian refugees make up a group that is singled out and consequently doesn't benefit from the international protection regime.<sup>181</sup> This fact results in a *de jure* and a *de facto* protection gap.<sup>182</sup> The reasons for and the consequences of this phenomenon and the role UNRWA plays or could potentially play will be subject of this chapter.

---

<sup>180</sup> See UNRWA, *Organisational Development: A Mid-Term Report*, August 2008.

<sup>181</sup> For more critical thoughts on the actual effects of a protection mandate see chapter 5.3.7.

<sup>182</sup> The *de jure* protection gap refers to Palestine refugees within UNRWA's area of operations; the *de facto* protection gap refers to Palestine refugees outside this area. The issue of the protection gap will be discussed in chapter 5.2.

## 5.1.What is Protection?

### 5.1.1. The United Nations and Human Rights

One of the fundamental aims of the whole United Nations system is the promotion of human rights on a global level.<sup>183</sup> The normative and institutional development of the international protection of human rights can be divided in three different phases.<sup>184</sup> The first phase was mainly concerned with standard-setting, the search for binding norms and codification. It started with the coming into power of the charter of the United Nations and finished with the adoption of the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights in 1966.<sup>185</sup> Codification continues until today, but during this first phase the most comprehensive and groundbreaking work has been done.<sup>186</sup> The second phase began around 1965 and focused on the promotion of these rights. International mechanisms were created to enable individuals and groups to pursue claims based on the violation of fundamental human rights. With the end of the Cold War a new phase started, which is still ongoing.<sup>187</sup> During this phase the actors involved are striving to make the monitoring mechanisms more effective. The western democratic model has been adopted as the most apt to promote human rights, therefore relieving the discourse of the burden of sometimes contradicting east-west ideologies. The connection between western democracy and human rights had already been agreed upon by the Commission on Security and Cooperation in Europe (CSCE; since 1995 Organisation for Security and Cooperation in Europe, OSCE) in 1990.<sup>188</sup> The Council of Europe and the Convention for the Protection of Human Rights and Fundamental Freedoms (also called the European Convention on Human Rights, ECHR) have been setting the standards for Europe. Human rights have been made an issue of international interest. They found their way into arguments of international peace and security. The development of individual accountability before

---

<sup>183</sup> Article 1 of the Charter of the United Nations lists the purposes of the Organisation. Paragraph 3 of this article reads: "To achieve international co-operation (...) in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

<sup>184</sup> Strauss, Ekkehard: *Prävention von Menschenrechtsverletzungen als Aufgabe internationaler Organisationen: Rechtsgrundlage und inhaltliche Ansätze*, Berlin Verlag Arno Spitz GmbH, Berlin, 2001, p.25.

<sup>185</sup> It took another ten years for the two pacts to come into force in 1976. Neuhold/Hummer/Schreuer (editors), 2004, p.265, par.1383f.

<sup>186</sup> Strauss, 2001, p.25.

<sup>187</sup> Ibid., p.27.

<sup>188</sup> Ibid.,p.27.

international criminal courts concerning genocide, crimes against humanity and war crimes is also an expression of this trend.<sup>189</sup> UNRWA's annual reports mention human rights for the first time in 1968.<sup>190</sup> In 2000 UNRWA started to teach conflict resolution and basic human rights in its schools.<sup>191</sup> In the latest annual reports of 2006 and 2007 human rights have been mentioned in the introduction pointing out that States and the international community are the ones responsible for the protection of refugees.<sup>192</sup>

UNRWA, being a subsidiary organ of the United Nations, is in itself bound by the United Nations Charter provisions and accordingly, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" as stated in the Preamble. In addition, it is not unaffected by the developments and changes in trend that occurred during the last 60 decades. One should keep in mind this bigger picture when discussing the reasons for UNRWA's efforts towards the protection of human rights.

### 5.1.2. Definition of the Term Protection

There are different forms of protection. As a first step one can distinguish between the *Protection of individuals* in general, which means "securing the enjoyment of basic rights that are inherent to every human being",<sup>193</sup> and *International Protection*. The latter is based on international law as opposed to protection provided under the national law of states. Furthermore, Parvathaneni talks about "a variety of protection contexts", which include diplomatic protection, consular protection, protection under humanitarian law, protection under human rights law, protection of the vulnerable (children women, elderly, disabled, etc.), and protection of refugees and stateless persons.<sup>194</sup> The first two categories, diplomatic and consular protection, are not relevant for refugees because they represent rights of states,<sup>195</sup> and refugees per definition do not enjoy protection by their

---

<sup>189</sup> Ibid., p.28.

<sup>190</sup> UNRWA, Annual Report, 1967/1968, par.11.

<sup>191</sup> UNRWA, Annual Report, 1999/2000, par.26.

<sup>192</sup> UNRWA, Annual Report, 2006, p.viii, and UNRWA, Annual Report, 2007, p.iv.

<sup>193</sup> Takkenberg, Lex: *International Protection of Palestinian Refugees & the Relevant Rules of International Law*, Paper Outline for the BADIL Expert Forum 2003 -2004, Cairo, 5-8 March 2004, p.1.

<sup>194</sup> Parvathaneni, Harish: *UNRWA's Role in Protecting Palestine Refugees*, BADIL Expert Seminar, Cairo, 5-8 March 2004, p.9. See also Takkenberg, 2004, p.1.

<sup>195</sup> It should be stressed that being the right of states, no individual can claim diplomatic protection but it is in left to the States' discretion if they want to protect their citizen or not. Neuhold/Hummer/Schreuer (editors), 2004, p.140, par.705, 706.

states of nationality, or do not belong to any nationality – as is the case of the majority of Palestinian refugees.<sup>196</sup> International refugee protection first became an issue during the time of the League of Nations<sup>197</sup> and evolved historically as a compensation for the lack of access to consular and diplomatic protection by refugees. Today refugee protection is part of the broader international human rights regime.<sup>198</sup> Because of the fact that refugees, unlike other foreigners, cannot turn to the authorities of their home countries, they must seek protection from the international community.<sup>199</sup>

There are different definitions of the word “protection” – a stricter one, which basically means legal protection as opposed to broader ones as presented for example by the Secretary-General.<sup>200</sup> Therefore, when using this term in any kind of publication, it would be necessary to explain what is meant by the author(s). But even in official UN resolutions the term is not defined and leaves room for interpretation. Although scholars agree that UNRWA does not have an explicit protection mandate,<sup>201</sup> which could be compared to the one of UNHCR the term comes up in the resolution that is passed every three years to prolong the mandate without being defined.

According to the UNHCR its protection function includes promoting international agreements for refugee protection, supervising their application, assisting governments and private actors in the voluntary repatriation of refugees or in their resettlement in third countries, and assisting refugees in protecting their properties, such as restitution or transfer of assets left in their states of origin.<sup>202</sup> One can divide UNHCR’s protection role into two main blocks: one is the direct protection of the refugees’ human right, and the other is the search for and the implementation of durable solutions.<sup>203</sup> Since its inception UNHCR’s role in protection has evolved significantly.<sup>204</sup> It has expanded its mandate to include persons who do not fit the convention’s strict statutory definition, such as displaced persons, returnees, and persons falling within broader refugee definitions

---

<sup>196</sup> Takkenberg, 1998, p.185.

<sup>197</sup> Jäger, Gilbert: *On the history of the international protection of refugees*, International Review of the Red Cross, Vol. 83, No.843, September 2001, p.727; See also Parvathaneni, 2004, p.9.

<sup>198</sup> Takkenberg, 2004, p.1.

<sup>199</sup> Ibid., p.2.

<sup>200</sup> Takkenberg, 1998, p.285.

<sup>201</sup> Parvathaneni, 2004, p.2; Akram, Susan: *Palestinian Refugees and their legal status: Rights, politics, and implications for a just solution*, in: Journal of Palestine Studies XXXI, no. 3, Spring 2002, pp. 36-51, p.39.

<sup>202</sup> Akram, 2002, p.37 and Statute of the Office of the High Commissioner for Refugees, Art. 8.  
<http://www.unhcr.org/protect/PROTECTION/3b66c39e1.pdf> (Download 26 August 2008).

<sup>203</sup> Akram, 2002, p.37.

<sup>204</sup> Ibid., p.38.

adopted by individual states.<sup>205</sup> UNHCR's mandate can serve as an example for the successful transformation of the mandate and adaption to changed realities. This evolution has been supported by the international community.<sup>206</sup> Refugees also benefit from a broader concept of human rights inscribed in a multitude of human rights instruments.<sup>207</sup>

In its Interim Programme Strategy 2008-2009 UNRWA defines protection in the following terms:

“In line with the definition of the UN Inter-Agency Standing Committee, we understand protection to encompass activities that are geared towards obtaining full respect for the rights of refugees under relevant international law.”<sup>208</sup>

A citation from the first page of the UNRWA's annual report 2007 shows that, indeed, the agency states protection as one of its priorities.

“UNRWA is a global advocate for the protection and care of Palestine refugees. In circumstances of humanitarian crisis and armed conflict, the Agency's emergency interventions, and indeed its presence, serve as tangible symbols of the international community's concern and ultimately contributes to a stable environment.”<sup>209</sup>

At the same time this excerpt reveals the still unclear definition UNRWA uses for this concept. It uses *protection* and *care* in the same sentence, making it difficult for the reader to get a clear picture of what is meant with either of these terms. Are the Agency's emergency interventions part of its protection efforts? Is its *presence* – the “symbol of the international community's concern” – part of the agency's understanding of protection?

---

<sup>205</sup> Ibid., p.38.

<sup>206</sup> See n.67 and 68 above.

<sup>207</sup> Such as the International Covenant of Civil and Political Rights (and the Human Rights Committee), the International Covenant for Economic, Social and Cultural Rights, the Committee Against Torture (CAT), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of all Discrimination Against Women (CEDAW), the Committee on the Right of the Child (CRD). UN organs include the International Court of Justice (ICJ), the UN Human Rights Council, the Office of the High Commissioner of Human Rights (OHCHR), the UN General Assembly, the UN Security Council, and the Economic and Social Council (ECOSOC).

<sup>208</sup> UNRWA, *Interim Programme Strategy 2008-2009*, 2007, p.9.

<sup>209</sup> UNRWA, *Annual Report*, 2007, p.1.

The agency is aware of this lack of clarity and is working on a clear strategy:

“Our ongoing work on developing a protection strategy will focus on clarifying the actions, rights and legal precepts that are germane to UNRWA’s mandate and to our specific operational context and the needs of each field.”<sup>210</sup>

Furthermore, in UNRWA’s Interim Programme Strategy 2008-2009, human rights are seen as part of human development.<sup>211</sup> This could be interpreted to mean that the issue of human rights is indirectly part of UNRWA’s daily work, considering that UNRWA’s over-all mission reads: “To help Palestine refugees achieve their full potential in human development terms under the difficult circumstances in which they live”.<sup>212</sup>

In a report to the Security Council in 1988 the then Secretary-General defined four different concepts of the term protection in connection to the first intifada in the OPT. Firstly, protection can mean physical protection through armed forces, who might engage in fights in reaction to threats to the safety of the protected persons. Secondly, protection can mean legal protection. Thirdly, protection can mean general assistance, “in which an outside agency intervenes with the authorities of the occupying power to help individuals or groups of individuals to resist violations of their rights”.<sup>213</sup> And finally, it can mean protection by outside agencies, especially media, who protect through their mere presence in combination with the knowledge of the occupier that violations might be published. The Secretary-General had to admit that this last notion of protection was very difficult to determine.

In the context of this thesis the first category is not of importance because UNRWA does not engage in such physical protection and does not have the capabilities to do so. Legal protection as well as the engagement with the authorities will be discussed. The fourth aspect might concern UNRWA as well, but due to the fact that this is just a well-received side-effect of UNRWA’s work as well as the difficulties in measuring this form of protection it will not be discussed in this paper, and consequently will not be included in the definition of the term *protection* for this work.

---

<sup>210</sup> UNRWA, *Interim Programme Strategy 2008-2009*, 2007, p.9.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid., p.1.

<sup>213</sup> Takkenberg, 1998, p.285.



The author agrees with the statement by Arthur Helton: “when we speak of “protection”, we mean *legal* protection”.<sup>214</sup> She will, therefore, not focus on physical protection as well as protection through indirect effects caused by mere presence of UNRWA personnel. Nonetheless, the term legal protection will be used in a broader sense including consultations with government authorities and what we might generally describe as *advocacy role* of an organization. To put it in a nutshell, the term protection in this paper can be understood as legal protection plus advocacy work, whereas advocacy includes engagement with authorities as well as all forms of publications that address Palestinian rights and/or protection gaps.

### 5.1.3. Temporary Protection

As we have seen, the search for durable solution and the immediate protection of human rights both are considered efforts towards protection of a certain group. This paper will mostly focus on immediate protection solutions. During the last 60 years the plight of the Palestine refugees has been merged with the broader political conflict, thus compromising basic human rights and holding them in a limbo situation. The obvious answer to their suffering would be a just solution of the conflict including the right to chose between different options (return or get compensation in case of resettlement). Yet, this solution seems now “more remote than ever”,<sup>215</sup> which could lead to a stronger focus on the immediate needs and protection gaps of the Palestine refugees. According to Susan Akram, in a state of temporary protection Palestinians in host countries would enjoy many of the rights of an individual granted asylum, but would lack the permanent status that might compromise their right to return to their home country.<sup>216</sup> Temporary protection would be tied to this right to return as well as to refugee choice as described earlier. There are a couple of advantages and disadvantages for the states and the refugees respectively. The individual might be afforded fewer rights than a refugee under the 1951 Convention, but it is still the grant of a set of certain basic rights, such as the right to work and the right to freedom of movement. For the states it is an alternative to the obligation

---

<sup>214</sup> Helton, Arthur C.: *What is Refugee Protection? A Question Revisited*, in: Steiner/Gibney/Loescher: *Problems of Protection: The UNHCR, Refugees, and Human Rights*, Routledge, New York/London, 2003, pp.19-36, p.20.

<sup>215</sup> Akram, Susan/Rempel, Terry: *Temporary Protection for Palestinian Refugees: A Proposal*, paper prepared for BADIL Expert Forum 22-23 May 2003, Ghent University/Department of Third World Studies, 2003, p.3.

<sup>216</sup> Akram/Rempel, 2003, p.3.

to provide full asylum procedures, which would otherwise be required, therefore making it easier for the states to admit to this measure. This is due mainly to the stressing of the fact that the situation is a temporary one and that the State will not be expected to fully integrate the refugee group.

## **5.2. Palestine Refugees in International Law**

### **5.2.1. Reasons for a Special Regime for Palestinian Refugees**

Article 1D of the 1951 Refugee Convention

First sentence:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than The United Nations High Commissioner for Refugees protection or assistance.”<sup>217</sup>

This article is generally referred to as *exclusion clause*.<sup>218</sup>

Special attention should be paid to the wording “who receive protection or assistance”. The word “or” is of crucial importance. One could argue that only one of the conditions has to be fulfilled in order to exclude the person concerned. It should be noted that during the drafting process the parties were not aware of the protection gap they were creating, and this gap was not indented by the parties concerned.<sup>219</sup> This argument will be discussed later on, taking into account the travaux préparatoires of the convention.<sup>220</sup> Only one non-governmental organization with consultative status, the Commission of the Churches on International Affairs, suggested changing the wording into “who receive

---

<sup>217</sup> Convention relating to the Status of Refugees, Geneva, 1951.

<sup>218</sup> UNHCR: *Note On The Applicability Of Article 1d Of The 1951 Convention Relating To The Status Of Refugees To Palestinian Refugees*, International Journal for Refugee Law, Oxford University Press, IJRL 2002.14(450), April 2002, p.1

<sup>219</sup> Takkenberg, 1998, p.67.

<sup>220</sup> Article 32 of the Convention on the Law of Treaties: “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.”

assistance *and* protection”, because “material assistance is not in itself a guarantee of protection”.<sup>221</sup>

According to a statement issued by UNHCR in 2002 concerning interpretation of Art 1D of the 1951 Convention the deciding factor to fall under the first sentence is whether the person is inside of UNRWA’s area of operation and is registered or eligible to be registered with UNRWA. In a UNHCR paper on the applicability of Art 1d it is stated that the intent of this article was to “avoid (...) overlapping competencies”.<sup>222</sup>

Second sentence:

“When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.”

This article is generally referred to as an *inclusion clause*.<sup>223</sup> This clause is interpreted to mean a general and automatic inclusion of Palestine refugees in the case protection ceases. This would have as a consequence that Palestine refugees who no longer receive assistance from UNRWA would not need to prove that they fall under the definition of a refugee as stated in art. 1A of the 1951 Refugee Convention but countries should treat them as refugees automatically. This however has not been the case in many countries, also due to incorrect interpretations by the UNHCR.<sup>224</sup>

Many scholars stress that the motive for singling out the Palestinian refugees was not meant to exclude them from the protection mechanisms, which were established to ensure the rights of refugees worldwide – but due to the belief that this group of refugees deserved special measures.<sup>225</sup> This becomes clear when taking into account the very extensive discussions around the issue of Palestine refugees during the drafting of the UNHCR Statute. The situation was thought to be of high importance and to deserve a

---

<sup>221</sup> Cit. in Takkenberg, 1998, p.67.

<sup>222</sup> UNHCR, 2002, p.2. Yet, in this paper the author didn’t mention that the competencies of the two agencies are very different in nature, and that since UNRWA does not have an explicit protection mandate for the registered refugees, this results in a de facto protection gap of Palestine refugees.

<sup>223</sup> UNHCR, 2002, p.1.

<sup>224</sup> Takkenberg, 1998, p.101 and Akram, 2002, p.43.

<sup>225</sup> Akram, 2002, p.40, Takkenberg, 1998, p.65. Except for the Israeli delegate who stated that Palestine refugees didn’t meet the definition of refugee and that therefore no exclusion was necessary. Takkenberg, 1998, p.66.

special regime in order not to be “submerged (...) and relegated to a position of minor importance.”<sup>226</sup> One of the reasons why this case deserved special attention was the heavy responsibility the UN itself bore for the plight of this particular group of refugees, due to the partition plan and the recognition of the State of Israel. During discussions in Geneva an amendment was introduced by Egypt, Lebanon, and Saudi Arabia, which aimed at distinguishing the Palestine refugees as a group from other refugees. According to the Lebanese representative this was necessary because usually refugee problems come into life through the breach of international law as set forth by the United Nations, whereas in the Palestinian case “the existence of the Palestine refugees (...) was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences.”<sup>227</sup>

The situation is also unique because “the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return.”<sup>228</sup> UNHCR offers three main durable solutions to a refugee problem: repatriation, host country absorption, and third-state resettlement – two of which are being rejected by Palestinians and host countries respectively, and one of which (repatriation) is denied by Israel. This lack of opportunities for a durable solution is one of the basic characteristics of the Palestine refugee problem.

Article 1D was also included to free the Arab host countries from responsibility for this group of refugees. Yet, the Arab states never became party to these instruments, therefore article 1D has never been applied for the reasons it was intended.<sup>229</sup> Even in other states article 1D was hardly ever applied for the first 15 years after its creation. Only through the 1967 war and regional conflict and unrest, which resulted in many refugees being displaced for a second time, there were a great number of Palestine refugees, who asked for the determination of refugee status under the 1951 Convention. Parties to the Convention for the first time had to decide how to apply article 1D, and if it was applicable to Palestine refugees who had left UNRWA’s area of operation. Practice of states differed considerably regarding this issue.<sup>230</sup> And once countries had decided that the first sentence of 1D did not apply, practice also differed concerning the second

---

<sup>226</sup> *Remarks of the Saudi Arabian Representative*, UN GAOR, 3d Comm., 5<sup>th</sup> Sess., 328<sup>th</sup> mtg., paras.52 and 55, UN Doc. A/C.3/SR.328, cit. in Akram, 2002, p.40.

<sup>227</sup> Cit. in Takkenberg, 1998, p.62.

<sup>228</sup> *Remarks of the Lebanese Representative*, UN GAOR, 3d Comm., 5<sup>th</sup> Sess., 328<sup>th</sup> mtg., para. 47, UN Doc. A/C.3/SR.328, cit. in Akram, 2002, p.40.

<sup>229</sup> Takkenberg, 1998, p.91.

<sup>230</sup> Ibid.

sentence regarding the automatic inclusion of Palestine refugees as a group. Consequently in some states Palestine refugees then had to prove that they fall under article 1A(1) i.e. that they fled a country due to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Only in 2002 UNHCR issued a paper addressing the interpretation of article 1D and stating that Palestine refugees who no longer reside in UNRWA's area of operation should fall under the second sentence of article 1D and therefore automatically be considered refugees who deserve protection under the 1951 Convention.<sup>231</sup>

Since the UNCCP has not contributed to the protection of Palestine refugees in decades<sup>232</sup> one might argue that protection for Palestinian refugees has ceased. One conclusion could be to argue that therefore all Palestinian refugees should now be considered refugees under the 1951 Refugee Convention. Authors like Farah, Akram and Goodwin-Gill agree to this argument.<sup>233</sup> Although from the legal perspective it might be a reasonable argument, in practice it is an opinion that's not very wide-spread and UNHCR is likely to be opposed to this interpretation.

As seen above all three main solutions offered by UNHCR still seem impossible to implement in the Palestinian case. Therefore Palestine refugees have lived in "temporary" arrangements for 60 years now. The reason for this is that the UN *merged the issue of protection with the larger conflict*. As Rempel puts it "in the midst of all the other outstanding issues on the agenda the rights of the refugees were, in effect, displaced in the search for a resolution of the entire conflict itself."<sup>234</sup> A report by the UN Economic Survey Mission of the Middle East made two important statements: First, "The refugees themselves are the most serious manifestation of "economic dislocation" created by the Arab-Israeli hostilities. And second, "The continuing political stalemate in the relations between the Arab countries and Israel precludes any early solution of the refugee problem by means of repatriation or large-scale resettlement."<sup>235</sup>

---

<sup>231</sup> UNHCR, 2002, p.2.

<sup>232</sup> Takkenberg, 1998, p.28; Badil Website, *The UN Conciliation Commission for Palestine (UNCCP)*, [www.badil.org/Protection/text01.htm](http://www.badil.org/Protection/text01.htm) (Download 19 September 2008); see also chapter 5.3.1.

<sup>233</sup> Farah, 2002, p.165, and n.59.

<sup>234</sup> Rempel, Terry M.: *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*, BADIL Information & Discussion Brief no.5, June 2000, p.6.

<sup>235</sup> United Nations Economic Survey Mission for the Middle East, Final Report, UN Doc. A/AC. 25/6, Part I, p.16, points 1,2. <http://domino.un.org/pdfs/AAC256Part1.pdf> (Download 19 September 2009).

Yet, although a durable solution has to be found in the future the immediate protection needs of Palestine refugees have to be addressed irrespective of the political situation and efforts have to be increased in order to implement the basic human rights to which every person is entitled.

### 5.2.2. The Applicability of Human Rights in the OPT

The West Bank remains occupied territory and is therefore also subject to international humanitarian law. This opinion has also been confirmed by the International Court of Justice in its advisory opinion of 2004.<sup>236</sup>

Since the withdrawal of the permanent IDF forces from Gaza accompanied by the evacuation of Israeli settlements from Gaza in 2005, there has been ongoing discussion about the status of Gaza. Prime Minister Sharon had declared that with the withdrawal Israeli responsibility for the entire Gaza strip had ceased.<sup>237</sup> Yet, this opinion is highly contested among others by the United Nations,<sup>238</sup> who are especially referring to the concept of *effective control* over the territory.<sup>239</sup> The concept of effective control contains the notion that the presence or absence of permanent military forces in a territory is not the deciding factor for determining whether this territory is under occupation or not. In the case of Gaza John Dugard, the Special Rapporteur on the situation in the OPT to the UN Human Rights Council,<sup>240</sup> suggests four factors that demonstrate Israel's effective control over Gaza. First, he names substantial control over Gaza's six land crossings.<sup>241</sup> Control through military incursions, rocket attacks and sonic bombs is the second

---

<sup>236</sup> International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004., par.78.

<sup>237</sup> John Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, 21 January 2008, UN Document A/HRC/7/17, p.7.

<sup>238</sup> Report of the High Commissioner for Human Rights (Louise Arbour) on the Implementation of Human Rights Council Resolution 7/1, *Human Rights Violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the Gaza strip*, 6 June 2008, UN Doc A/HRC/8/17, footnote 1: "This fact (occupation) has not been altered by Israel's 2005 unilateral withdrawal of its forces from the strip, as confirmed repeatedly since then by the General Assembly (most recently in its resolution 62/107 of 17 December 2007) and by the United Nations Secretary-General (notably in this message to the United Nations Seminar on Assistance to the Palestinian People, Amman, Jordan, 19 February 2008; and in his message to the opening of the 2008 session of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, New York, 14 February 2008)."

<sup>239</sup> Dugard, 2008, p.8, par.11.

<sup>240</sup> John Dugard, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, 21 January 2008, UN Document A/HRC/7/17.

<sup>241</sup> This will be more thoroughly discussed under chapter 5.4.1.

deciding factor. According to Dugard within the territory of the Gaza strip there are so called “no-go” zones, where Palestinians are not allowed to go, otherwise they might be shot.<sup>242</sup> The third factor is the complete control of Gaza’s airspace and territorial waters. Lastly, Dugard mentions the control over the Palestinian Population Registry, which includes the power to decide who is “Palestinian” and who is a resident of Gaza or the West Bank and who is not. This, consequently decides over, who has the right to enter Gaza, because only the holders of Palestinian identity cards are allowed to enter through Rafah, the border crossing between Egypt and the Gaza Strip.<sup>243</sup>

Yet, since 19 September 2007 Israel has referred to Gaza as *hostile territory*, a concept that was approved by Condoleezza Rice, the United States Secretary of State.<sup>244</sup> While the legal implications of this “status” are not defined, it served as an argument to legitimize the reduction of the supply of gas and electricity to Gaza by Israel.<sup>245</sup>

The decision over Gaza’s status is so contested because the state of occupation implies Israel’s obligation to abide by international humanitarian law.

It has to be determined to which human rights provisions Palestine refugees are entitled. In this thesis, among other sources, the Advisory Opinion by the International Court of Justice of the year 2004 will be used in order to demonstrate some of the arguments that were brought forward by Israel and the decision by the Court, which represents the international institution with the most legitimacy. An advisory opinion is a non-binding legal decision, but on 20 July 2004, an overwhelming majority of UN member states voted for General Assembly Resolution ES-10/15, which called on Israel to comply with the ICJ opinion.<sup>246</sup>

Generally human rights grant rights to individuals towards their own country of nationality or residence (territorial application) and not against the enemy state like it is the case with humanitarian law.<sup>247</sup> Nevertheless there are provisions within the different human rights instruments that expand the scope of application to include persons, who are

---

<sup>242</sup> Dugard, 2008, p.8.

<sup>243</sup> Since 2000 Israel has not permitted additions to the registry (with few exceptions), Dugard, 2008, p.8.

<sup>244</sup> Dugard, 2008, p.8. See also Haaretz online, *Cabinet declares Gaza “hostile territory”*, <http://www.haaretz.com/hasen/spages/905561.html> (Download 19 September 2008).

<sup>245</sup> Dugard, 2008, p.8.

<sup>246</sup> OCHA: *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*, 9 July 2007, p.3.

<sup>247</sup> Sassòli, Marco/Bouvier, Antoine A.: *Un droit dans la guerre ?*, Comité international de la Croix-Rouge, Volume I, Genève, 2003, p. 346.

under the competence or jurisdiction of the authorities of another country, like it is the case in a state of occupation.<sup>248</sup>

There is a possibility to override certain human rights provisions in the case of necessity, like for example public danger, as specified by article 4 of the International Covenant of Civil and Political Rights. Nonetheless there are certain provisions that always apply, including within an occupied territory, where at the same time humanitarian law applies.<sup>249</sup> We talk about the “noyau dur” of human rights, including the right to life, the prohibition of inhumane and degrading treatment and other fundamental human rights provisions. In this case no derogation is possible.<sup>250</sup>

In the present case “Israel denies that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which it has signed, are applicable to the Occupied Palestinian Territory (OPT). It asserts that humanitarian law is the protection granted in a conflict situation such as the one in the West Bank and Gaza Strip, whereas human rights treaties were intended for the protection of citizens from their own Government in times of peace.”<sup>251</sup>

In its advisory opinion “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (2004) the International Court of Justice (ICJ) responds to this assertion by stating that concerning the applicability of human rights law versus humanitarian law it is not a question of either or, but that there is the possibility that certain rights can be drawn from either one of these areas of international law. Therefore the argument of the Israeli authorities stating that humanitarian law applies does not exclude the applicability of human rights law provisions. In addition even if humanitarian law is applied during times of war, does not lead to the conclusion that human rights law is only applicable during times of peace. On the contrary, human rights law is applicable at all times.<sup>252</sup>

---

<sup>248</sup> Definition of occupied territory after article 42 of the *Hague Convention* 1907 (Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907): “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”

<sup>249</sup> Common article 2 of the Geneva Conventions of 12 August 1949, International Committee of the Red Cross.

<sup>250</sup> Sassòli/Bouvier, 2003, p. 344, 349.

<sup>251</sup> International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004., par.102.

<sup>252</sup> Sassòli/Bouvier, 2003, p. 343.



The Court reminds that Israel has ratified the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, as well as the Convention on the Rights of the Child, and is therefore party to these instruments.<sup>253</sup>

Concerning the area of application of the International Covenant on Civil and Political Rights the Court has to interpret article 2, paragraph 1 of this instrument, which reads:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Attention is on the wording “within its territory *and* subject to its jurisdiction”. The Court has to decide whether the “and” between the two conditions means that both have to be fulfilled or that one of them is enough. After taking into account object and purpose of the covenant, constant practice of the Committee of Human Rights and the *travaux préparatoires* of the text, “the Court considers that the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.”<sup>254</sup>

The International Covenant on Economic, Social and Cultural Rights does not contain a provision concerning its scope of application, but the Court doesn’t exclude “that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction.”<sup>255</sup>

The Court repeats the Israeli position according to which exclusively the Israeli settlements enjoy the rights enshrined in the Covenant whereas the Palestinian population finds itself excluded of this protection. This position is expressed in reports by Israel to the Committee of Economic, Social and Cultural Rights from the year 1998, and statements by the Committee concerning this position.<sup>256</sup> The Committee had expressed

---

<sup>253</sup> International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004., par.103.

<sup>254</sup> Ibid, par. 111

<sup>255</sup> Ibid, par. 112

<sup>256</sup> Concluding observations of the Committee of Economic, Social and Cultural Rights: Israel, 23 Mai 2003 E/C.12/1/Add. 27; See also E/1990/6/Add. 32, Implementation of the International Covenant on Economic, Social and Cultural Rights, second periodic report by Israel, 16 October 2001, par.5.

its concern in this regard and also the ICJ “cannot accept Israel’s view.”<sup>257</sup> The Court also reminds “that the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power”. It concludes that Israel is bound by the provisions of the Covenant and that furthermore it is obliged not to hinder the exercise of those rights where competence has been transferred to the Palestinian Authority.<sup>258</sup>

The Convention on the Rights of the Child contains an article (Art.2) stating that “States Parties shall respect and ensure the rights set forth in the (...) Convention to each child within their jurisdiction (...)”. The ICJ therefore decides that this Convention is applicable within the Occupied Palestinian Territory.<sup>259</sup>

We may conclude that certain human rights provisions, like the ones in the Covenant on Civil and Political Rights and others apply also to the OPT, notwithstanding of the fact that it is an occupied territory and that humanitarian law applies as well. Israel therefore has to abide by these provisions, and can be held responsible in case of a breach of international human rights law.

### **5.2.3. The Right of Return**

In general international law all individuals have a right to return. According to Gail this is an inherent human right and exists independently of any government’s policy to allow for it or not.<sup>260</sup> This right is anchored in the law of nationality, humanitarian law, human rights law and refugee law. If there was a situation of forced expulsion, which as we have seen is disputed regarding the present case, there is a heightened obligation to implement this right of return.<sup>261</sup>

In 1948 following the first mass expulsion of Palestine refugees, the United Nations passed resolution 194 (III), the most important resolution concerning the right of return of Palestinian refugees to their homeland. It is important because it is widely known and often referred to when the issue comes up. Nonetheless it does not constitute a new right,

---

<sup>257</sup> International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004., par.112.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid, par. 113.

<sup>260</sup> Boling, Gail: *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, Badil, January 2001, p.5.

<sup>261</sup> Ibid., p.7.

but merely confirms already existing and binding rights in international law.<sup>262</sup> It has to be mentioned that resolution 194 does not refer to refugees who were displaced after 1948, the 1967 refugees or any refugees displaced after that date.<sup>263</sup>

In paragraph 11 of 194 (III) the General Assembly states that:

“(...) the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of damage to property which, under principles of international law or in equity should be made good by the Governments or authorities responsible.”<sup>264</sup>

Of the three major possible solutions to a refugee problem (return, host country integration, resettlement) only return is a right under international law.<sup>265</sup> Also Akram states that the right of return existed before the passing of resolution 194 (III):

“Resolution 194 (III) acknowledges that no new rights were created in proclaiming the Palestinian refugees’ right of return to their homes and lands. Although the status of Palestinian nationals/citizens after the creation of the State of Israel has been much debated, established principles of state succession, human rights, and humanitarian law confirm that the denationalization of Palestinians was illegal and that they retain the right to return to their places of origin.”<sup>266</sup>

According to Takkenberg, this paragraph “soon became the touchstone of the Palestinian refugees’ cries for justice”.<sup>267</sup>

Ruth Lapidoth is among the scholars who do not believe in the existence of a right of return. In the following citation she is referring to the interpretation that resolution 194 contains an explicit right of return.

“This interpretation, however, does not seem warranted: the paragraph does not recognize any "right", but recommends that the refugees "should" be "permitted" to return. Moreover, that permission is subject to two conditions - that the refugee

---

<sup>262</sup> Rempel, 2003, p.7.

<sup>263</sup> Ibid., p.3.

<sup>264</sup> United Nations General Assembly Resolution 194 (III) of 11 December 1948, A/RES/194 (III), *Progress Report of the United Nations Mediator*, par.11.

<sup>265</sup> Rempel, 2003, p.4.

<sup>266</sup> Akram, 2002, p.41.

<sup>267</sup> Takkenberg, 1998, p.24.

wishes to return, and that he wishes to live at peace with his neighbours. The violence that erupted in September 2000 forecloses any hope for a peaceful co-existence between Israelis and masses of returning refugees. The return should take place only "at the earliest practicable date". The use of the term "should" with regard to the permission to return underlines that this is only a recommendation. (...) neither under the international conventions, nor under the major UN resolutions, nor under the relevant agreements between the parties, do the Palestinian refugees have a right to return to Israel. According to Palestinian sources, there are about 3.5 million Palestinian refugees nowadays registered with UNRWA. If Israel were to allow all of them to return to her territory, this would be an act of suicide on her part, and no state can be expected to destroy itself.”<sup>268</sup>

We can see that there are scholars who interpret resolution 194 in completely opposite ways. Many scholars explicitly acknowledge the right of return as a right accorded to the Palestine refugees, others deny this right. In this respect it should be acknowledged that authors who state that there is no such right usually also fear the destruction of the State of Israel in the case of the granting of this right and the consequent supposed mass influx of Palestinians into Israel. The most important actor in this respect remains the Government of Israel, who does not acknowledge this right. This is mainly due to different interpretations of the past and the national existence of the Palestinians as a people. The official Israeli historiography denies the existence of a Palestinian people.<sup>269</sup> According to a statement by Golda Meir in 1969 the Palestinians did not exist, Rabin referred to them as the “so called Palestinians” and Menachem Begin called them the “Arabs of Eretz Israel”.<sup>270</sup> Since 1948 Israel has maintained its position that the return of Palestinian refugees, infringe on Israel’s right to self-determination. In addition there has been no “attribution of imputability of an internationally wrongful act”, which is the premise for reparation.<sup>271</sup> Even though in the last two decades a group of *new historians* or *revisionist historian* have tried to set straight the history of events around the creation

---

<sup>268</sup> Ruth Lapidot, *Do Palestinian Refugees Have a Right to Return to Israel?*, 2001, [www.mfa.gov.il/mfa/go.asp?MFAH0j8r0](http://www.mfa.gov.il/mfa/go.asp?MFAH0j8r0) (Download from the Israeli Ministry of Foreign Affairs Website, 1 September 2008).

<sup>269</sup> Farah, 2003, p.155.

<sup>270</sup> Farah, 2003, p.155; and Edward Said: *The Politics of dispossession: The struggle for Palestinian self-determination, 1969-1994*, Pantheon Book, New York, 1994, p.63,64.

<sup>271</sup> Farah 2003, p.155f, cites Goodwin-Gill, 2000, *Return and Compensation*, in *The Final Status Negotiations on the Refugee Issue: Positions and Strategies*. Ramallah and Jerusalem: Department of Refugee Affairs: PLO: 43; See also International Law Commission: *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Chapter II, p.38.

of Israel, according to Farah “their impact (remains) marginal when compared to the dominance of Israeli historiography in the public arena and in Western societies.”<sup>272</sup>

#### 5.2.4. The Applicability of Humanitarian Law

Older terms for international humanitarian law (IHL) would be *law of war* or *law of armed conflict*. This makes clear that this part of international law contains provisions that apply during a situation of war or armed conflict, and is meant to limit and regulate the use of force and violence by the enemy state. The aim of an armed conflict is to destroy another power,<sup>273</sup> but civilians should be spared as well as combatants who are *dehors combat*, such as wounded or prisoners. One of the most fundamental principles of IHL is the distinction between *ius ad bello* and *ius in bello*. IHL deals exclusively with issues of *ius in bello*, which refers to rights and obligations during an armed conflict. They always apply to the same extent to all affected parties and the question whether (this) war is legal in international law, or the question about who is responsible for the war and who started it under what conditions (*ius ad bello*) is never of any importance to international humanitarian law.<sup>274</sup> First attempts to regulate the use of force during armed conflict, date back to 1859, when Henry Dunant became witness to the battle of Solferino, and later founded the Red Cross. The first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted in 1864.<sup>275</sup> In this paper the Geneva Conventions (1949) – especially the third and fourth Convention, relating to prisoners of war and civilians – as well as the First Additional Protocol will be of particular importance.<sup>276</sup> Many of the rules set out in previous instruments have then been

---

<sup>272</sup> Farah, 2003, p.156.

<sup>273</sup> Takkenberg, 1998, p.198.

<sup>274</sup> Sassòli, Marco/Bouvier, Antoine A.: *How does law protect in war?*, International Committee of the Red Cross, Geneva, 1999, p.83, 84.

<sup>275</sup> Other important instruments include the following: the declaration of St. Petersburg (1868), the Hague Conventions (1899 and 1907), the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous and Other Gases and of Bacteriological Methods of Warfare (1925), the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field and of Prisoners of War (1929), the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; of the Wounded Sick and Shipwrecked Members of Armed Forces at Sea; relative to the Treatment of Prisoners of War; and to the Protection of Civilian Persons in Time of War (1949) – also referred to as the *four Geneva Conventions* of 1949. In addition there are several conventions relating to nuclear or bacterial weapons, and the Additional Protocols to the Geneva Conventions (1977).

<sup>276</sup> The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 will be referred to in this paper as *Fourth Geneva Convention*. Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts will be referred to as *First Additional Protocol*.

reaffirmed in the Geneva Conventions of 1949, and there is consensus among jurists and governments that the older conventions have become part of customary international law.<sup>277</sup> Virtually all UN member states are party to the Geneva Convention, including all countries that are dealt with in this paper. Concerning the Additional Protocols, Israel as well as Lebanon is not bound by them, whereas Jordan is bound by both Protocols and Syria by Protocol I.<sup>278</sup> In 1989, the Permanent Observer of Palestine to the United Nations Office in Geneva informed the Swiss Federal Department of Foreign Affairs, the depository of the Geneva Conventions of 1949 and the two Additional Protocols, that Palestine would adhere to the Geneva Conventions. The Swiss authorities responded by stating that they couldn't decide about the validity of this statement, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine."<sup>279</sup>

There is no mention of refugees in the definition of protected persons in article 4 of the Fourth Geneva Convention. However, they are covered and benefit from the protection provided for in that Convention due to their nature as civilian persons or combatants. According to article 4 protected persons are who, "at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals".<sup>280</sup>

The fact that the occupation of the Palestinian territories has continued for more than 40 years brings new considerations to the legal situation of an occupied territory, since these provisions have been adopted on the assumption that occupation was a temporary condition.

"At present, there is a distinct risk that the law on occupations, if not adapted to special problems arising in a prolonged occupation, could be used or abused in such a way as to contribute to leaving a society politically and economically undeveloped. During a long occupation, many practical problems may arise that do not admit to mere temporary solutions based on the idea of preserving the *status quo ante*: decisions may have to be taken about such matters as road construction, higher education, water use, electricity generation, and integration

---

<sup>277</sup> Takkenberg, 1998. p.199. See also ICJ, Advisory Opinion, 2004, par. 89.

<sup>278</sup> Takkenberg, 1998, p.199.

<sup>279</sup> Andrew Clapham: *Human Rights Obligations of Non-State Actors*, Oxford University Press, Oxford/New York, 2006, p.274, n.14.

<sup>280</sup> Fourth Geneva Convention, 1949, article 4.

into changing international markets. Such decisions, although they involve radical and lasting change, cannot be postponed indefinitely.”<sup>281</sup>

Surely there was a reason why also the ICJ repeatedly mentioned the long duration of the occupation in its advisory opinion on the legality of the wall.<sup>282</sup> It did so especially in regards to the applicability of social and cultural rights to the Palestinians in the OPT.

International humanitarian law has been of particular importance to Palestine refugees, since they have repeatedly been confronted with situations of armed conflict. This concerns especially citizens of Gaza and the West Bank, areas that have come under Israeli military control in 1967. Due to the fact that the status of these territories then changed into being occupied territories the status of the refugees changed as well.<sup>283</sup> In addition to being refugees they became protected persons under the 1949 Geneva Conventions. International protection has been provided by the International Committee of the Red Cross (ICRC). The same applies to refugees subject to other armed conflicts, such as in Lebanon or in Kuwait.<sup>284</sup>

In this context it should be mentioned that since the first Arab-Israeli war formally the state of war continues between Israel and Lebanon, as well as between Israel and Syria up to this day. Egypt and Jordan entered into peace treaties in 1979 and 1994 respectively.<sup>285</sup>

In the OPT:

In order to decide the applicability of international humanitarian law, the status of the OPT has to be determined. The International Court of Justice has elaborated on this issue in its advisory opinion of 2004. As already mentioned, article 42 of the Hague Declaration reads: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”

There is consensus about the fact that the 1907 Hague Regulations are applicable to the Occupied Palestinian Territory.<sup>286</sup> Israel does not accept the de jure applicability of the

---

<sup>281</sup> Takkenberg, 1998, p.205f.

<sup>282</sup> ICJ, 2004, par.112.

<sup>283</sup> Takkenberg, 1998, p.196.

<sup>284</sup> Ibid.

<sup>285</sup> Shlaim, 2000, p.273 and 539.

<sup>286</sup> Israel has stated that it does honor and implement the regulations annexed to the fourth Hague Convention Respecting the Laws and Customs of War on Land (Hague Regulations). Al-Haq: *The Israeli*

Fourth Geneva Convention,<sup>287</sup> nonetheless it has indicated that it will respect the “humanitarian provisions” of the Convention on a de facto basis. These were never defined by Israel.<sup>288</sup> Israel argues that the Convention does not apply because what is now the OPT was not a sovereign power in itself before it fell under occupation, and neither Jordan nor Egypt was the legitimate sovereign power in the West Bank and the Gaza Strip respectively before the 1967 war. According to Takkenberg

“(…) the rationale for taking this position was the fear that express acknowledgement of the applicability of the Fourth Geneva Convention might be interpreted as amounting to a formal recognition by the Israeli government that the territory occupied was the sovereign territory of the party which the occupying power had displaced, in other words, that Egypt had sovereignty in the Gaza Strip and Jordan in the West Bank and East Jerusalem.”<sup>289</sup>

Israel’s position has found many critics. Up front the ICRC in its function as guardian of the Geneva Conventions has repeatedly criticized the occupant. There have been countless resolutions by the General Assembly and the Security Council, explicitly urging the applicability of the Fourth Geneva Convention,<sup>290</sup> legal writers have voiced disapproval of this practice as well. The author agrees with this judgement and will from now on assume that international humanitarian law applies in the OPT.<sup>291</sup>

Especially during the first intifada, allegations arose about gross violations of international humanitarian law by the occupying force Israel.<sup>292</sup>

---

*High Court of Justice and the Palestinian Intifada: A Stamp of Approval for Israeli violations in the Occupied Palestinian Territories*, Ramallah, 2004, p.20.

<sup>287</sup> ICJ, 2004, par.86. See also, Al-Haq, 2004, p.17f.

<sup>288</sup> Takkenberg, 1998, p.212.

<sup>289</sup> Ibid., p.212, 213.

<sup>290</sup> General Assembly Resolutions on related topics usually reaffirm the applicability in their preamble. See for example A/RES/62/104 of 17 December 2007, which deals with UNRWA’s mandate. The applicability is reaffirmed in the preamble and in paragraph 10 the Assembly “calls upon Israel, the occupying power, to comply fully with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949”; See also Security Council Resolution 1435 of 24 September 2002, S/RES/1435 (2002). And S/RES/605 of 1987, par. 2 and 3.

<sup>291</sup> There are reasons to believe that Israel’s interpretation is motivated by political interests. The intent to keep the occupied territories and include them in Israel’s territory would be made more difficult if Israel was to accept the term *occupation*, because occupation and annexation are not legal in international law. Adding to this belief is the fact that immediately after the beginning of the occupation military commanders issued official orders which considered the West Bank and Gaza occupied territory to which international humanitarian law applies. Later on the Israeli political leaders and authorities began to call the territory “liberated” or “administered” and rejected the priority of IHL over Israeli military law in the OPT. Al-Haq, 2004, p.17f.

<sup>292</sup> Takkenberg, 1998, p.216.



### 5.2.5. The Legal Status of Palestinians in Lebanon, Syria and Jordan

As we have seen above Palestine refugees, who get assistance from UNRWA are excluded from the 1951 refugee convention. This exclusion however only makes a theoretical difference for Palestinian refugees residing in Lebanon, Syria and Jordan because neither of these countries has signed the Convention or the Protocol.<sup>293</sup> After the creation of the State of Israel and the exodus of Palestinians from the lands who are now Israel, the Arab states were “forced to grant *de facto* asylum to the refugees whether they liked it or not.”<sup>294</sup> The reaction to this new reality by Jordan, Syria and Lebanon were very different. Jordan granted citizenship to the vast majority of Palestinian refugees who resided in the country. Today Palestinians make up the majority of Jordanians. In Syria Palestinians never constituted more than 2.5% of the population and the issue was and is therefore less politically sensitive.<sup>295</sup> This is in stark contrast to Lebanon, a country that always has to try to maintain the balance between its religions – the main reason for the exclusion of Palestine refugees from many parts of society and the denial of the granting of some fundamental rights. According to Takkenberg the Arab League only had limited influence on the treatment of Palestine refugees within its member states. Even though they tried to introduce certain minimum standards for the treatment of Palestinian refugees, “in practice the position of these refugees was, and continues to be, largely determined by political and security considerations of the governments of the Arab host countries.”<sup>296</sup> In many cases there is no codified legal status of this refugee group, but the treatment is largely made up of administrative practice, and is subject to constant change.<sup>297</sup> The Casablanca protocol although it contains only five articles is “the clearest manifestation of the intent of Arab states to provide for the treatment of Palestinian refugees.”<sup>298</sup> Article one contains “national treatment” concerning the right to engage in economic activities. Articles two and three state that the individual should be allowed to leave the territory of the state of residence as well as the right to return to it, and that there

---

<sup>293</sup> Ibid., p.89.

<sup>294</sup> Ibid., p.132.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid., p.133.

<sup>297</sup> Akram, 2001, p.44.

<sup>298</sup> Takkenberg, 1998, p.141. The Protocol doesn't speak of Palestinian refugees but of Palestinians in general. This stands for the realization that the legal situation of Palestinians in host countries is basically the same if the individual is a recognized 1948 refugee, a 1967 refugee or not recognized as a refugee at all.

should be free movement in all states of the Arab League.<sup>299</sup> Article four contains the obligation of the states to provide Palestinians with travel documents, and article five calls for a treatment equal to other Arab League nationals in respect of visas and residency.<sup>300</sup> The Casablanca Protocol was adopted by a majority decision and is therefore only binding upon those member states willing to accept it. Furthermore reservations are possible. In 1969 a study was conducted by the Conference of Supervisors of Palestinian Affairs. This study concluded that policies and procedures in respect to the Casablanca protocol were far below standard.<sup>301</sup> The PLO's position during the 1991 Gulf War, when he supported Saddam Hussein created anger among the majority of Arab states and further weakened the legal regime concerning Palestinian refugees in Arab host countries.<sup>302</sup> After the war a resolution was adopted by the League Council - "apparently in retaliation for the PLO's support of Saddam Hussein" – that severely weakened the Casablanca Protocol.<sup>303</sup>

#### In Lebanon

From the start of the refugee problem Palestinians in Lebanon constituted a threat to the delicate balance between Christians and Muslims and indirectly to political and social stability. Therefore the Lebanese authorities decided to prevent the refugees from being absorbed. They constitute about 10% of the total population. "Their situation has been more difficult than in any other Arab host country."<sup>304</sup> In addition the Palestinian refugees have repeatedly been strongly affected by conflicts and wars within Lebanon and with Israel.<sup>305</sup> Palestinian refugees are in principle subject to the same legal status as other foreigners. Only the refugees who fled during and in the aftermath of the 1948 war who took refugee directly in Lebanon without residing in a third country before are considered Palestine refugees. Palestinians who came later are considered illegal residents of Lebanon. UNRWA is not allowed to provide services for this group except in emergency

---

<sup>299</sup> Takkenberg notes that since these provisions depend on national immigration policies, this article can be rather seen as a statement of good intent than a real commitment.

<sup>300</sup> For the protocol and Arab ratification and reservations see: Badil-Website: <http://www.badil.org/Documents/Protection/LAS/Casablanca-Protocol.htm> (Download 21 September 2008).

<sup>301</sup> Takkenberg, 1998, p.145.

<sup>302</sup> Ibid., p.148.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid., p.162.

<sup>305</sup> For example Nahr el-Bared in 2007, Jenin in 2002, and Sabra and Shatila in 1982.

situations.<sup>306</sup> The majority of Palestinians in Lebanon remain stateless. One exception has been made for Palestinian Christians when Camille Chamoun was president between 1952 and 1958. They were granted citizenship in order to keep the balance between Christians and Muslims. There is also a considerable number of Palestinian Muslims who obtained citizenship. Some suggest that approval depended on connections and the ability to pay very high lawyer fees.<sup>307</sup> Today estimations about the number of Palestinians who possess Lebanese citizenship range between 50,000 and 30,000.<sup>308</sup> Refugees enjoy the same status as other non-Lebanese concerning employment, property rights, taxes etc. They need presidential consent in order to obtain immovable property, they are barred from a list of professions, especially with high-earning wages, such as medicine, law and engineering, and they have no right to social security.<sup>309</sup> There were three different types of travel documents: one for UNRWA registered refugees, one for refugees registered with the League of the Red Cross Society, and one for Palestinians who are registered with neither of these organizations. The first category got a document that was valid for one year and renewable three times. The second type of document was also valid for one year and renewable three times, but could be distinguished by a rubber stamp indicating “valid for return”. Refugees who were not registered could obtain a travel document valid for three months that indicated “not valid for return”.<sup>310</sup> In 1995 Palestinian refugees who had Lebanese residence but were at the time in Libya were literally left hanging by the government of Lebanon which decided that this group would not be able to return to Lebanon without a special re-entry visa.<sup>311</sup>

#### In Syria

The case of Palestine refugees in Syria is much less sensitive and politically charged than in Lebanon or Jordan. Palestinians only constitute a small minority of the total population – they never exceeded 2 to 3 percent.<sup>312</sup> In addition at the time of the Palestinian exodus Syria was neither suffering from unemployment or from limited natural resources. On the contrary the country was under-populated and many economists welcomed the new

---

<sup>306</sup> Takkenberg, 1998, p.163.

<sup>307</sup> Sayigh, cit. In. Takkenberg, 1998, p.164, n.155.

<sup>308</sup> Takkenberg, 1998, p.164, n.155

<sup>309</sup> UNRWA, Annual Report, 2006, p.11.

<sup>310</sup> Takkenberg, 1998, p.165.

<sup>311</sup> UN Press Release, *UN Agencies issue joint statement on expulsion of Palestinians from Libya*, 29 September 1995. See also Takkenberg, 1998, p.165.

<sup>312</sup> Takkenberg, 1998, p.167.

arrivals as a stimulus for economic development.<sup>313</sup> In 1949 the then Prime Minister Husni al-Za'im even offered to resettle 300,000 Palestinians in the Jazirah region to farm the land along the Euphrates River. This proposal was never put into practice because Za'im was overthrown in a military coup. From 1949 on the Syrian government began to adopt a series of laws that practically put the Palestinians in the same legal situation as Syrian nationals.<sup>314</sup> The Most important law for Palestinians in Syria is Law no.260 of the year 1956. It reads as follows:

“Palestinians residing in Syria as of the state of the publication of this law are to be considered as originally Syrian in all things covered by the law and legally valid regulations connected with the right to employment, commerce, and national service, while preserving their original nationality.”<sup>315</sup>

Other areas are not covered by the law, such as education, travel and property ownership. Palestinians in Syria basically enjoy the same quality of education as Syrian nationals. While most refugees receive their elementary education from UNRWA schools, almost all of them attend Syrian government schools for their secondary education.<sup>316</sup> Syrian universities have also been open to Palestinians and some scholarships have been granted by the government for Palestinians to study abroad.<sup>317</sup> Syria is the only Arab state where Palestinians are drafted into the national army.<sup>318</sup>

It can be concluded that in law and in practice Palestinian refugees have enjoyed rights equal to the ones guaranteed to Syrian nationals. There are some exceptions, however, like the right to vote, the right to buy land and the right to own more than one house.<sup>319</sup> The government has established the Palestine Arab Refugee Institution (PARI) which was succeeded by the General Authority for Palestine Arab Refugees (GAPAR). GAPAR is primary responsible for camp administration and keeps an eye on all issues relating to Palestinian refugees in Syria. They have their own budget and assistance programme and cooperate with UNRWA in a number of programmes.<sup>320</sup>

---

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

<sup>315</sup> Cit. in Takkenberg, 1998, p.168.

<sup>316</sup> Takkenberg, 1998, p.168.

<sup>317</sup> Ibid.

<sup>318</sup> They used to be given the option of serving in the Palestinian Liberation Army (PLA), now they are drafted by the Syrian army and then the PLA demands the personnel it needs. Takkenberg, 1998, p.168.

<sup>319</sup> Takkenberg, 1998, p.168.

<sup>320</sup> Ibid., p.169.

## In Jordan

In 1950 the New Hashemite Kingdom of Jordan was established. This included the annexation of the West Bank, which resulted in approximately half of the Kingdom's population being Palestinian. Article three of the 1053 Nationality Law contains a provision explicitly referring to Palestinians:

“The following shall be considered Jordanian nationals: (...)

(2) Any person with previous Palestinian nationality except the Jews before the date of May 15<sup>th</sup>, 1948, residing in the Kingdom during the period from December 20, 1949 and February 16<sup>th</sup>, 1954;”

Consequently, all Palestinians, irrespective of whether they lived in the East or the West Bank had become Jordanian citizens with the same rights and obligation as every Jordanian national. Palestinians are highly successful in Jordan. They are represented in the highest paying professions in the private sector as well as in government. There have been Palestinian generals, cabinet officers, and even prime minister.<sup>321</sup>

Palestinians from the Gaza Strip were not considered for Jordanian nationality, as well as the Palestinians who took up residence in Jordan or the West Bank after the dates indicated in the 1954 law (1949-1954). This group of Palestinians in Jordan is inferior to the group of “Jordanian Palestinians”, and officially they are not allowed to work.<sup>322</sup> Only in 1988, reacting to the intifada, King Hussein announced that the West and the East Bank would be legally separated and also Jordan administration would not extend towards the West Bank. The King was giving up his claims to sovereignty over the West Bank, leaving it to the Palestinians who were working towards their own sovereign state.<sup>323</sup> This decision led to an implicit denationalization of Palestinians who were residing in the West Bank. There are scholars who challenge the power of the King's speech to change the nationalities of the West Bank residence since no formal change in

---

<sup>321</sup> Ibid., p.156.

<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

the constitution followed. In addition West Bank Palestinians still hold their Jordanian passports.<sup>324</sup>

A general problem that affects many Palestinian refugees in the Middle East is the one of residency status.<sup>325</sup> As already mentioned the first country of refuge provided the refugees with a residence status. This status however was impossible to be transferred to a different country, other than the country of first refuge. Many Palestinians who migrated had no possibility to gain permanent residence status in their new host country. This fact can become a very pressing matter when individuals have lost their right of residence in the first country. They virtually have no country where they enjoy a right to stay. This was the case with the Palestinians expelled from Libya as well as the Palestinians forced out of Kuwait after Arafat's support for Saddam Hussein. These individuals stay and work in a certain country but have no security whatsoever about the duration of their stay. They are completely dependant on the good-will of the host government and could be expelled at any time.

#### **5.2.6. Law Relating to Stateless Persons**

In this section the author will introduce the basic principles of law relating to stateless persons in order to add to the list of rights and obligations that might apply to the Palestinians who have become refugees. The majority of Palestinians are stateless persons.<sup>326</sup> A person can be born stateless or become stateless during the course of his or her life. In addition there are de jure and de facto stateless persons, where de facto stateless persons lack an effective nationality. A state can decide who it wants to make a national, but in addition there has to be a legal bond and a genuine connection with the State.<sup>327</sup> Still statelessness is an anomaly<sup>328</sup> and article 15 of the Universal Declaration of Human Rights reads "Everyone has the right to a nationality". This is of fundamental importance because only a nationality gives a person the right to demand rights from the

---

<sup>324</sup> Nonetheless they are not considered Jordanian nationals. They don't get a Jordanian residence permit, and are only allowed in the country for a period of 30 days. They also face difficulties renewing their passports. (Takkenberg, 1998, p.157).

<sup>325</sup> Shiblak, Abbas: *Residency status and civil rights of Palestinian refugees in Arab countries*, Journal of Palestine Studies Vol. XXV, no.3 (spring 1996), pp.36-45, p.39.

<sup>326</sup> Badil, *Survey of Palestinian Refugees and Internally Displaced Persons 2004-2005*, 2006, p.155, 157 and 162.

<sup>327</sup> See International Court of Justice: *Nottebohm-Case (Liechtenstein vs. Guatemala)*, 18 November 1953.

<sup>328</sup> Takkenberg, 1998, p.175.

respective state of which he or she is a national. The problem with article 15 is that the Declaration doesn't indicate who is to grant nationality in the case of statelessness. Statelessness is undesirable for individuals, but also for states because it can lead to frictions. Therefore since the mid-20<sup>th</sup> century there have been international efforts to reduce this phenomenon.<sup>329</sup> In 1961 the United Nations adopted the Convention on the Reduction of Statelessness. Prior to the British mandate, the inhabitants of Palestine were Turkish nationals<sup>330</sup> as Palestine was part of the Ottoman Empire. During the British mandate, mandate citizenship was regulated by the Palestine Citizenship Order, and Palestinian citizens could obtain a British passport but which referred to the holder as "Palestinian citizen".<sup>331</sup> Yet, Palestinian citizenship was "a product of the mandatory's authority, (and) terminated with the mandate and with the proclamation of the state of Israel on 15 May 1948".<sup>332</sup> Since there is no Palestinian state until today, Palestinians who have not acquired the nationality of a third state remain stateless.<sup>333</sup>

In summary of the status of Palestinian refugees in international law one can conclude that there is no international body responsible for aspects of Palestinian refugee protection within UNRWA's area of operations and, after the UNCCP became effectively defunct, for the search for a permanent solution. This results in the *de jure* **protection gap** of Palestinian refugees living **within** UNRWA's area of operations. A *de facto* **protection gap** for Palestinian refugees living **outside** UNRWA's area of operations exists and results, according to Takkenberg, from the fact that UNHCR does not always optimally exercise its responsibility in respect of the protection of this group of Palestinian refugees.<sup>334</sup>

---

<sup>329</sup> The issue was first dealt with in the League of Nations, later in the UDHR and by the ECOSOC, which conducted a study in 1948. (Takkenberg, 1998, p.177)

<sup>330</sup> Takkenberg, 1998, p.179, n.28.

<sup>331</sup> Ibid., p.180.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid., p.181.

<sup>334</sup> Takkenberg, 2004, p.4.

### 5.3.UNRWA's Protection Mandate

There is no document which would lay down or clearly define UNRWA's mandate but it is composed of a number of General Assembly resolutions. Therefore, it has been subject of interpretations, especially by UNRWA itself, and has changed over time. Consequences and problems resulting from this fact have been discussed in chapter 3.3. above.

When UNRWA was created in 1949 by GA Resolution 302 (IV) its mandate was expressed in article 7: The General Assembly,

*“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 programmes 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.”<sup>335</sup>

Although UNRWA was mandated to consult with the governments, the mission has been focused on relief and on works programmes.

Yet, as already mentioned, in 1950 its mandate had already been subject to change by the General Assembly. In resolution 393 of 2 December 1950 the Assembly states that “the reintegration of the refugees in the economic life of the Near East, either by repatriation or resettlement, is essential (...)”.<sup>336</sup> In this respect the Agency was mandated to establish a reintegration fund.<sup>337</sup> The involvement of the agency in settlement issues was a very different task from providing humanitarian services and put the agency in contact with the strong political currents in the region.<sup>338</sup> Repatriation and resettlement clearly are two

---

<sup>335</sup> General Assembly Resolution 302 (IV), 8 December 1949.

<sup>336</sup> General Assembly Resolution 393 (V), 3 December 1950, par.4.

<sup>337</sup> Ibid., par.5.

<sup>338</sup> Dale, William: *UNRWA: A subsidiary organ of the United Nations*, 1974, p.583.



aspects in the search for a durable solution. Therefore, this meant the involvement of UNRWA in protection issues, for the first time.<sup>339</sup>

Today UNRWA describes itself as “a global advocate for the protection and care of Palestine refugees”.<sup>340</sup> Still, this role has not yet been adequately defined. UNRWA’s Quarterly Report on Organisational Development, covering the period from January until March 2008 shows clearly that the Agency is still trying to define its actions and competencies in this regard.

“A review of UNRWA’s protection role has been undertaken. This will pave the way for a revised protection strategy and the engagement of a new Senior Protection Advisor working with updated terms of reference.”<sup>341</sup>

The next chapter will treat the origin of a protection mandate for Palestine refugees in general, UNRWA’s predecessors and its creation.

### **5.3.1. Historical Origin**

The UN Conciliation Commission for Palestine (UNCCP) was established by General Assembly Resolution 194 (III) in December 1948. The Commission is composed of representatives of the United States, France and Turkey. It was mandated to provide protection to Palestine refugees and to facilitate durable solutions for persons displaced as a result of the 1947-1948 conflict and war in Palestine.<sup>342</sup>

The second part of paragraph 11 of resolution 194 (III) reads as follows:

“(The General Assembly) Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the

---

<sup>339</sup> The term protection did hardly ever come up in the first three decades of UNRWA’s existence, but applying today’s definition of the term it can be described as such.

<sup>340</sup> UNRWA, Annual Report 2006, p.1, Par.4.

<sup>341</sup> UNRWA: *Organizational Development in UNRWA: Quarterly Progress Report to the Advisory Commission: January 2008 - March 2008*, p.3.

<sup>342</sup> BADIL Website, *The UN Conciliation Commission for Palestine (UNCCP)*, [www.badil.org/Protection/text01.htm](http://www.badil.org/Protection/text01.htm) (Download 19 September 2008).

Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.”<sup>343</sup>

Through the creation of this Commission the protection mandate for Palestinian refugees had first been created, and among the given possibilities of long-lasting solutions repatriation has been given an emphasis.<sup>344</sup>

In 1950, The General Assembly by passing resolution 394 (V) requested the UNCCP to protect the rights, properties and interests of the refugees. The UNCCP dealt with the territorial question as well as with the status of Jerusalem, and made strong efforts towards the implementation of paragraph 11 of resolution 194(III) (“the right of return”). A number of proposals concerning the return of a number of refugees has been made at a conference in Lausanne in 1949, but the UNCCP could not reconcile the positions of the parties.<sup>345</sup> In July of the same year the Israeli cabinet announced that it would be willing to accept the offer made by the UNCCP to take back 100,000 refugees in the context of a peace settlement. This offer was never put into practice because the Arab delegations later rejected it as inadequate.<sup>346</sup> When it became clear that there wouldn’t be a rapid solution of the refugee problem through repatriation, efforts started to resettle the refugees in Arab countries. The Economic Survey Mission (ESM) was founded in order to examine the economic situation in the countries affected and to make recommendations to the UNCCP for an integrated programme.<sup>347</sup> An ESM interim report was delivered in November 1949. It described the dilemma of the refugees: the majority would like to return home, but they can’t. Resettlement in other countries was not a realistic option because many refugees refused to be moved again. In addition resettlement in third countries was seen as undermining the refugees’ rights given by resolution 194 (III) to return to their lands. Therefore the report concluded that “the only immediate constructive step in sight is to give the refugees an opportunity to work where they are now”.<sup>348</sup> The report also recommended creating an agency to direct “a programme of public works, calculated to

---

<sup>343</sup> General Assembly Resolution 194 (III), 11 December 1949.

<sup>344</sup> Farah, 2003, p.161.

<sup>345</sup> Takkenberg, 1998, p.25.

<sup>346</sup> Although the Israeli Cabinet had accepted the offer, it was torn by disagreement over the issue, and “in general Israel’s leaders were not unhappy with the no-war, no-peace situation.” Morris, 1987, p.282.

<sup>347</sup> Takkenberg, 1998, p.25.

<sup>348</sup> UN Economic Survey Mission, *First Interim Report of the United Nations Economic Survey Mission for the Middle East*, appended to UNCCP, Final Report of the United Nations Economic Survey Mission for the Middle East, 28 December 1949, part I, p.19.

improve the productivity of the area.”<sup>349</sup> The agency should also take over the relief efforts directed towards the Palestine refugees. In resolution 302 (IV) of 1949 the General Assembly created UNRWA, acting on the recommendations of the report. The events that led to the creation of UNRWA are important for this thesis because they demonstrate clearly the intentions that lay behind the creation of this agency, and characterize UNRWA once again as a humanitarian agency, which was established *in addition* to the UNCCP, which was charged with the responsibility for protecting the Palestinian refugees. After the creation of UNRWA, the UNCCP continued its efforts to implement paragraph 11 of resolution 194 (III) but, once it had realized that repatriation turned out to be an ever more distant possibility, it focused on the issue of compensation.<sup>350</sup> In this context it is worth mentioning that the Refugee Office which was established by the UNCCP estimated the value of the property abandoned by the Palestinian refugees at 120 million Palestine pounds, which were approximately 1.85 billion US dollars in 1990. This sum should constitute a debt by the Government of Israel to the refugees. This estimation was never accepted by Palestinian or Arab economists believing that it was much too low.<sup>351</sup> The Commission was also responsible for the return of a small number of refugee dependents through a family reunification programme.<sup>352</sup>

In 1951 the UNCCP tried one more time to address the issue of repatriation in a conference in Paris – but unsuccessfully. Whilst Israel stated that “major considerations of security and of political and economic stability made the return of Arab refugees impossible”, the Arab delegations claimed that “no limitations on the return of the refugees” could be made.<sup>353</sup> The UNCCP succeeded in reaching an agreement with the Government of Israel about the release of Palestinian bank accounts that had been blocked in Israeli banks, and established an Office for Identification and Valuation of Arab Property, which completed its work in 1964. Since that date, according to Takkenberg, UNCCP made no more substantial contribution to the protection of Palestine refugees.<sup>354</sup> According to Badil, a Palestine-based NGO, the UNCCP has not provided

---

<sup>349</sup> Ibid., p.17, par.3.

<sup>350</sup> Takkenberg, 1998, p.27; According to Morris the return of the refugees had become “virtually inconceivable” already by mid-1949 (1987, p.155), caused by “the destruction of the Arab villages” (p.155), “the take-over and allocation of the abandoned lands” (p.170), “the establishment of new settlements” (p.179), and “the absorption and settlement of the new immigrants” (p.188).

<sup>351</sup> Takkenberg, 1998, p.27.

<sup>352</sup> BADIL Website, *The UN Conciliation Commission for Palestine (UNCCP)* [www.badil.org/Protection/text01.htm](http://www.badil.org/Protection/text01.htm) (Download 19 September 2008).

<sup>353</sup> Takkenberg, 1998, p.27.

<sup>354</sup> Ibid., p.28.

Palestinian refugees with basic international protection since 1952, when it declared failure of its repatriation efforts after the Paris Conference<sup>355</sup>. Nonetheless it was never formally abolished and continues to issue annual reports to the General Assembly, reciting that progress towards the implementation of resolution 194 (III) depends on substantial changes by the parties.<sup>356</sup> In 1985 the report stated that “as far as the Commission is concerned, the circumstances which unfortunately have limited its possibilities of action have remained up to now essentially unchanged.”<sup>357</sup> During the last couple of years the Commission just stated that “it has nothing new to report.”<sup>358</sup>

We can summarize the reasons for the failure of the UNCCP in three categories: Firstly, Israel’s noncompliance with resolution 194 (III) and its rejection of the right to return. Secondly, Palestinians were unwilling to abandon their right to return, and Arab host countries rejected UN proposals to integrate the refugees into their host countries. And thirdly, there was a lack of commitment by the international community towards supporting UNCCP’s efforts.<sup>359</sup>

As we have seen the principal organ by the United Nations charged with protecting Palestine refugees is the UNCCP, which although it has ceased operations, has not been formally abolished, therefore leaving the protection issue in a grey area, where one has to differentiate between theoretical and actual protection.

### **5.3.2. The RAO-Programme**

The 1967 war and the occupation of the Palestinian territory had strong implication for UNRWA’s work as well. Benjamin Schiff explains this with the following words:

“When in 1967 Israel occupied the West Bank and Gaza Strip, the distinction between the agency’s humanitarian assistance role and political involvement became more problematic. It was impossible to be apolitical in a totally politicized environment. Although UNRWA had had difficulties with others of the host governments, the Israeli relationship was the first one in which the refugees

---

<sup>355</sup> BADIL Website, *The UN Conciliation Commission for Palestine (UNCCP)* [www.badil.org/Protection/text01.htm](http://www.badil.org/Protection/text01.htm) (Download 19 September 2008).

<sup>356</sup> Takkenberg, 1998, p. 28.

<sup>357</sup> UNCCP, Report to the General Assembly, 3 September 1985, par.3.

<sup>358</sup> UNCCP, Report to the General Assembly, 20 August 2008.

<sup>359</sup> Farah, 2003, p.161.

themselves were considered enemies by the sovereign power with which UNRWA had to deal.”<sup>360</sup>

This development has to be taken into account when discussing the agency’s protection efforts in the OPT.

In the rise of the Palestinian uprising, or intifada, in 1987 the Security Council adopted resolution 605, deploring Israeli violations of human rights of the Palestinian people in the OPT, and called on Israel to abide by the rules laid out in the Fourth Geneva Convention.<sup>361</sup> Consequently the Secretary-General issued a report which included ways of how the situation of the Palestinians could be improved. He stated that a just and lasting settlement of the conflict was the best way to ensure their rights, but that in the meantime Israel should be urged to accept the de jure applicability of the Fourth Geneva Convention to the occupied territories. He deplored the different concepts of protection (as mentioned above) and saw a special role of UNRWA in the protection of Palestine refugees in the OPT.<sup>362</sup>

For the purpose of providing a measure of protection to the Palestinian refugee population several international staff members were transferred from headquarters in Vienna to the Gaza Strip and the West Bank, the so-called Refugee Affairs Officers, or RAOs.<sup>363</sup>

According to UNRWA’s annual report 1990, the RAOs “facilitated Agency operations and assisted the refugee population in their day-to-day life.”<sup>364</sup>

Furthermore, “(t)he refugee affairs officers also helped, by their presence, to lower tensions and to prevent maltreatment of the refugees, especially vulnerable groups such as women and children. They helped to evacuate the wounded, to reduce interference with ambulances and to obtain the release of refugee children. They assisted the population as occasion arose, for example, to obtain permits for funerals. They also helped to obtain curfew permits to carry on essential services during curfew periods and to facilitate the movement of essential food and medical supplies to camps and other locations where needed. In performing these

---

<sup>360</sup> Schiff, Benjamin N.: *Between occupier and the occupied: UNRWA in the West Bank and the Gaza Strip*, Journal of Palestine Studies, Vol.18, no.3 (spring 1989), pp.60-75, p.62.

<sup>361</sup> Takkenberg, 1998, p.284.

<sup>362</sup> Ibid., p.285f.

<sup>363</sup> Ibid., p.287.

<sup>364</sup> UNRWA, Annual Report, 1989/1990, par.101.

functions the refugee affairs officers sometimes succeeded in establishing a dialogue with Civil Administration officials and were able to assist on the spot in numerous matters affecting the welfare of the population.”<sup>365</sup>

Referring to this example, we can summarize the function of the Refugee Affairs Officers in the following categories: a) indirect protection, i.e. the anticipation of human rights violations by mere presence; b) physical protection (evacuation of the wounded); c) advocacy (the release of refugee children, help to obtain permits etc.); and d) assistance.

In the 1991 annual report there was further description of the RAOs’ duties:

“They (the RAOs) and the Agency’s legal officers, together with locally recruited assistants, continued efforts to uphold the legal rights of the refugees and to safeguard the Agency’s privileges and immunities, including the treatment of Agency staff.”<sup>366</sup>

Unfortunately it was not explained what was meant by efforts to uphold the legal rights of the refugees. Later in the same paragraph the introduction of a legal aid scheme was mentioned.<sup>367</sup>

### **5.3.3. The OSO-Programme**

In 2001 a new programme called the Operation Support Officer Programme (OSO) was initiated by UNRWA.<sup>368</sup> The aim of the programme is to facilitate the delivery of humanitarian assistance to the refugee population, safeguarding the neutrality and integrity of UNRWA’s programmes and installations, to monitor the human rights and humanitarian situation of the refugees.<sup>369</sup> It is providing a measure of protection, primarily indirect protection through its presence but also monitoring and reporting.<sup>370</sup>

It does so also by ensuring “the integrity of the Agency’s installations”.<sup>371</sup> What is meant is that the OSO Programme also serves as an internal monitoring system trying to prevent

---

<sup>365</sup> Ibid.

<sup>366</sup> UNRWA, Annual Report, 1989/1990, par.89.

<sup>367</sup> Ibid.

<sup>368</sup> UNRWA Emergency Appeal 2008, p.24.

<sup>369</sup> Ibid.

<sup>370</sup> UNRWA, Annual Report 2006, p.10, par. 51.

<sup>371</sup> UNRWA in 2006, p.28.

the misuse of UNRWA facilities for political reasons. The programme tries to restore the trust in UNRWA as an impartial organization, which was repeatedly accused of collaborating with alleged terrorists, employing them, offering room for the recruiting of potential suicide bombers or militants in their schools, and being unable to prevent the misuse of their ambulances.

“(The programme) also functions as the Agency’s principal focal point on protection issues in the field.”<sup>372</sup> It addresses disruptions of freedom of movement and officers have conducted a number of research projects in the OPT, providing valuable information for UNRWA and other agencies.<sup>373</sup> In addition, the simple presence of these officers, who are visible as international presence, can have a very positive effect on the situation on the ground. This is an example of indirect protection, a concept which will be more closely deployed in the next sub-section. In addition to these indirect effects the OSO-officers also intervene with Israeli military and police agencies.<sup>374</sup> According to Farah, the protection function of the programme is of informal nature due to the lack of an explicit protection mandate granted to UNRWA. This supposedly protects UNRWA against accusations that it has violated its role as a humanitarian actor.<sup>375</sup> Consideration of recent reports by UNRWA makes clear that, although they do use the term *protection*, at least publicly the Agency is unwilling to claim a major role in this field. This will be illustrated by the following example: the report *UNRWA in 2006* states that “Operations Support Officers monitor and report on the *humanitarian situation* (...)” (emphasis added). In the whole section on the OSO programme, there is no mentioning of human rights and consequently no mentioning of human rights violations.<sup>376</sup>

Again according to Farah, “such temporary programs (the RAOs and OSOs) provide a practical example of how international protection could actually become more effective in the Palestinian context.”<sup>377</sup>

Referring to the RAO and the OSO programme, Bob Bowker states that “(in) both cases, UNRWA provided, at the time, the most effective option available to the international community to give concrete expression to its concerns - to ensure the safety and

---

<sup>372</sup> Ibid.

<sup>373</sup> Ibid.

<sup>374</sup> UNRWA Emergency Appeal 2008, p.26.

<sup>375</sup> Farah, 2003, p.168f.

<sup>376</sup> UNRWA in 2006, p. 25f.

<sup>377</sup> Farah, 2003, p.169.

protection of Palestinians under occupation on one hand, and to make the results of the peace process felt by the Palestinian refugee community on the other.”<sup>378</sup>

#### **5.3.4. Efforts towards Durable Solutions**

UNRWA does not have a mandate or significant experience concerning the implementation of durable solutions. Nonetheless there are a number of incidents where UNRWA contributed to this matter on a case-to-case basis. These efforts include the repatriation of Palestinian refugees, who remained on the Egyptian side of the border after the return of the Sinai to Egypt according to the Camp David accords in 1982.<sup>379</sup> Also the agency’s resettlement activities during the 1950s fall under the category of durable solutions. UNRWA established a Placement Services Office, which provided assistance, such as emigration loans, to Palestinian refugees, who agreed to be resettled in Libya or Iraq. At the time there was a full-time liaison officer for each country.<sup>380</sup> For a short period of time UNRWA also assisted overseas emigration for refugees who had already obtained visas, but this “experiment”, as it is called by Rempel, was suspended after one year at the request of local governments.<sup>381</sup>

In 2008, an independent consultant was charged with the task of defining what protection means for UNRWA and with making recommendations on how UNRWA could implement the concept into its work.<sup>382</sup> In this report it is stated that while UNRWA itself cannot bring about a durable solution to the problem it still has the political duty to promote efforts to this effect. According to Nicholas Morris, the author, “UNRWA should engage with those drawing up negotiating papers and proposing positions and policies in order to ensure to the extent possible that these take proper account of the rights and interests of the refugees and of UNRWA’s experience and knowledge.”<sup>383</sup>

---

<sup>378</sup> Bowker, Bob: *The political management of change in UNRWA*, Palestinian Refugee Research Net, [http://www.arts.mcgill.ca/mepp/new\\_prn/research/papers/bowker.htm](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/bowker.htm) (Download 20 October 2008).

<sup>379</sup> Rempel, 2000. p.3.

<sup>380</sup> Ibid.

<sup>381</sup> Ibid., p.4.

<sup>382</sup> Morris, Nicholas: *What protection means for UNRWA in concept and practice*, Consultant’s report dated 31 March 2008.

<sup>383</sup> Ibid., p.3.



### 5.3.5. Advocacy

Despite the fact that UNRWA shows itself from a rather neutral side in its official reports, shying away from many key words that might be aim of criticism, international staff does speak up publicly in defence of basic human rights and humanitarian law. After analysing a number of recent speeches by and interviews of UNRWA international staff, as well as a number of annual reports by the agency, the author wants to summarize their attitude as follows: They usually argument from a human rights perspective, using UN documents and resolutions to support their arguments. There is criticism of the Israeli closure regime, settlements, mentioning of the *wall*,<sup>384</sup> and the wide range of Palestinian rights are repeatedly mentioned. In past annual reports the authors have tried to maintain a fact-like language, listing human rights abuses without including language that would imply recommendations to the actors, such as “should”, “has to” etc. Most of the time there is an emphasis on the humanitarian impact of the methods that were under scrutiny – such as the closure regime in Gaza and the West Bank.

Of course, advocacy is not just reporting and speaking in the interest of Palestine refugees, but can consist of more practical measures, such as legal aid, or direct involvement with the authorities in charge in order to obtain a change in their behaviour. While there are many practical examples for this, especially in the context of the RAO or the OSO-programme, based on the information contained in UNRWA’s annual reports, these efforts have mainly be focused on UNRWA personnel. This was frequently the case when staff was detained without charge or killed.<sup>385</sup> In addition, OSO officers will also intervene with Israeli military personnel, when they feel UNRWA’s privileges and immunities are not being respected. Staff is assisted in crossing checkpoints and obtaining the necessary permits.<sup>386</sup> The majority of staff consists of Palestine refugees, so the advocacy efforts reach the refugee population. Still in these cases UNRWA’s engagement is based on a different reasoning which is not related to the broader question of protection of Palestine refugees, but is set forth clearly in a number of provisions concerning UN

---

<sup>384</sup> UNRWA, Annual Report 2007, p.vi.

<sup>385</sup> See for example UNRWA, Annual Report 2007, p.viii; or UNRWA, Annual Report 2006, par.24.

<sup>386</sup> UNRWA, Emergency Appeal 2008, p.24 and 25.

personnel and their rights and immunities.<sup>387</sup> Therefore, this engagement is not subject of this paper.

Examples, where advocacy efforts were directed to Palestine refugees that are not UNRWA staff, include the introduction of a legal aid scheme,<sup>388</sup> and “efforts to secure refugees’ access to employment, secondary education and other fundamental rights (...)”<sup>389</sup> in Lebanon. According to Takkenberg, while efforts for the protection of UNRWA staff is still stronger, UNRWA is “increasingly also raising issues referring to the refugee population at large.”<sup>390</sup>

“Intervention can range from a letter to the local military commander to (...) issues where we seek a meeting, to reporting on trends if we notice a pattern of violation. We report on that in different reporting formats to donors, to the General Assembly and to sometimes human rights bodies. In exceptional cases we may take the situation to the press, and elevate it to that level, but never without first seeking the consultation on the matter with the Israeli authorities.”<sup>391</sup>

Richard Cook, Director of UNRWA affairs in Lebanon, gives another example of advocacy efforts:

“(We) know of 24 young people from Nahr al-Bared who are still in prison and we are following up with ICRC over this. We also ask the army to grant us and residents better access to the camp.”<sup>392</sup>

---

<sup>387</sup> Such as Security Council resolution 1502 of 26 August 2003 on the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones. And the 1967 Comay-Micheltore Agreement under which Israel is obligated to “ensure the protection and security of the personnel, installations and property of UNRWA”, UNRWA, Annual Report 2006, par.52.

<sup>388</sup> UNRWA, Annual Report 1991, par.89. In UNRWA’s Annual Report 1993 it is referred to “the refugee affairs officer and *legal aid* and assistance programmes in the West Bank and the Gaza Strip” (emphasis added), par. 53. After this date the term legal aid does not show up in UNRWA’s annual reports.

<sup>389</sup> UNRWA, Annual Report, 2007, p.v.

<sup>390</sup> Personal interview with Lex Takkenberg, 7 October 2008.

<sup>391</sup> Ibid.

<sup>392</sup> Cook, Richard, Director of UNRWA operations in Lebanon: *UNRWA “not satisfied” with pace of reconstruction in Palestinian refugee camp*, Interview, Electronic Lebanon, 23 June 2008.

### 5.3.6. Co-operation between UNRWA and UNHCR

Co-operation between the two is limited. In 1983 following the occupation of Lebanon, the Joint Inspection Unit (JIU)<sup>393</sup> issued a report on UNRWA including a section dealing with Protection of refugees. In this section the Co-operation with UNHCR was mentioned after very clear words and recommendations about the protection gap:

“UNRWA’s mandate does not extend to the protection of refugees. (...) The Office of the High Commissioner for Refugees (...) is specifically excluded from a role in the protection of Palestinian refugees. JIU is convinced that this anomalous situation should not and need not continue. (...) JIU feels that the involvement of the Office of the High Commissioner for Refugees could have a positive effect on the safety and security of Palestinian refugees. It therefore suggests that the Secretary-General (...) should consult with the High Commissioner for Refugees to determine what possibilities exist for co-operation between HCR and UNRWA (...).”<sup>394</sup>

These recommendations were never implemented. Takkenberg concludes that fears within UNHCR of a politicization of the agency were the reason for this.<sup>395</sup>

There were incidents where both UNHCR and UNRWA cared for the same group of refugees, as was the case in the years following 1995 when Libya decided to expel the Palestinians residing in Libya. Some of the Palestinians had literally nowhere to go and were stranded in the border area between Libya and Egypt. Both agencies engaged in the search for a satisfactory solution.<sup>396</sup>

In 2006, “UNRWA also began to provide, in collaboration with the United Nations High Commissioner for Refugees, limited assistance to over 600 Palestine refugees who had fled the conflict in Iraq to the El-Hol refugee camp in the north of the Syrian Arab Republic or to the "no-man's land" between the Syrian and Iraqi borders.”<sup>397</sup>

---

<sup>393</sup> The JIU was established in 1966 to strengthen the external audit function of all organizations of the UN system (Takkenberg, 1998, p.283).

<sup>394</sup> Joint Inspection Unit, Report on UNRWA, July 1983, UN doc. JIU/REP/83/8 and A/38/143 cit. in Takkenberg, 1998, p.283.

<sup>395</sup> Takkenberg, 1998, p.284.

<sup>396</sup> Ibid., p.167.

<sup>397</sup> UNRWA, Annual Report 2006, par.17.

### 5.3.7. Critical Thoughts on the Actual Effects of an Explicit Protection Mandate

The protection gap for Palestinian refugees in the international refugee regime is evident but does that necessarily mean they have disadvantages towards other refugees? Or, put in a different way, “would UNHCR be able to provide for better protection?” In the past practice regarding Palestinians outside of UNRWA’s operations varied considerably. On the one hand, Palestinians were denied refugee status when governments referred to the exclusion paragraph 1D of the Refugee Convention. In this context UNHCR mandate for Palestine refugees could be helpful. On the other hand, as we have seen above, this exclusion is not a real exclusion but entails also an *ipso facto* inclusion, that is, Palestinians should, as a group, be considered refugees under the convention if they no longer receive assistance from UNRWA. Consequently one could argue that it would be enough if governments were aware of this fact. Furthermore the *ipso facto* inclusion could actually facilitate access to international protection for Palestine refugees – a condition that might have to be abandoned if Palestine refugees were set under the UNHCR regime.

UNHCR is well respected and as organisation that is charged to monitor the fulfilment of the 1951 Refugee Convention it is officially recognized and the status of this internationally binding instrument of international law gives it further leverage. Nonetheless, the status of refugees in general is not at all satisfactory.

UNRWA on the other hand lacks this explicit mandate but, nonetheless, many of its efforts are directly and indirectly directed towards the goal of protecting the refugees that are under its mandate. As already mentioned the physical presence of UNRWA especially in the OPT can often diminish the tensions between the Palestinian population and the IDF, or prevent physical attacks or humiliation towards Palestine refugees.

The discussion of actual effects of a protection mandate is important in order to take the discussion from the theoretical level to a more practical one. What that means is that an explicit protection mandate does not automatically lead to an improvement of the situation of the group of refugees concerned – examples for this can easily be found when researching refugees that enjoy UNHCR protection.<sup>398</sup>

---

<sup>398</sup> See UNHCR: *The state of the world’s refugees 2006, Human Displacement in the New Millennium*, 2006.

UNHCR enjoys high credibility among United Nations member states, and can give a refugee issue high importance on the international level. This power to give leverage to a certain problem cannot be compared to UNRWA's possibilities to intervene in the public discourse. Of course this is also due to the fact that UNRWA enjoys almost no international visibility. What results from this is the question, if UNRWA – in the case it would be granted a protection mandate for Palestine refugees – would be able to establish itself as a credible and impartial actor.

### 5.3.8. Criticism in the New Millennium

Following the outbreak of the second intifada in 2000 and partly caused by UNRWA's efforts to enhance protection of Palestine refugees, the agency has been subject to criticism by the Israeli authorities. The then Commissioner-General, Peter Hansen, had condemned Israel's military incursions on the West Bank and Gaza, which influenced UNRWA's humanitarian activities in the OPT.<sup>399</sup> The IDF had rejected to allow ambulances and relief workers into the camps. There were accusations against UNRWA that it had used its ambulances to transport rockets into the occupied territories.<sup>400</sup> UNRWA schools were used as military posts, and Israeli armed attacks of UNRWA vehicles, clinics, schools, and personal had led to the death and injury of a number of UNRWA employees. In response to Hansen's criticism Alan Baker, the Israeli foreign ministry's legal adviser met with U.S. lawmakers and State Department officials in Washington in 2002 "to put pressure on the U.S., and to reiterate Israeli concerns about what he called 'anti-Israeli' bias by some UN officials".<sup>401</sup> These officials include Kofi Annan's Special Middle East envoy Terje Roed-Larsen and Peter Hansen.

Since 2005 the Israel-UNRWA relationship has improved in a substantial matter, which among other factors can be contributed to the new Commissioner-General Karen Koning

---

<sup>399</sup> See for example UNRWA Press Release, *UNRWA condemns a week of Israeli house demolitions in Rafah*, 22 January 2004. And UN News Center, *UN agency condemns Israeli tank fire on Palestinian school in Gaza Strip*, 02 June 2004.

<sup>400</sup> Süddeutsche Zeitung, Online Ausgabe: *Nahost-Debatte im Sicherheitsrat: EU wirft Israel Unverhältnismäßigkeit vor*, 5 October 2004, <http://www.sueddeutsche.de/ausland/artikel/577/40537/> (Download 1 September 2008).

<sup>401</sup> Farah, 2003, p.169.

AbuZayd, which made it a priority to improve the way in which UNRWA was perceived by Israel and western donors.<sup>402</sup>

### **5.3.9. The Evolution of the Term Protection within UNRWA**

During the first three decades of UNRWA's work the term protection has hardly been used in the sense of legal protection.<sup>403</sup> In 1967's annual report it was mentioned that this report didn't discuss issues of protection relating to the occupation of the Gaza Strip and the West Bank, because the Secretary-General had appointed Nils-Goran Gussing as his representative to get the information needed in this respect.<sup>404</sup> In this case the use of the word comes close to today's understanding of it, but it is limited to the gathering of information about legal rights violations. The term did not find its way back into UNRWA's annual reports until 1983 in reaction to the war in Lebanon. It basically referred to efforts by the Commissioner-General who intervened with the Lebanese and Israeli government trying to convince them to increase their own protection measures for Palestine refugees.<sup>405</sup> In this context Commissioner-General Olof Rydbeck made the following general comment about protection and UNRWA's role therein:

“The responsibility for the protection of the civilian population lies with the territorial sovereign or, in the case of occupied territory, the occupying Power. I have nevertheless considered it to be a clear moral duty for the Agency to assist in ensuring the safety of the Palestine refugee's in Lebanon. The only means at the disposal of the Commissioner-General of UNRWA and the UNRWA Field Director in Lebanon is, however, to report, to warn and to make representations to the authorities responsible. This we have done frequently.”<sup>406</sup>

In the following years the term was used in the same context that is, referring to monitoring and the reporting of violations of human rights.

---

<sup>402</sup> UNRWA's Annual Report 2005 states that “operational cooperation with the Government of Israel improved in the latter half of the reporting period,” par.35. AbuZayd became Commissioner-General on 28 June 2005. Contributing was also the Israeli disengagement from the Gaza Strip.

<sup>403</sup> The author has come to this conclusion after the examination of UNRWA's annual reports to the General Assembly.

<sup>404</sup> UNRWA, Annual Report 1966/1967, par.26.

<sup>405</sup> UNRWA, Annual Report, 1982/1983, par.6.

<sup>406</sup> Ibid., par.7.

In the context of its RAO-programme in the OPT UNRWA used the wording *measure of protection*.<sup>407</sup> This term has been frequently used and continues to be used today especially when referring the OSO-programme.<sup>408</sup>

The RAO and the OSO-programme have already been discussed; hence, at this point it shall only be reminded of the fact that those programmes did indeed enlarge the concept of protection in covering more than mere monitoring and reporting functions.

In August 2006 UNRWA published its Organizational Development Plan 2006-2009, which is called “Serving Palestine Refugees more effectively” and is the core document for the agency’s management reform, commonly also referred to as “Organizational Development” or “OD”.<sup>409</sup> The restructuring of the organization is due to be finalized by the end of 2009.<sup>410</sup>

In this report, whereas the implementation and strengthening of protection mechanisms is not explicitly mentioned, it is made clear that UNRWA sees protection as one of its core functions. UNRWA’s vision for the future of Palestine refugees comprises three points, one of which reads:

“Our vision is for every Palestine refugee to enjoy the best possible standards of human development, including (...) feeling assured that his or her rights are being defended, protected and preserved”.<sup>411</sup>

The report stresses that the vision is a general one and doesn’t necessarily imply that this is exclusively UNRWA’s responsibility. Nonetheless one out of six desired outcomes reads “Human rights enjoyed to the fullest extent possible”.<sup>412</sup> The agency is working on further definition of the outcomes. Indicators have been developed but are still being improved. They should be finalized by the end of 2009 and set for adoption in 2010-2011.<sup>413</sup>

---

<sup>407</sup> See for example UNRWA, Annual Report, 1987/1988, par.52.

<sup>408</sup> See for example UNRWA, Annual Report, 2004/2005, par.256; UNRWA, Annual Report, 2006, par.51; UNRWA, Annual Report, 2007, par.60.

<sup>409</sup> UNRWA: *Serving Palestine Refugees more effectively: Strengthening the Management Capacity of UNRWA/UNRWA’s Organisational Development Plan 2006-09*.

<sup>410</sup> UNRWA, *Interim Programme Strategy 2008-2009*, 24 September 2007.

<sup>411</sup> Ibid., p.1.

<sup>412</sup> Ibid., p.6.

<sup>413</sup> Ibid., p.21.

Four dimensions of activities through which results are delivered are being defined in UNRWA's Interim Programme Strategy 2008-2009. In the context of this paper the third point is of importance:<sup>414</sup> "Incorporating thematic areas, such as inclusion, protection, gender equality, and support for vulnerable groups (...), into everything we do".<sup>415</sup>

Today protection is seen by the Agency as a cross-cutting issue within its work. It is not labelled one of its programmes but it shall be included in all of its work. As of now, this is an ongoing process and the exact outcome of this including a clear description of what UNRWA considers its protection work and how it wants to integrate it into all of its programmes has not been delivered, yet.<sup>416</sup>

### **5.3.10. International Reactions to UNRWA's Protection Efforts**

In 1983's annual report, when UNRWA was faced with the consequences of the war in Lebanon, the Advisory Commission was in favour of efforts to improve protection:

"The Commission shares profoundly your concern for the vulnerability of Palestine refugee civilians and the need to assure their physical and legal protection. It is appreciative of your efforts to "report, to warn and to make representations to the authorities responsible".<sup>417</sup>

In 2004, for the first time, UNRWA organized a high-level conference in Geneva in order to get more international visibility, explain its work into more depth to its donors and "to produce recommendations on the strengthening of UNRWA's capacity to provide essential assistance and, where applicable, protection for Palestine refugees."<sup>418</sup>

According to Commissioner-General Hansen, one of the goals of the conference was "to break free of the short-term outlook that has, of necessity, hobbled the Agency's planning (...)."<sup>419</sup> There was a clear message that UNRWA should improve planning and analytical abilities, and its service delivery. An integrated approach towards more

---

<sup>414</sup> The other two are Programmes and Field Operations, Specific Interventions and OD.

<sup>415</sup> UNRWA, *Interim Programme Strategy 2008-2009*, 24 September 2007, p.5.

<sup>416</sup> See for example UNRWA, *Organizational Development in UNRWA: Quarterly Progress Report to the Advisory Commission: January 2008 - March 2008*, p.3: "A review of UNRWA's protection role has been undertaken. This will pave the way for a revised protection strategy and the engagement of a new Senior Protection Advisor working with updated terms of reference."

<sup>417</sup> UNRWA, *Annual Report, 1982/1983*, letter by Advisory Commission.

<sup>418</sup> UNRWA, *The Geneva Conference, 7-8 June 2004, Conference Report*, p.15.

<sup>419</sup> Commissioner-General Hansen, closing remarks to the Geneva High-Level Conference, 2004.



efficiency was called for. In other words, the participants stressed that UNRWA had to plan further ahead in spite of its temporary mandate. Protection as a cross-cutting issue is part of this integrated approach. In the chairman's summary, it was stated:

“In a more general context protection was raised as a central theme in many discussions, although UNRWA does not have a specific protection mandate. Participants stressed that detailed data and research about the present protection needs, in particular of vulnerable groups, including children, is required. Relevant and disaggregated data covering violence, abuse and exploitation should therefore be compiled and analyzed.”<sup>420</sup>

The participants of this conference were mostly member states of the UN, many of them already donors of UNRWA. Therefore this is an example where interested governments expressed their opinion that UNRWA should further engage in its protection role. An additional argument for the support of UNRWA's engagement in protection is the absence of protest by the General Assembly.

### **5.3.11. Recent Developments: The Responsibility to Protect (R2P)**

In a personal talk with Lex Takkenberg – who is the author of the book “The status of Palestinian refugees in international law” and who has worked for UNRWA for almost 20 years – the present author learned that UNRWA has changed its attitude in respect to the issue of protection. After years of discussions among and about UNRWA concerning its protection mandate – or rather the lack thereof – UNRWA has come to adopt a different point of view. Riding the wave of a more global development towards a *responsibility to protect* (R2P), Takkenberg states that “we now essentially take it as a given that UNRWA has a protection mandate”.<sup>421</sup> In addition to the already mentioned UN resolutions, which contain elements of a protection mandate, this is now an additional reasoning in order to come to the conclusion that UNRWA has a mandate to protect the refugees concerned. The present author welcomes this move as a smart step, because it avoids polarisation of the issue of protection and stresses that in the end protection is about the respect of basic human rights. By doing so it does justice to one of the fundamental principles of the

---

<sup>420</sup> UNRWA, *The Geneva Conference, 7-8 June 2004, Conference Report*, p.17.

<sup>421</sup> Personal interview with Lex Takkenberg, 7 October 2008.

United Nations: the promotion of human rights. Consequently, in respect to UNRWA's work, this has led to the conclusion that "essentially assistance and protection are two sides of the same coin. And irrespective whether it's explicitly incorporated in the mandate documents of the organization in question (...) it's always like an implied power, an implied responsibility."<sup>422</sup> As already mentioned, UNRWA is still in the process of internalising this conclusion – discussing how it could be incorporated into day-to-day operations.

In order to understand this new reasoning it is necessary to know more about the origins and the development of the concept of the responsibility to protect. In the United Nations 2005 World Summit more than 170 countries came together to try to draw up measures that would enhance the ability of the international community to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. They agreed in the fact that the international community, "*acting through the United Nations*, bears a responsibility to help protect populations from genocide and other atrocities when their own governments fail to do so" (emphasis added).<sup>423</sup> This new understanding stems from negative experiences of genocide, such as in Rwanda, where the UN was unable to prevent the crimes. In order to do this the concept of humanitarian intervention had to be introduced – legitimizing the right to intervene in situations of grave human rights violations and bypassing the concept of state sovereignty. This responsibility to protect "is not only the responsibility of states but also on United Nations organisations."<sup>424</sup>

## 5.4. Identification of Protection Gaps

As discussed above protection gaps exist for Palestine refugees within UNRWA's area of operation as well as for Palestine refugees outside of this area. In the following chapter there will be concrete examples for human rights violations that affect Palestine refugees within UNRWA's area of operation, since this paper focuses on the need for protection in relation to UNRWA's potential to address this issue. Most of these violations happen in

---

<sup>422</sup> Personal interview with Lex Takkenberg, 7 October 2008.

<sup>423</sup> Bannon, Alicia L.: *The Responsibility To Protect: The U.N. World Summit and The Question of Unilateralism*, Yale Law Journal 115 (2006): 1157-1164, p.1157.

<sup>424</sup> Personal interview with Lex Takkenberg, 7 October 2008.

the public eye but nonetheless, due to the lack of a powerful advocate for Palestinian rights, they persist.

#### **5.4.1. Violations of Human Rights and Humanitarian Law in the OPT**

As already discussed above, since the 1967 war the OPT is regarded an occupied territory and therefore subject to both human rights provisions and international humanitarian law.

In many instances it is not possible to distinguish between human rights violations towards refugees or non-refugees within the OPT. But since Palestine refugees constitute over 40 percent of the total population of the OPT it is clear that they are hit by these as well as the rest of the population.<sup>425</sup>

After the outbreak of the first intifada in 1987, UNRWA's annual report listed some of the measures taken by the occupying power in order to defeat the uprising without calling them human rights violations.

“Administrative detention of large numbers of refugees suspected of involvement in the demonstrations, the demolition or sealing of houses occupied by families of Palestinians accused of security violations, the imposition of curfews and other restrictions on travel, the expulsion of individuals considered to have played a role in directing the resistance to the Israeli occupation, fines, taxation, confiscation of identity cards (without which residents of the territories cannot work or even move freely), closure of schools, cutting off water, electricity and telephone service to communities, and other economic and political measures have all added to the difficulties confronting the residents of the territories.”<sup>426</sup>

“UNRWA has noted physical ill treatment of refugees and the destruction of their property, the sealing and demolition of houses, instances of intimidation, deportations and the application of collective punishment.”<sup>427</sup>

The OPT is not a sovereign state, therefore rights and obligations of actors on the Palestinian side differ from the ones inherent to a sovereign state.<sup>428</sup> Nonetheless the

---

<sup>425</sup> UNRWA, Emergency Appeal 2008, p.5.

<sup>426</sup> UNRWA, Annual Report, 1987/1988, par.30.

<sup>427</sup> Ibid., par.52.

Palestinian side is also responsible for human rights violations, some of which will be discussed hereafter, among violations by Israeli authorities.

- The West Bank Barrier

In 2003 the General Assembly called on Israel to cease construction of the Barrier. When Israel did not comply, the General Assembly called on the ICJ to issue an advisory opinion on the legality of the Barrier. In this opinion the construction of a wall inside the OPT has been declared illegal.<sup>429</sup> The ICJ ruled that it had jurisdiction to decide over the legality of the issue, it stated that the construction on the territory east of the Green Line could not be justified by military necessity or by the requirements of security of public order.<sup>430</sup> Nonetheless construction continues.<sup>431</sup> When complete, approximately 10.2 per cent of the West Bank territory, including East Jerusalem, will be located to the west of the barrier and isolated from the rest.<sup>432</sup> The construction is having a major humanitarian impact on Palestinian communities in the West Bank. Citizens, who live in the so-called seam zone between the barrier and the 1967 Green Line, face considerable difficulties reaching work, schools, universities or relatives. An OCHA study, carried out in 2007 and researching the effects of the barrier on 57 Palestinian communities came to the conclusion that 94 individuals, mostly women and children had not obtained re-entry visa and therefore had not left their own community since the construction of the wall, due to fears that they wouldn't be able to go back home.<sup>433</sup> An OCHA-UNRWA survey found out that none of the communities enclosed enjoy 24 hour access to medical services. This poses difficulties in emergencies, such as women in labour. A report by the Ministry of Health to the World Health Assembly in 2008 claimed that 69 women were forced to give birth at Israeli checkpoints, five of the women died as a result.<sup>434</sup> In many instances families have been separated from their farming land, but only 40 percent of those

---

<sup>428</sup> See for example Clapham, Andrew: *Human Rights Obligations of Non-State Actors*, 2006, p.273.

<sup>429</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, par.162.

<sup>430</sup> OCHA, *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*, 9 July 2007, p.8.

<sup>431</sup> Dugard, John: *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008, p.2.

<sup>432</sup> OCHA, 2007, p.3.

<sup>433</sup> OCHA, 2007, p.1.

<sup>434</sup> Palestinian Authority/Ministry of Health, *Health Conditions in the Occupied Palestinian Territory, Including East Jerusalem*, Report presented to the Sixty-first World Health Assembly, May, 2008, p.9, par.16.

affected have been issued with permits. The majority has no access to their land.<sup>435</sup> Often religious holidays, weddings and funerals cannot be attended by the extended family. The permit regime has also led to a change in wedding patterns. Women traditionally move to their husband's locality, and often parents have been unwilling to approve of a wedding that would leave their daughters in isolation.

- Settlements

Immediately after the 1967 war Israeli settlement activity in the Occupied Palestinian Territory started.<sup>436</sup> Article 49 of the Fourth Geneva Convention refers to the issue of settlements and the transfer of population.

“The Occupying Power shall not (...) transfer parts of its own civilian population into the territory it occupies.”<sup>437</sup>

It is important to point out that the creation of settlements in itself is not automatically prohibited or illegal, whereas the *active policy* by the occupier to transfer population into the occupied territory does fall under this provision.<sup>438</sup> The Israeli government defined areas of interest within the territory (East Jerusalem and the Jordan Valley). This happened within the framework of an official government plan, the so-called Allon Plan.<sup>439</sup> It should also be mentioned that settlement activity never came to a complete halt, especially not in the time following the Oslo agreements, in which a two-state solution was being aimed at.<sup>440</sup>

Eighty-five percent of the West Bank Barrier is within the territory of the West Bank. The ten percent that are now to the west of the 1967 Green Line include almost all major Israeli settlements. Israel continues to expand its settlement activity; the settlement population has been growing by around 5.5 percent each year.<sup>441</sup> 83 percent of the West

---

<sup>435</sup> OCHA, 2007, p.2.

<sup>436</sup> See Lesch, Ann M.: *Israeli Settlements in the Occupied Territories*, Journal of Palestine Studies, Vol.8, No.1 (Autumn 1978), pp.100-119.

<sup>437</sup> Article 49, Fourth Geneva Convention, 1949.

<sup>438</sup> Sassòli, Marco/Bouvier, Antoine A.: *How does law protect in war?*, International Committee of the Red Cross, Geneva, 1999, p.154.

<sup>439</sup> Takkenberg, 1998, p.221, note 121.

<sup>440</sup> Zreik, Raef, Part 1: *The Palestinians of the Occupied Territories*, The Palestinian Question/Themes of Justice and Power, Journal of Palestine Studies, Vol.32, No.4 (Summer, 2003), pp.39-49, p.42.

<sup>441</sup> Human Rights Watch, *Israel/Occupied Palestinian Territories (OPT), Country Summary*, January 2008, p.3.

Bank consists of settlements, military bases and other Israeli-controlled areas. Settler violence against Palestinians “continues with virtual impunity.”<sup>442</sup>

UNRWA’s annual report 2007 states that, “Israeli settlement activity in the West Bank continues; tenders for the construction of 847 new housing units have been issued by the Israeli authorities since the Annapolis meeting in November 2007.”<sup>443</sup>

- Demolition of Houses

The demolition of houses had been an Israeli policy ever since the beginning of the occupation in 1967.<sup>444</sup> According to Amnesty International in 2004 it had reached an unprecedented level. It was estimated that between the beginning of 2001 and May 2004 more than 3,000 homes, hundreds of public buildings and private commercial property as well as vast areas of agricultural lands had been destroyed by Israeli authorities in Israel and the OPT.<sup>445</sup> Reasons for the demolitions as stated by Israeli authorities are military necessity, punishment or the lack of a building permit.<sup>446</sup>

As the occupying force Israel is not allowed to destroy property of the occupied. Article 53 of the Fourth Geneva Convention reads:

“Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

Furthermore, in most cases the demolition of houses also constitutes an action of *collective punishment*, which is explicitly banned by international law.<sup>447</sup> Destruction is often aimed at houses of suicide bombers and others known or suspected of involvement in attacks. Israeli army’s spokespersons often include the following sentence in their announcement of house demolitions, stating that “the demolitions of houses of terrorists

---

<sup>442</sup> Ibid.

<sup>443</sup> UNRWA, Annual Report, 2007, p.v.

<sup>444</sup> Israeli Committee against House Demolition UK Website, *Demolition Statistics since 1967*, <http://www.icahd.org/icahd/ukdev/eng/articles.asp?menu=6&submenu=2&site=UK&article=364> (Download 27 September 2008).

<sup>445</sup> Amnesty International: Israel and the Occupied Territories: *Under the rubble: House demolition and destruction of land and property*, May 2004, p.1.

<sup>446</sup> Dugard, 2008, p.18.

<sup>447</sup> Article 33 of the Fourth Geneva Convention relative to the protection of civilian persons in time of war: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”

sends a message to suicide bombers and their accomplices that anyone who participates in terrorist activity will pay a price for their actions.”<sup>448</sup> The Israeli argument is that the demolition is not supposed to punish the family but, as the citation made clear, to deter potential attackers, who may decide against getting involved in the attack knowing that they might cause the homelessness of their family.<sup>449</sup> Notwithstanding of this argumentation, the remaining families are the victims of the destructions. In addition, according to Amnesty International, in many cases surrounding buildings are affected as well, a fact that supports the notion of collective punishment.<sup>450</sup>

The issue of permits is also not as obvious as it might seem, because although many buildings are indeed built without a permit, Palestinians are frequently forced to do so, because once again the permit system is very restrictive and sometimes it is virtually impossible to get one.<sup>451</sup>

Whilst there are provisions in international humanitarian law that allow the destruction of property in cases in which “such destruction (is) imperatively demanded by the necessities of war (...)”<sup>452</sup>, destruction always has to remain within the limits of *proportionality*.<sup>453</sup> Israel argues that its actions are in accordance with this principle and ensure that their operations do not disproportionately harm civilians. Many Human Rights organisations as well as international organizations dispute this interpretation.

- Jerusalem

The status of Jerusalem remains one of the most contested issues in the whole conflict. East Jerusalem is regarded by the international community as occupied territory since the 1967 war. Jerusalem is also affected by the construction of the West Bank Barrier, which tries to separate East Jerusalem from the West Bank. In connection with a very restrictive permit system, this fact can only be described as highly political. The goal of which

---

<sup>448</sup> Cit in. Amnesty International, 2004, p.11.

<sup>449</sup> Amnesty International, 2004, p.13.

<sup>450</sup> Ibid.

<sup>451</sup> Dugard, 2008, p.18.

<sup>452</sup> Art 23 (g) of the Hague Convention of 1907, See ICRC-Website, <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument> (Download 27 September 2008).

<sup>453</sup> Sassòli, Marco/Bouvier, Antoine A.: *How does law protect in war?*, International Committee of the Red Cross, Geneva, 1999, p.115.

would be the Judaization of East Jerusalem by reducing the number of Palestinian residents in the city.<sup>454</sup>

- Freedom of movement

All crossings from and to the Gaza Strip are controlled by Israel.<sup>455</sup> According to the Agreement on Movement and Access (AMA) Palestinians are allowed to travel freely from Gaza to the West Bank and Egypt. In addition the number of export trucks through Karni should be substantially increased.<sup>456</sup> Following the capture of Gilat Shalit on 25 June 2006 and especially since June 2007, when events in Gaza resulted in the seizure of power by Hamas, there have been serious implications on the freedom of movement of Palestinians as well as access. Rafah, the crossing from Gaza to Egypt, is monitored by delegates from the European Union, which was also decided in the AMA of 2005. For alleged security reasons, the Israeli authorities have continuously denied the international monitoring officials to enter Gaza, resulting in the fact that it remained closed for lengthy periods since 2006.<sup>457</sup> From June to August 2007 about 6,000 Palestinians were stranded on the Egyptian side of the crossing, denied the right to return home. Over 30 people died while waiting.<sup>458</sup> Erez crossing is effectively closed, which is the crossing Palestinians need to pass in order to enter Israel or to transit to the West Bank. Karni is the most important crossing for goods, scheduled to operate six days per week has been closed on 12 June 2007. Since that date the crossing operates very limited on a two day average.<sup>459</sup> This fact was repeatedly criticized by UNRWA Commissioner-General, Karen AbuZayd, as well as John Ging, Director for Operations in Gaza,<sup>460</sup> because it highly affected UNRWA's work and results in a lack of basic humanitarian goods but also of construction material which meant that UNRWA construction projects with a value of USD 84 million came to a halt in 2007.<sup>461</sup>

---

<sup>454</sup> Dugard, 2007, p.13.

<sup>455</sup> Dugard, 2008, p.9.

<sup>456</sup> Agreement on Movement and Access of 15 November 2005, p.5, par.3.8.

<sup>457</sup> Dugard, 2008, p.8.

<sup>458</sup> Ibid., p.9.

<sup>459</sup> OCHA: *Report No. 69, Implementation of the Agreement on Movement and Access and Update on Gaza Crossings (25 June – 08 July 2008)*, p.2.

<sup>460</sup> See Statement by John Ging, Director of UNRWA operations in Gaza, *The humanitarian emergency in Gaza "A shocking and shameful situation"*, 30 April 2008, to the International Development Committee House of Commons.

<sup>461</sup> UNRWA, Annual Report, 2007, par.59.



In recent years there has been an ongoing increase in checkpoints and other obstacles throughout the West Bank. In September 2008 OCHA counted 630 obstacles in the West Bank and East Jerusalem blocking Palestinian movement.<sup>462</sup> This development is contrary to the Agreement on Movement and Access of the year 2005, which demanded a reduction of these obstacles.

- Prisoners

The IOF detains a number of Palestinians without charge or trial for very long periods. This is called administrative detention. This order permits for the detention of periods between 3 to 6 months. These periods however can be indefinitely renewed without reference to charge or trial.<sup>463</sup> By the end of 2007 at least 750 Palestinians were in administrative detention. According to article 78 of the Fourth Geneva Convention, this treatment is only allowed as an exceptional measure for “imperative reasons of security”. The Palestinian Center for Human Rights argues, that detention without charges is rather a measure of punishment, and not necessitated by reasons of security.<sup>464</sup>

In 2007 five Palestinians died in Israeli prisons, four of which suffered from chronic diseases. In its annual report 2007 the Palestinian Center for Human Rights raises concerns about the medical treatment of detained Palestinians.<sup>465</sup> The fact that the majority of deaths was among ill people supports the notion that there is reason for concern.

- Military incursions

There have been over two thousand military incursions in 2005 into the OPT. After the capturing of an Israeli soldier in 2006, 203 Palestinians were killed and almost 1,000 injured within two months.<sup>466</sup> In November 2006, during a six-day-siege on Beit Hanoun in northern Gaza, 50 Palestinians were killed and many refugee homes were destroyed.<sup>467</sup> By late November 2006 when a ceasefire was announced over 450 Palestinians had been killed through Israeli military actions in Gaza alone.<sup>468</sup> The Human Rights Council has

---

<sup>462</sup> OCHA, *Closure Update: Main Findings and Analysis*, (30 April – 11 September 2008), September 2008, par.2.

<sup>463</sup> PCHR, Annual Report 2007, p. 49.

<sup>464</sup> Ibid.

<sup>465</sup> Ibid.

<sup>466</sup> Human Rights Watch: *Israel/Occupied Palestinian Territories: Country Summary*, January 2006, p.3.

<sup>467</sup> UNRWA, Annual Report, 2006, p.2.

<sup>468</sup> Ibid.

again condemned the ongoing incursions in a resolution passed during a special session on human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory.<sup>469</sup>

- Violence against women and girls

Data on violence against women and girls within the OPT is not very comprehensive but a report by Human Rights Watch indicates that there are high levels of violence within the family. This violence is enhanced during times of political violence.<sup>470</sup> According to this report the Palestinian Authority fails in addressing these issues appropriately, which leads to “virtual impunity for perpetrators of domestic violence.”<sup>471</sup>

- Interfactional fighting

Since the takeover of force in Gaza by Hamas in 2007, interfactional fighting and tensions between Hamas and Fatah have caused an additional source of major human rights violations. The violations – in both the West Bank and in Gaza – include arbitrary arrest, torture, unlawful detention and denial of access to a lawyer. All of these are contrary to Palestinian law. There also prohibited by a large number of international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture. Not being a national state the PA cannot formally sign those treaties, but both, Hamas and Fatah, have stated that they adhere to those instruments.<sup>472</sup>

#### **5.4.2. Existing Mechanisms to Fight for Human Rights**

After having discussed the vast array of human rights violations concerning Palestinian refugees, the next paragraph will further illustrate the existing protection gap. The underlying question is “who can Palestinians turn to when they feel their rights are being violated?” And how are the chances that this will lead to an improvement of the situation?

---

<sup>469</sup> OHCHR Website, 6<sup>th</sup> special session of the Human Rights Council  
<http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/6/index.htm> (Download 15 October 2008).

<sup>470</sup> Human Rights Watch: *A Question of Security: Violence against Palestinian Women and Girls*, November 2006, p.3.

<sup>471</sup> Ibid., p.4.

<sup>472</sup> Human Rights Watch: *Internal Fight: Palestinian Abuses in Gaza and the West Bank*, July 2008, p.9.

Concerning the occupied territories this question is of particular interest, because competencies by the occupying power and the Palestinian authority are not clearly defined, and disagreement on the issue of responsibility exists in many instances, for example concerning the Geneva Conventions and Human Rights provisions, as we have seen in the above chapter.

The Oslo Accords or Declaration of Principles of 1993 were considered a milestone in Israeli-Palestinian relations. They created the Palestinian Authority and wanted to establish an interim self-government of the Palestinian people. The general idea included a transfer of power from the occupying force to the Palestinian people. The judicial branch was part of this set of rules. But still there are great problems within the OPT concerning the distribution of competencies. Being an occupied territory, jurisdictions of the occupying power and the one by the Palestinian Authority are often intermingled. Israeli perpetrators within the OPT are not brought before Palestinian courts. This poses huge difficulties concerning assault by settlers against the Palestinian population. These often violent assaults combined with the fact that they mostly go without punishment adds to the frustration of the Palestinian people in the OPT and is therefore an important issue in this conflict.<sup>473</sup>

Shortly after the West Bank and Gaza became occupied in 1967, the Israeli military commander announced that he had assumed all powers and authorities.<sup>474</sup> Since then, Israel has created a series of legal changes. The legal basis for the practices of the occupying power is formed by military orders. According to a report by Al-Haq from 2004, these “orders introduced substantial and radical changes to the Palestinian judicial system which was well-established in the Palestinian territories before the occupation began. Further, they severely curtailed the jurisdiction of local courts, limiting their jurisdiction to addressing the internal affairs of the Palestinians.”<sup>475</sup> The Israeli High Court’s jurisdiction was extended to also cover the OPT. Local residents filed petitions to the Israeli High Court questioning the legitimacy of military practices. Since 1967 the High Court has reviewed hundreds of such petitions. The issues addressed included the

---

<sup>473</sup> Human Rights Watch: *Israel/Occupied Palestinian Territories: Country Summary*, January 2006, p.2.

<sup>474</sup> Al-Haq: *The Israeli High Court of Justice and the Palestinian Intifada: A Stamp of Approval for Israeli violations in the Occupied Palestinian Territories*, Ramallah, 2004, p.17.

<sup>475</sup> *Ibid.*, p.11.

confiscation of land, demolition of houses, deportation, administrative detention, collective punishment and assassinations. Most of these petitions were refused.<sup>476</sup>

In 2005 the Knesset introduced new legislation that “effectively bars Palestinians from the OPT from suing Israel for death, injury or damages caused by Israeli security agents.”<sup>477</sup> At that time, only around 10 percent of Palestinian civilian deaths were investigated at all and only a handful of IDF soldiers had been convicted for causing death or injury. “The IDF maintains the policy that killings of Palestinians will be investigated only under *exceptional circumstances*, which neither the IDF nor the government has ever defined.”<sup>478</sup>

We can conclude that Israeli courts do not offer Palestinian victims the prospect to get a fair trial. This is due to the very particular way of the Israeli judiciary to interpret their own jurisdiction in the OPT as well as their interpretations of international law, which in many instances aligns itself with interpretations of the legal situation made by Israel’s political actors, and which in many instances is strongly criticised.<sup>479</sup>

Concerning internal human rights violations, the Palestinian Authority and the Palestinian judicial system should be the ones responsible for guaranteeing those rights. But in many cases the system is unable or unwilling to protect the victims. Women who have become victims to domestic violence many times are sent back to their homes, because their families’ reputation is prioritized over their basic human rights.<sup>480</sup> The Palestinian police is very limited in its capacity to respond to individual criminal charges. They have almost no investigative capacity.<sup>481</sup> The public prosecutor’s office has repeatedly been criticised for not investigating in cases of killings of Palestinians by other Palestinians on the suspicion of collaboration with Israel.<sup>482</sup> In 1994, when the PA came into power the Palestinian judicial system was barely functioning in the OPT. The situation is further complicated by the fact that it has only has jurisdiction over criminal matters that happened in areas A and B, C is excluded. In addition, under the Oslo Accords

---

<sup>476</sup> Ibid., p.12.

<sup>477</sup> Human Rights Watch: *Israel/Occupied Palestinian Territories (OPT), Country Summary*, January 2006,p.2.

<sup>478</sup> Ibid.

<sup>479</sup> See for example Al-Haq: *The Israeli High Court of Justice and the Palestinian Intifada: A Stamp of Approval for Israeli violations in the Occupied Palestinian Territories*, Ramallah, 2004.

<sup>480</sup> Human Rights Watch: *A Question of Security: Violence against Palestinian Women and Girls*, November 2006, p.5.

<sup>481</sup> Ibid., p.18.

<sup>482</sup> Ibid., p.19.

Palestinian courts have no jurisdiction on Israeli citizens, such as settlers, or Israeli security forces.<sup>483</sup> There is an acute lack of qualified judges and lawyers.<sup>484</sup>

### The Human Rights Council

In 2007 a group of dispossessed Palestinian people, represented by a team of lawyers, BADIL and the Centre on Housing Rights and Evictions (COHRE), filed a petition under the confidential “1503” complaints procedure to the Human Rights Council.<sup>485</sup> This complaint procedure was first introduced by ECOSOC resolution 1503 of May 1970, therefore the name, and has been reviewed by ECOSOC in 2000 and by the Human Rights Council in its resolution 5/1 “UN Human Rights Council: Institution Building” of 18 June 2007. According to the official website of the Office of the High Commissioner for Human Rights, the reviewed version of the procedure “(...) was improved where necessary to ensure that the complaint procedure be impartial, objective, efficient, victims-oriented and conducted in a timely manner.”<sup>486</sup> It is of confidential nature in order to enhance cooperation of the State concerned. The objective of the procedure is “to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.”<sup>487</sup> On 19 June 2008 the petitioners were informed that their appeal was no longer under consideration and that no reasons would be given for why the case was dropped.<sup>488</sup> One possible explanation could be that human rights violations by Israel are discussed in the Human Rights Council on a frequent basis. This fact might justify the application of the following criteria under which the petition would not be accepted for examination under this procedure:

“It refers to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special

---

<sup>483</sup> Ibid.

<sup>484</sup> Ibid., p.20.

<sup>485</sup> BADIL, Press Release, *Accountability Must Replace Impunity for Acts of Forced Displacement in Israel/Palestine*, 20 June 2008.

<sup>486</sup> OHCHR Website, *Human Rights Council Complaint Procedure*, <http://www2.ohchr.org/english/bodies/chr/complaints.htm> (Download 29 August 2008).

<sup>487</sup> Ibid.

<sup>488</sup> BADIL, Press Release, *Accountability Must Replace Impunity for Acts of Forced Displacement in Israel/Palestine*, 20 June 2008.

procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights.”<sup>489</sup>

Yet, the human rights council predominantly deals with human rights violations within the OPT, and the petition did refer to events within the territory that is now the State of Israel, therefore even this argumentation could be put into question.

Nonetheless, even if there are reasons not to respond to the petition in this case, this example clearly shows the lack of accountability concerning human rights violations. The Human Rights Council deals with this issue, and is frequently criticized for the fact that it gives too high priority to violations by the State of Israel. Still, it can be argued that this UN body did not lead to substantial improvements concerning the human rights situation in the area concerned. Consequently, petitions are not accepted but violations persist.

In addition, there is the possibility to file individual complaints under UN human rights treaty bodies, among others the Human Rights Committee, which monitors the implementation of the International Covenant of Civil and Political Rights, the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC). As already mentioned UNRWA cooperates and provides information regarding individual cases during the process of filing a complaint.

## **5.5. Conclusion on UNRWA’s Role in Protection**

One of the biggest challenges for UNRWA remains the severe underfunding of the agency – also in respect of its engagement in protection. In 2006 the funding deficit was US\$ 71.5 million, forcing UNRWA to scale down its services in health, education and assistance to the poor.<sup>490</sup> Obviously, serious efforts to improve the agency’s protection function demand funding. Taking into account that the humanitarian situation remains dire, any serious change towards this goal will also depend on future donor support.

---

<sup>489</sup> OHCHR Website, *Human Rights Council Complaint Procedure*, <http://www2.ohchr.org/english/bodies/chr/complaints.htm> (Download 29 August 2008).

<sup>490</sup> UNRWA, Annual Report, 2007, p.vi.

As we have seen different definitions of the term protection can be found. Nonetheless the common characteristic of the concept remains the question of responsibility. Who is to be responsible for Palestine refugees? And who could individuals turn to in case of violations of their rights? Following the invasion in Lebanon in 1982 the General Assembly adopted a resolution calling for “The Protection of Palestine refugees” and called upon the Secretary-General and UNRWA to “undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestine refugees in the occupied territories.”<sup>491</sup> The then Commissioner-General of UNRWA made an important statement in response: “(...) responsibility should go with power, and (...) under international law it is for the occupying power to ensure that the civil and other rights of the inhabitants of the territory are safeguarded.”<sup>492</sup> This is one of the crucial points of the whole protection discussion. In practical terms the deciding factor for the effectiveness of protection depends on the political weight and actual power of the protecting power or organization. Refugees don’t enjoy protection of their own national state or they might be stateless persons so the international community should fill this gap. Nonetheless it is the national states of residence that are responsible for breaches of international law and they should be held accountable. The author concludes that UNRWA cannot alone be responsible for the well-being of Palestine refugees – this difficult task does not lie within its power. But it can strengthen and elaborate its role as an advocate for the cause of the refugees under its mandate through closer monitoring of violations of human rights and calling on the states concerned to take up the responsibility they have under international law as well as calling on the international community to increase their efforts to hold states responsible for their illegal actions. Even if International Organizations are mandated with the task of protection, there is always an imbalance of power, because their adversaries are sovereign States. Therefore real protection has to come through states as well. It is sovereign states who decide on Security Council resolutions, the taking of measures under Chapter VI and VII of the Charter of the United Nations, or if they want to follow-up on human rights violations through the ICJ or through individual criminal prosecution by establishing a tribunal comparable to the International Tribunal for Yugoslavia or Rwanda.

---

<sup>491</sup> General Assembly resolution 37/120 J, of 16 December 1982, part J, p.106, par.1.

<sup>492</sup> Takkenberg, 1998, p.282.

Still, UNRWA, due to its strong presence and decades-long experience in the region, is in a good position to work towards the introduction of more effective protection measures. There is still a wide margin and possibilities for engagement towards a better human rights situation, without compromising UNRWA's role as an impartial actor. If it wasn't for the always difficult financial situation, efforts could go towards more support to individuals by having a team of international lawyers or by directly negotiating with the authorities also when the individual concerned is not a member of UNRWA staff.

There are differing voices concerning the future involvement of UNRWA concerning the matter of refugee protection. According to Rempel UNRWA should not play a major role in refugee protection, due to its "overall limited resources" and "limited experience in this area."<sup>493</sup> At the same time the NGO BADIL, who published Rempel's paper, repeatedly also called for a stronger engagement in this field. According to Randa Farah, UNRWA should not be officially granted a protection mandate, because this could prove counterproductive, as UNRWA might risk its current flexibility, resulting from the fact that it is perceived as a mostly humanitarian organization that poses no threat to the host governments.<sup>494</sup> Although Rempel does acknowledge the fact the UNRWA has some very important qualities like its extensive regional network and knowledge of the socio-economic situation in its area of operation and information contained in UNRWA's registration system, he states that "with little experience in this area, and lingering suspicions about attempts by the international community to use the Agency as a tool for de facto or forced resettlement during the early years of its operations this role would be better left to an international protection agency, with a strong record of protecting and facilitating refugee choice."<sup>495</sup>

These are just some examples of opinions but they show that the discussion on the official and explicit mandate is a difficult one. Taking this fact into account the author welcomes the recent developments within UNRWA which include a new understanding of the protection mandate: now the agency assumes that it has a protection mandate even though it is not as explicitly mentioned as is the case with UNHCR. But it takes its mandate from the global responsibility to protect – a concept that has evolved and was strengthened

---

<sup>493</sup> Rempel, Terry M.: *The UN Relief and Works Agency (UNRWA) and a durable solution for Palestinian Refugees*, BADIL Information & Discussion Brief no.6, July 2000, p.2.

<sup>494</sup> Farah, 2003, p.170.

<sup>495</sup> Rempel, Terry M.: *The UN Relief and Works Agency (UNRWA) and a durable solution for Palestinian Refugees*, BADIL Information & Discussion Brief no.6, July 2000, p.4.



during the last couple of years in connection with the broader UN reforms. The author sees this change within the agency as a smart move in order to move towards a more effective engagement towards protection, but steering clear of the troubled discussion of the explicit protection mandate, which might have politicised UNRWA's work. It can only be hoped that this new approach will also lead to changes on the ground and visible improvements to the human rights situation of Palestine refugees.

## **6. Conclusion**

Let us now go back to the initial question of this thesis. Why does UNRWA still exist today? There are a number of reasons for this fact. First of all, UNRWA could not be dismantled because the international community has proven to be unable to find a just and long-lasting solution to the Palestinian refugee problem.

Despite reoccurring criticism towards the agency – by scholars, journalists and other individuals from all sides to the conflict and countries not directly concerned – there are obvious reasons for all concerned to keep UNRWA because it serves the relative well-being of a population that is otherwise deprived of the most fundamental rights and consequently opportunities to provide for themselves. In this thesis the author tried to show that it is this contribution that lies in the interest of all of the actors concerned. Therefore, it has been a logical and welcomed step that, when new needs arise, UNRWA should step in and provide more or different services. That is the underlying concept of many of UNRWA's adaptations in the past, such as the enlargement of health care services, education, micro-credit schemes, and large-scale development projects like the one planned for Nahr el-Bared.

This has happened despite the fact that even UNRWA itself in the past has criticized its own engagement in the region, encouraging a stronger engagement of the Arab countries. Yet, the Arab states as well as all other countries concerned have not taken measures to provide the most basic services to the Palestine refugee population – leaving UNRWA as the only actor to take on this task. Being a UN organ it stands for the responsibility of the UN and the international community for the refugee problem.

Taking into account the bigger picture of the issue UNRWA cannot be held responsible for perpetuating the refugee problem. At the same time it is not just a passive player

carrying out the functions laid down by the UN, but rather it disposes of a relatively large discretion to take its own decisions.

According to Takkenberg “by and large (...) the Commissioner-General takes the ultimate decisions of the organisation”, and “what drives her is the ultimate best interest of the agency and the refugees we are serving. And that is pretty much respected by the principal stakeholders. (...) We’re able to steer the course that we think is in the best interest of the refugees. It’s not that we’re pulled into the direction of a specific donor interest, of a specific host country.”<sup>496</sup>

Protection differs from all of the other changes and adaptations made in the past because it touches upon basic human rights of Palestine refugees – an issue that will necessarily lead to criticism towards most of the host countries where UNRWA operates. The agency finds itself in a dilemma: on the one hand as a subsidiary organ of the United Nations it is committed to the concept of universal human rights, and on the other hand the non-political, humanitarian aspect of its existence has come to be the answer to most of the criticism brought against the agency and the guarantee for comparatively good relations with all host countries. Therefore, this principle is of fundamental importance to UNRWA.

The official protection mandate, if it were to be conferred to UNRWA, which in the author’s eyes is not likely to happen in the near future, or at any time given the arguments mentioned above, could have the same effects as the resettlement efforts in the 1950’s, that is, a politicisation of the Agency, which could threaten its ability to deliver its services to the people in need, and consequently lead to the rejection of this mandate.

Now, the existence of a dilemma results from the characterisation of protection and the humanitarian mandate as two extremes, where one is threatening the foundation of the other. Yet, the functioning of an organisation like UNRWA is, of course, much more subtle and diversified, trying to please different stakeholders by diplomatic efforts and compromises. In this respect, the way out of the dilemma could be by negating that there is a dilemma and, instead, taking the “way-in-between”. What is meant is the “silent” enhancement of protection efforts. As shown above, work has been done in order to improve the human rights situation of the refugees – through initiatives like the RAO and

---

<sup>496</sup> Personal interview with Lex Takkenberg, 7 October 2008.

the OSO-programme, reports, speeches by senior officials of the agency and through confidential negotiations with governments. UNRWA officials have not been afraid to speak up for the people under UNRWA's mandate, even if it meant to criticise one of the agency's host countries. These efforts happened without serious damage to the perception of UNRWA as an impartial player.

The fact that direct improvement from an official protection mandate cannot be a certain assumption gives further backing to the new approach within UNRWA according to which the agency already has a protection mandate. This realisation stems from the global responsibility to protect, which applies also to all UN organisations. Human rights of Palestine refugees are an issue in a number of forums, such as a number of bodies of the United Nations, the Council of Europe, various national and international NGOs, and national governments. It can be doubted that UNRWA would be able to find a way out of the political dead-lock that has characterized the situation of Palestine refugees for the last six decades if it were to be granted an official protection mandate. Therefore the concentration on smaller scale improvements should be continued, desirably with increased funds, the lack of which is one of the reasons that impede the agency's work to improve human rights for Palestine refugees.

As we have seen the United Nations have been involved in this issue since its creation in 1948, and are partly held responsible because it suggested partition of Mandate Palestine and because of its recognition of the State of Israel. But also the Arab states have their role to play. They are constantly divided between two concepts: the one of solidarity towards the Palestinians and the one of their own political and security issues, which in many cases leads them to neglect the humanitarian needs of this refugee group. In the light of the rather negative outlook on the conflict today, the author stresses the immediate protection needs of Palestinian refugees based on human rights and humanitarian law as opposed to the merging of the refugee problem with a just and long-lasting political solution.

UNRWA is in a unique role due to its decades-long involvement with Palestine refugees as well as through its role as an impartial and above all humanitarian actor. There is still a big potential within the organization to increase its efforts concerning protection. Nonetheless UNRWA always needs to be careful in order not to risk the fact that it is perceived as a rather apolitical actor. The organization depends on the cooperation and

good-will of the host governments in order to ensure the deliverance of its services to the refugees concerned.

Responding to the question if there could be any negative effects caused by stronger engagement in protection of refugees Lex Takkenberg stated that “any change meets resistance” but that he wasn’t sure if there were any negative effects, despite the fact that “there is obviously a tremendous challenge in taking on protection issues and to raise it to Israel and host countries.”<sup>497</sup>

---

<sup>497</sup> Personal interview with Lex Takkenberg, 7 October 2008.

## 7. Bibliography

### Books:

- Afifi, Mohamed El-Hadi: *The Arabs and the United Nations*, Longmans, London, 1964.
- Altamemi, Younes R.: *Die Palästinaflüchtlinge und die Vereinten Nationen*, Abhandlungen zu Flüchtlingsfragen, Band II, Forschungsgesellschaft für das Weltflüchtlingsproblem (WAR), Wilhelm Braumüller, Wien, 1974.
- Alvarez, José E.: *International Organizations as Law-makers*, Oxford University Press, Oxford/New York, 2005.
- Clapham, Andrew: *Human Rights Obligations of Non-State Actors*, Oxford University Press, Oxford/New York, 2006.
- Dumper, Michael (editor): *Palestinian Refugee Repatriation: Global Perspectives*, Routledge, London/New York, 2006.
- Meulen, Lionel van der: *Fremde im eigenen Land: die Geschichte der Palästinenser und der PLO*, Knesebeck & Schuler, München, 1989.
- Morris, Benny: *The birth of the Palestinian refugee problem: 1947-1949*, Cambridge University Press, Cambridge, 1987.
- Morris, Benny: *1948*, Yale University Press, New Haven/London, 2008.
- Neuhold/Hummer/Schreuer (editors): *Österreichisches Handbuch des Völkerrechts*, Band 1, Textteil, 4.Auflage, Manz, Wien, 2004.
- Pappé, Ilan (editor): *The Israel/Palestine Question: Rewriting Histories*, Routledge, London/New York, 1999.
- Reinisch, August: *International Organizations before National Courts*, Cambridge Studies in International and Comparative Law, Cambridge University Press, Cambridge, 2000.
- Said, Edward: *The Question of Palestine*, Routledge & Kegan Paul, London, 1980.
- Said, Edward: *The politics of dispossession: The struggle for Palestinian self-determination, 1969-1994*, Pantheon Book, New York, 1994.
- Said, Edward: *The end of the peace process: Oslo and after*, Pantheon Books, New York, 2000.

- Sassòli, Marco/Bouvier, Antoine A.: *How does law protect in war?*, International Committee of the Red Cross, Geneva, 1999.
- Sassòli, Marco/Bouvier, Antoine A.: *Un droit dans la guerre ?*, Comité international de la Croix-Rouge, Volume I, Genève, 2003.
- Sato, Chie: *Immunität Internationaler Organisationen*, Dissertation vom Fachbereich Rechtswissenschaften der Universität Marburg, Peter Lang, Berlin/New York/Oxford, 2003.
- Shlaim, Avi: *The Iron Wall: Israel and the Arab World*, Penguin Books, London/New York, 2000.
- Strauss, Ekkehard: *Prävention von Menschenrechtsverletzungen als Aufgabe internationaler Organisationen: Rechtsgrundlage und inhaltliche Ansätze*, Berlin Verlag Arno Spitz GmbH, Berlin, 2001.
- Takkenberg, Lex: *The Status of Palestinian Refugees in International Law*, Claredon Press, Oxford, 1998.
- Wagner, Viktoria: *A Preliminary Assessment of the Palestinian Judiciary and the Rule of Law in the Autonomous Areas of the West Bank and the Gaza Strip*, Diplomarbeit zur Erlangung des Magistergrades der Philosophie und der Grund- und Integrativwissenschaftlichen Fakultät der Universität Wien, März 2000.

#### Articles:

- Abi-Saab, Rosemary: “*Conséquences juridiques de l’édification d’un mur dans le territoire palestinien occupé*”: quelques réflexions préliminaires sur l’avis consultative de la Cour internationale de Justice, *Révue Internationale de la Croix Rouge*, Vol.86, No.855, September, 2004.
- Akram, Susan: *Temporary Protection and its Applicability to the Palestinian Refugee Case*, BADIL – Information & Discussion Brief, Issue No. 4, June 2000. [www.badil.org/Publications/Briefs/Brief-No-04.html](http://www.badil.org/Publications/Briefs/Brief-No-04.html)
- Akram, Susan: *Palestinian Refugees and their legal status: Rights, politics, and implications for a just solution*, in: *Journal of Palestine Studies* XXXI, no. 3, Spring 2002, pp. 36-51.
- Akram, Susan/Rempel, Terry: *Temporary Protection for Palestinian Refugees: A Proposal*, paper prepared for BADIL Expert Forum 22-23 May 2003, Ghent University/Department of Third World Studies. [www.badil.org](http://www.badil.org)

- Al Abed, Oroub: *Palestinians in Jordan*, Forced Migration Online, <http://www.forcedmigration.org/guides/fmo025/fmo025.pdf> (Download 1 September 2008).
- Al Abed, Oroub: *Unprotected Palestinian Refugees in Egypt*, Case Study, BADIL Expert Forum 2003-04, 5-8 March 2004.
- Bannon, Alicia L.: *The Responsibility To Protect: The U.N. World Summit and The Question of Unilateralism*, Yale Law Journal 115 (2006): 1157-1164.
- Boling, Gail: *The 1948 Palestinian Refugees and the Individual Right of Return: An International Law Analysis*, Badil, January 2001. [http://www.badil.org/Publications/Legal\\_Papers/RoR48.pdf](http://www.badil.org/Publications/Legal_Papers/RoR48.pdf) (Download 14 September 2008).
- Bowker, Bob: *The political management of change in UNRWA*, Palestinian Refugee Research Net, [http://www.arts.mcgill.ca/mepp/new\\_prn/research/papers/bowker.htm](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/bowker.htm) (Download 20 October 2008).
- Brynen, Rex: *The future of UNRWA: an agenda for policy research*, Palestinian Refugee Research Net, PRRN/IDRC/RIIA workshop on the future of UNRWA, [http://www.arts.mcgill.ca/mepp/new\\_prn/research/papers/brynen\\_000219.htm](http://www.arts.mcgill.ca/mepp/new_prn/research/papers/brynen_000219.htm) (Download 20 October 2008).
- Cervenak, C.M.: *Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status*, Human Rights Quarterly; vol.16, No.2 p.300-374 (1994).
- Dale, William: *UNRWA: A subsidiary organ of the United Nations*, International and Comparative Law Quarterly, 23, p.576-609, Cambridge University Press, 1974, <http://www.jstor.org/stable/757888?seq=7> (Download 28 August 2008).
- Farah, Randa: *The Marginalization of Palestinian Refugees*, in: Steiner/Gibney/Loescher: *Problems of Protection: The UNHCR, Refugees, and Human Rights*, Routledge, New York/London, 2003, pp. 155-178.
- Helton, Arthur C.: *What is Refugee Protection? A Question Revisited*, in: Steiner/Gibney/Loescher: *Problems of Protection: The UNHCR, Refugees, and Human Rights*, Routledge, New York/London, 2003, pp.19-36.
- Jäger, Gilbert: *On the history of the international protection of refugees*, International Review of the Red Cross, Vol. 83, No.843, September 2001.

- Koning AbuZayd, Karen: *This brutal siege of Gaza can only breed violence*, The Guardian, 23 January 2008, [http://www.un.org/unrwa/news/articles/2008/Guardian\\_23jan08.html](http://www.un.org/unrwa/news/articles/2008/Guardian_23jan08.html) (Download 11 September 2008).
- Lapidoth, Ruth: Legal Aspects of the Palestinian Refugee Question, Jerusalem Center for Public Affairs, Jerusalem Letter No.485, 1 September 2002. <http://www.jcpa.org/jl/vp485.htm> (Download 3 September 2008).
- Lesch, Ann M.: *Israeli Settlements in the Occupied Territories*, Journal of Palestine Studies, Vol.8, No.1 (Autumn 1978), pp.100-119.
- Masalha, Nur: *A Critique on Benny Morris*, in: Pappé, Ilan (editor): *The Israel/Palestine Question: Rewriting Histories*, Routledge, London/New York, 1999, pp.211-220.
- Morris, Nicholas: *What protection means for UNRWA in concept and practice*, Consultant's report dated 31 March 2008.
- Parvathaneni, Harish: *UNRWA's Role in Protecting Palestine Refugees*, BADIL Expert Seminar, Cairo, 5-8 March 2004, [http://www.badil.org/Campaign/Expert\\_Forum/Cairo/paper4.pdf](http://www.badil.org/Campaign/Expert_Forum/Cairo/paper4.pdf) (Download 17 October 2008).
- Pipes, Daniel: *The Refugee Curse*, New York Post, 19 August 2003, <http://www.danielpipes.org/article/1206> (Download 3 September 2008).
- Rempel, Terry M.: *The United Nations Conciliation Commission for Palestine, Protection, and a Durable Solution for Palestinian Refugees*, BADIL Information & Discussion Brief no.5, June 2000, <http://www.badil.org/Publications/Briefs/Brief-No-05.html> (Download 17 October 2008).
- Rempel, Terry M.: *The UN Relief and Works Agency (UNRWA) and a durable solution for Palestinian Refugees*, BADIL Information & Discussion Brief no.6, July 2000, <http://www.badil.org/Publications/Briefs/Brief-No-06.html> (Download 17 October 2008).
- Rempel, Terry M.: *Internally Displaced Palestinians, International Protection and Durable Solutions*, BADIL – Information & Discussion Brief, Issue No. 9, November 2002, [www.badil.org/Publications/Briefs/Brief-No-09.html](http://www.badil.org/Publications/Briefs/Brief-No-09.html) (Download 17 October 2008).



- Rempel, Terry M.: *UN General Assembly Resolution 194(III) and the framework for durable solutions for 1948 Palestinian refugees*, Paper prepared for the BADIL Expert Forum, 22-23 May, 2003, [http://www.badil.org/Campaign/Expert\\_Forum/Ghent/paper05.pdf](http://www.badil.org/Campaign/Expert_Forum/Ghent/paper05.pdf) (Download 17 October 2008).
- Shiblak, Abbas: *Residency status and civil rights of Palestinian refugees in Arab countries*, Journal of Palestine Studies Vol. XXV, no.3 (spring 1996), pp.36-45.
- Stroh, David Peter: *A systemic view of the Israeli-Palestinian Conflict*, in: Systems Thinker Vol.13 No.5, June/July 2002.
- Schiff, Benjamin N.: *Between occupier and the occupied: UNRWA in the West Bank and the Gaza Strip*, Journal of Palestine Studies, Vol.18, no.3 (spring 1989), pp.60-75.
- Suleiman, Jaber: *Palestinian Civil Society Perspective towards Improving Protection for Palestinian Refugees: Report from 2003 Beirut Workshop*, presented to BADIL Expert Forum 2003 – 2004, Beirut, 6 February 2004.
- Takkenberg, Lex: *International Protection of Palestinian Refugees & the Relevant Rules of International Law*, Paper Outline for the BADIL Expert Forum 2003 -2004, Cairo, 5-8 March 2004.
- Viorst, Milton: *UNRWA and Peace in the Middle East*, Washington DC, The Middle East Institute, 1984.
- Zreik, Raef, Part 1: *The Palestinians of the Occupied Territories*, The Palestinian Question/Themes of Justice and Power, Journal of Palestine Studies, Vol.32, No.4 (Summer, 2003), pp.39-49.

#### Documents and Reports:

- Agreement on Movement and Access of 15 November 2005, [http://www.ochaopt.org/documents/AMA\\_The\\_Passages\\_Technical\\_Elaboration.pdf](http://www.ochaopt.org/documents/AMA_The_Passages_Technical_Elaboration.pdf) (Download 27 September 2008).
- Al-Haq: *The Israeli High Court of Justice and the Palestinian Intifada: A Stamp of Approval for Israeli violations in the Occupied Palestinian Territories*, Ramallah, 2004, <http://www.alhaq.org/pdfs/THE%20ISRAELI%20HIGH%20COURT%20OF%20>

[JUSTICE%20AND%20THE%20PALESTINIAN%20INTIFADA.pdf](#) (Download 20 September 2008).

- Amnesty International: *Lebanon: Economic and Social Rights of Palestinian Refugees*, Submission to the Committee on the Elimination of Racial Discrimination, 22 December 2003 (AI Index MDE: 18/017/2003).
- Amnesty International: *Israel and the Occupied Territories: Under the rubble: House demolition and destruction of land and property*, May 2004, <http://www.amnesty.org/en/library/asset/MDE15/033/2004/en/dom-MDE150332004en.pdf> (Download 27 September 2008).
- Amnesty International: *Enduring Occupation: Palestinians under siege in the West Bank*, June 2007.
- BADIL: Occasional Bulletin No. 01: *International Protection – Overview and Special Protection for Refugees*, November 2000. [www.badil.org/Publications/Bulletins/Bulletin-01.htm](http://www.badil.org/Publications/Bulletins/Bulletin-01.htm)
- BADIL: Occasional Bulletin No. 02: *International Protection Forces – Overview and Relevance for Palestinians*, November 2000. [www.badil.org/Publications/Bulletins/Bulletin-02.htm](http://www.badil.org/Publications/Bulletins/Bulletin-02.htm)
- BADIL: Occasional Bulletin No. 06: *Physical Protection for Refugee Populated Areas*, May 2001. [www.badil.org/Publications/Bulletins/Bulletin-06.htm](http://www.badil.org/Publications/Bulletins/Bulletin-06.htm)
- BADIL: *Survey of Palestinian Refugees and Internally Displaced Persons 2004-2005*, 2006. <http://www.badil.org/Publications/Books/Survey2004-2005.pdf> (Download 24 September 2008).
- Charter of the United Nations, San Francisco, 1945, <http://www.un.org/aboutun/charter/>.
- Committee of Economic, Social and Cultural Rights: *Concluding observations, Israel*, E/C.12/1/Add. 27, 23 Mai 2003, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.90.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.90.En?Opendocument) (Download 19 September 2008).
- Committee of Economic, Social and Cultural Rights: *Implementation of the International Covenant on Economic, Social and Cultural Rights, second periodic report by Israel*, E/1990/6/Add. 32, 16 October 2001, <http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/718aa6e9>

[5901651c85256c5500630447/\\$FILE/e90-6add32.pdf](http://www.unhcr.org/refugees/5901651c85256c5500630447/$FILE/e90-6add32.pdf) (Download 19 September 2008).

- Convention relating to the Status of Refugees, Geneva, 1951, <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.
- ECOSOC, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan*, Note by the Secretary-General, E/2007/13.
- *Geneva Conventions of 12 August 1949 and Additional Protocols to the Geneva Conventions of 12 August 1949*, ICRC, Geneva.
- Government of Lebanon: *A Common Challenge – A shared Responsibility: The International Donor Conference for the Recovery and Reconstruction of the Nahr el-Bared Palestinian Refugee Camp and Conflict-Affected Areas of North Lebanon*, Vienna, 23 June 2008, [http://www.un.org/unrwa/publications/NBC/Vienna\\_23June08.pdf](http://www.un.org/unrwa/publications/NBC/Vienna_23June08.pdf) (Download 17 October 2008).
- Human Rights Watch: *Israel/Occupied Palestinian Territories: Country Summary*, January 2006.
- Human Rights Watch: *A Question of Security: Violence against Palestinian Women and Girls*, November 2006, <http://hrw.org/reports/2006/opt1106/opt1106web.pdf> (Download 15 October 2008).
- Human Rights Watch: *Israel/Occupied Palestinian Territories: Country Summary*, January 2008.
- Human Rights Watch: *Internal Fight: Palestinian Abuses in Gaza and the West Bank*, July 2008, <http://hrw.org/reports/2008/iopt0708/iopt0708web.pdf> (Download 15 October 2008).
- ICRC Website, <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument> (Download 27 September 2008).
- International Court of Justice: *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949, <http://www.icj-cij.org/docket/files/4/1835.pdf> (Download 11 September 2008)

- International Court of Justice: *Nottebohm-Case (Liechtenstein vs. Guatemala)*, 18 November 1953.
- International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf> (Download 19 September 2008).
- International Law Commission: *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, Chapter II, p.38. [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf) (Download 19 September 2008).
- OCHA: *Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion*, 9 July 2007.
- OCHA/UNRWA: *The Humanitarian Impact of the Barrier: Four Years after the Advisory Opinion of the International Court of Justice on the Barrier*, Update No. 8, July 2008.
- OCHA: *Report No. 69, Implementation of the Agreement on Movement and Access and Update on Gaza Crossings (25 June – 08 July 2008)*, [http://www.ochaopt.org/documents/Movement\\_Access\\_Agreement\\_69\\_8\\_July\\_2008.pdf](http://www.ochaopt.org/documents/Movement_Access_Agreement_69_8_July_2008.pdf) (Download 27 September 2008).
- OCHA: *Closure Update: Main Findings and Analysis, (30 April – 11 September 2008)*, September 2008, [http://www.ochaopt.org/documents/ocha\\_opt\\_closur\\_update\\_2008\\_09\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_closur_update_2008_09_english.pdf) (Download 27 September 2008).
- OECD: *Paris Declaration on Aid Effectiveness*, March 2005.
- OECD: *Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons*, 2008, <http://www.oecd.org/dataoecd/11/8/40581496.pdf> (Download 14 September 2008).
- OECD, Development Co-operation Directorate (DCD-DAC): *Adhesion procedure*, <http://www.oecd.org/dataoecd/57/30/36083092.pdf> (Download 28 July 2008).
- Palestinian Authority/Ministry of Health: *Health Conditions in the Occupied Palestinian Territory, Including East Jerusalem*, Report presented to the Sixty-first World Health Assembly, May, 2008, p.9, par.16.
- Palestinian Centre for Human Rights: *Annual Report 2007*, Gaza, 2008.

- Palestinian Human Rights Organisation (PHRO): *Lebanon Crisis: Israel Severe Breaches to the International Law: July 12-27, 2006*, [www.palhumanrights.org](http://www.palhumanrights.org)
- Palestinian Human Rights Organisation (PHRO): *Lebanese Labor Laws: Palestinian Refugees' Recent Situation*, April 2007.
- Protocol for the treatment of Palestinians in Arab states, "Casablanca Protocol", <http://www.badil.org/Documents/Protection/LAS/Casablanca-Protocol.htm> (Download 21 September 2008).
- Soto, Alvaro de: *End of Mission Report*, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority, Envoy to the Quartet, May 2007.
- United Nations Conciliation Commission for Palestine (UNCCP): *Report to the General Assembly*, 3 September 1985. <http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/d70cab6bcedb427b85256102007d3a3a!OpenDocument&Highlight=2,UNCCP> (Download 24 September 2008).
- United Nations Conciliation Commission for Palestine (UNCCP): *Report to the General Assembly*, 20 August 2008. <http://domino.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/8f08eed82087298e852574be004b602e!OpenDocument&Highlight=2,UNCCP> (Download 24 September 2008).
- United Nations Development Group (UNDG): *Implementing the Paris Declaration on Aid Effectiveness: Action Plan of the UN Development Group*, [http://www.undg.org/docs/9213/6189-UNDG Action Plan - Implementing the Paris Declaration.pdf](http://www.undg.org/docs/9213/6189-UNDG_Action_Plan_-_Implementing_the_Paris_Declaration.pdf) (Download 14 September 2008).
- UN Economic Survey Mission: *First Interim Report of the United Nations Economic Survey Mission for the Middle East*, appended to UNCCP, Final Report of the United Nations Economic Survey Mission for the Middle East, 28 December 1949, part I, p.19. <http://domino.un.org/pdfs/AAC256Part1.pdf> (Download 24 September 2008).
- United Nations General Assembly resolution 181 (II) (A+B), *Future Government of Palestine*, 29 November 1947.

- United Nations General Assembly resolution 194 (III), *Palestine – Progress Report of the United Nations Mediator*, 11 December 1948.
- United Nations General Assembly resolution 302 (IV), *Assistance to Palestine refugees*, 8 December 1949.
- United Nations General Assembly resolution, 393 (V), 3 December 1950.
- United Nations General Assembly resolution 2252 (ES-V), 1967 *War/Humanitarian Assistance*, of 4 July 1967.
- United Nations General Assembly resolution 37/120 J, 16 December 1982, part J.
- United Nations General Assembly resolution 38/83 (A/RES/38/83), *Assistance to Palestine Refugees*, of 15 December 1983.
- United Nations General Assembly resolution A/RES/42/69, 2 December 1987.
- United Nations General Assembly resolution 48/116, 20 December 1993.
- United Nations General Assembly resolution, *Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, A/RES/62/104, 17 December 2007.
- United Nations General Assembly resolution 62/104 (A/RES/62/104), *Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, of 10 January 2008.
- United Nations General Assembly resolution 62/102 (A/RES/62/102), *Assistance to Palestine Refugees*, of 10 January 2008.
- United Nations Human Rights Council: Dugard, John: *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/4/17, 29 January 2007.
- United Nations Human Rights Council: Dugard, John: *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, A/HRC/7/17, 21 January 2008.
- United Nations Human Rights Council: *Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip*, Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 7/1, A/HRC/8/17, 6 June 2008.

- United Nations Secretary-General: *Report of the Secretary-General pursuant to General Assembly resolution ES-10/15* (Establishment of a registry on damage caused by the construction of a wall in the OPT) (A/ES-10/361), 17 October 2006.
- United Nations Security Council resolution, S/RES/605, 1987.
- United Nations Security Council resolution 1435, 24 September 2002.
- Security Council resolution 1502, *Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones*, 26 August 2003.
- UNHCR: *Statute of the Office of the High Commissioner for Refugees*, <http://www.unhcr.org/protect/PROTECTION/3b66c39e1.pdf> (Download 26 August 2008).
- UNHCR: *Handbook: Voluntary Repatriation: International Protection*, Geneva, 1996.
- UNHCR: *Refugee Protection/A Guide to International Refugee Law*, Geneva, 2001. <http://www.unhcr.org/publ/PUBL/3d4aba564.pdf>
- UNHCR: *Note On The Applicability Of Article 1d Of The 1951 Convention Relating To The Status Of Refugees To Palestinian Refugees*, International Journal for Refugee Law, Oxford University Press, IJRL 2002.14(450), April 2002.
- UNHCR: *Structural and management change process, Progress Report*, September 2006, <http://www.unhcr.org/excom/EXCOM/450eb2702.pdf> (Download 16 September 2008).
- UNHCR: *The state of the world's refugees 2006: Human displacement in the new Millennium*, 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/template?page=publ&src=static/sowr2006/toceng.htm> (Download 11 September 2008).
- UNRWA: *Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 6 October 1950, A/1451/Rev.1.
- UNRWA: Annual reports to the General Assembly: A/1905  
28 September 1951, A/2171, 30 June 1952; A/2470, 30 June 1953; A/2717, 30 June 1954; A/2978, 30 June 1955; A/3212, 30 June 1956; A/3686, 30 June 1957; A/3931, 30 June 1958; A/4213, 30 June 1959; A/4478, 30 June 1960; A/4861, 30 June 1961; A/5214, 30 June 1962; A/6713, 30 June 1967; A/7213,

15 September 1968; A/8013, 30 June 1970; A/8413, 30 June 1971; A/32/13, 30 June 1977; A/33/13, 30 June 1978; A/34/13, 1979; A/35/13, 30 June 1980; A/37/13, 30 June 1982; A/38/13, 30 June 1983; A/39/13, 12 September 1984; A/40/13, 13 September 1985; A/41/13, 23 September 1986; A/42/13, 15 September 1987; A/43/13, 16 September 1988; A/44/13, 2 October 1989; A/45/13, 21 September 1990; A/46/13, 9 October 1991; A/48/13, 19 January 1995(Covering 1992/1993); A/49/13, 17 October 1994; A/50/13, 26 October 1995; A/51/13, 26 October 1996; A/52/13, 14, November 1997; A/53/13, 28 October 1998; A/54/13, 1 November 1999; A/55/13, 15 October 2000; A/56/13, 18 October 2001; A/57/13, 27 October 2002; A/58/13, 11 October 2003; A/59/13, 19 October 2004; A/60/13, 9 August 2005; A/61/13, 17 October 2006; A/62/13, 17 June 2007; A/63/13, 2008.

- UNRWA: *The Geneva Conference, 7-8 June 2004, Conference Report*, [http://www.un.org/unrwa/genevaconference/con\\_report/con\\_report\\_april05.pdf](http://www.un.org/unrwa/genevaconference/con_report/con_report_april05.pdf) (Download 25 September 2008).
- UNRWA: *Medium Term Plan 2005 – 2009*, Gaza, 2005, <http://www.un.org/unrwa/news/mtp.pdf> (Download 17 October 2008).
- UNRWA: *Building Partnerships in Support of UNRWA, The Geneva Conference, 7-9 June 2004, Conference Paper*, April 2005, <http://www.un.org/unrwa/genevaconference/english/partnerships.pdf> (Download 17 October 2008).
- UNRWA: *Serving Palestine Refugees more effectively: Strengthening the Management Capacity of UNRWA/UNRWA's Organisational Development Plan 2006-09*, [http://www.un.org/unrwa/organization/od/od\\_plan.pdf](http://www.un.org/unrwa/organization/od/od_plan.pdf) (Download 17 October 2008).
- UNRWA: *Lebanon Emergency, Situation Report 21 May 2007*, (on file with the author).
- UNRWA: *UNRWA in 2006*, Gaza, September 2007, [http://www.un.org/unrwa/publications/pubs07/unrwa\\_in\\_2006.pdf](http://www.un.org/unrwa/publications/pubs07/unrwa_in_2006.pdf) (Download 17 October 2008).
- UNRWA: *General Fund Appeal 2008-2009*, <http://www.un.org/unrwa/publications/pubs07/GF-20082009.pdf> (Download 30 September 2008).



- UNRWA: *Interim Programme Strategy 2008-2009*, 24 September 2007, <http://www.un.org/unrwa/organization/od/InterimProgStrategy08-09.pdf> (Download 17 October 2008).
- UNRWA: *Prolonged Crisis in the Occupied Palestinian Territory/Recent Socio-Economic Developments* (Report Nr.2), Gaza, November 2007, <http://www.un.org/unrwa/publications/pubs07/RecentSoEcDev.pdf> (Download 17 October 2008).
- UNRWA: *Emergency Appeal 2008*, Gaza, November 2007. <http://www.un.org/unrwa/emergency/appeals/2008-appeal.pdf> (Download 17 October 2008).
- UNRWA: *statistical profiles: general*, <http://www.un.org/unrwa/publications/pdf/figures.pdf> (Download 20 October 2008).
- UNRWA: *UNRWA in figures*, December 2007. <http://www.un.org/unrwa/publications/pdf/uif-dec07.pdf> (Download 11 September 2008).
- UNRWA: *Reconstruction of Nahr el-Bared Camp: Infrastructure Feasibility Study and Preliminary Engineering Design* (Water Supply, Sewerage, Stormwater Drainage and Road Pavement), UNRWA Lebanon Field Office, April 2008, Conference Paper: The International Donor Conference for the Recovery and Reconstruction of the Nahr el-Bared Palestinian Refugee Camp and Conflict-Affected Areas of North Lebanon, Vienna, 23 June 2008, [http://www.un.org/unrwa/publications/NBC/UNRWA\\_Annex\\_05.pdf](http://www.un.org/unrwa/publications/NBC/UNRWA_Annex_05.pdf) (Download 17 October 2008).
- UNRWA: *Preliminary Master Plan and Guidelines for the Reconstruction of Nahr el-Bared Palestine Refugee Camp*, April 2008, Conference Paper: The International Donor Conference for the Recovery and Reconstruction of the Nahr el-Bared Palestinian Refugee Camp and Conflict-Affected Areas of North Lebanon, Vienna, 23 June 2008, [http://www.un.org/unrwa/publications/NBC/UNRWA\\_Annex\\_06.pdf](http://www.un.org/unrwa/publications/NBC/UNRWA_Annex_06.pdf) (Download 17 October 2008).
- UNRWA: *Report of UNRWA's Director of Health to the World Health Assembly*, 2008.

- UNRWA: *Organisational Development: A Mid-Term Report*, August 2008, <http://www.un.org/unrwa/organization/od/MidTermReport.pdf> (Download 17 October 2008).
- UNRWA: *Organizational Development in UNRWA: Quarterly Progress Report to the Advisory Commission: January 2008 - March 2008*, [http://www.un.org/unrwa/organization/od/QuarterlyReport\\_JanMar08.pdf](http://www.un.org/unrwa/organization/od/QuarterlyReport_JanMar08.pdf) (Download 17 October 2008).
- World Bank Technical Team: *Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy*, 9 May 2007, <http://domino.un.org/UNISPAL.NSF/db942872b9eae454852560f6005a76fb/3de751bf0a424afc852572d60043df42!OpenDocument> (Download 17 October 2008).

Internet:

- Austrian Foreign Ministry Website, <http://www.bmeia.gv.at/en/foreign-ministry/news/presseaussendungen/2008/plassnik-zur-wiener-geberkonferenz-ziel-erreicht-wiederaufbau-beginnt-im-herbst.html> (Download 12 September 2008).
- Badil Website, *The UN Conciliation Commission for Palestine (UNCCP)*, [www.badil.org/Protection/text01.htm](http://www.badil.org/Protection/text01.htm) (Download 19 September 2008);
- Badil Website, <http://www.badil.org/Refugees/facts&figures.htm> (Download 21 September 2008).
- Haaretz online, *Cabinet declares Gaza "hostile territory"*, <http://www.haaretz.com/hasen/spages/905561.html> (Download 19 September 2008).
- IASC Website, <http://www.humanitarianinfo.org/iasc/content/default.asp> (Download 15 October 2008).
- Israel Ministry of Foreign Affairs Website, Lapidoth, Ruth: *Do Palestinian Refugees Have a Right to Return to Israel?*, 2001, <http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/Do%20Palestinian%20Refugees%20Have%20a%20Right%20to%20Return%20to> (Download 17 October 2008).
- Journal of Humanitarian Assistance Online, Marx, Emmanuel/ Nachmias, Nitza: *Dilemmas of Prolonged Humanitarian Aid Operations: The Case of UNRWA (UN*

- Relief and Work Agency for the Palestinian Refugees*),  
<http://www.jha.ac/articles/a135.htm> (Download July 2008).
- OECD Website, Development Assistance Committee (DAC), Country list,  
[http://www.oecd.org/countrylist/0,3349,en\\_2649\\_34447\\_25602317\\_1\\_1\\_1\\_1,00.html#O](http://www.oecd.org/countrylist/0,3349,en_2649_34447_25602317_1_1_1_1,00.html#O) (Download 28 July 2008).
  - OECD Website, DAC, List of ODA Recipients,  
<http://www.oecd.org/dataoecd/23/34/37954893.pdf> (Download 28 July 2008).
  - OHCHR Website, 6<sup>th</sup> special session of the Human Rights Council,  
<http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/6/index.htm>  
 (Download 15 October 2008).
  - OHCHR Website, *Human Rights Council Complaint Procedure*,  
<http://www2.ohchr.org/english/bodies/hr/council/complaints.htm> (Download 29 August 2008).
  - Palestinian Refugee Research Net (PRRN): *UNRWA: Cutting the Fat or Heading for Starvation?*, Palestine Economic Pulse, Vol II. No.4, July-August 1997, pp21-22,  
[http://www.arts.mcgill.ca/mepp/new\\_prnr/research/papers/pep.htm](http://www.arts.mcgill.ca/mepp/new_prnr/research/papers/pep.htm) (Download 29 July 2008).
  - Süddeutsche Zeitung Online Ausgabe: *Nahost-Debatte im Sicherheitsrat: EU wirft Israel Unverhältnismäßigkeit vor*, 5 October 2004,  
<http://www.sueddeutsche.de/ausland/artikel/577/40537/> (Download 1 September 2008).
  - The Guardian Online, *Lebanese troops shell Palestinian refugees*, 21 May 2007,  
<http://www.guardian.co.uk/world/2007/may/21/syria.marktran> (Download 12 September).
  - UNDG Website, [www.undg.org](http://www.undg.org) (Download 17 October 2008).
  - UNHCR Website, <http://www.unhcr.org/protect/3c0762ea4.html> (Download 11 September 2008).
  - UNRWA Website, *Setting the record straight*:  
[http://www.un.org/News/briefings/docs/2007/071107\\_UNRWA.doc.htm](http://www.un.org/News/briefings/docs/2007/071107_UNRWA.doc.htm)  
 (Download 29 July 2008).
  - UNRWA Website, *Who is a Palestine Refugee?*,  
<http://www.un.org/unrwa/refugees/whois.html> (Download 11 September 2008).

- UNRWA Website, *Pledges to UNRWA for 2006*,  
[http://www.un.org/unrwa/finances/pledges\\_dec06.html](http://www.un.org/unrwa/finances/pledges_dec06.html) (Download 12 September 2008).
- UNRWA Website, *Lebanon refugee camp profiles*,  
<http://www.un.org/unrwa/refugees/lebanon.html> (Download 12 September 2008).
- UNRWA Website, *Frequently asked questions*,  
<http://www.un.org/unrwa/overview/qa.html#d> (Download 12 September 2008).

#### Press Releases and Oral Statements:

- BADIL, Press Release, *Accountability Must Replace Impunity for Acts of Forced Displacement in Israel/Palestine*, 20 June 2008.  
<http://www.badil.org/Publications/Press/2008/press482-08.htm> (Download: 29 August 2008).
- Cook, Richard, Director of UNRWA operations in Lebanon: *UNRWA “not satisfied” with pace of reconstruction in Palestinian refugee camp*, Interview, Electronic Lebanon, 23 June 2008,  
<http://electronicintifada.net/v2/article9637.shtml> (Download 20 October 2008).
- Ging, John, Director of UNRWA operations in Gaza: *The humanitarian emergency in Gaza “A shocking and shameful situation”*, 30 April 2008, statement to the International Development Committee House of Commons, on UNRWA-Website  
[http://www.un.org/unrwa/news/statements/DUO/HumanEmer\\_30Apr08.html](http://www.un.org/unrwa/news/statements/DUO/HumanEmer_30Apr08.html) (Download 27 September 2008).
- Hansen, Peter, speech at UNRWA’s Geneva Conference, 2004,  
[http://www.un.org/unrwa/genevaconference/press/comgen\\_speech.html](http://www.un.org/unrwa/genevaconference/press/comgen_speech.html) (Download 5 September 2008).
- Hansen, Peter, speech at UNRWA’s Geneva Conference, 2004, *closing remarks*,  
[http://www.un.org/unrwa/genevaconference/con\\_report/hansen\\_closing\\_remarks.pdf](http://www.un.org/unrwa/genevaconference/con_report/hansen_closing_remarks.pdf) (Download 19 October 2008).
- Israeli Committee against House Demolition UK Website, *Demolition Statistics since 1967*,  
<http://www.icahd.org/icahd.ukdev/eng/articles.asp?menu=6&submenu=2&site=UK&article=364> (Download 27 September 2008).

- UNRWA Press Release, *UNRWA condemns a week of Israeli house demolitions in Rafah*, 22 January 2004,  
<http://domino.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/2cea28005777990185256e23006cb5f5!OpenDocument> (Download 25 September 2008).
- United Nations Press Release PAL/534, *Gordon Clapp speaks on the work of the UN Economic Survey for the Middle East*, 13 October 1949,  
<http://domino.un.org/UNISPAL> (Download 3 September 2008).
- UN Press Release, *UN Agencies issue joint statement on expulsion of Palestinians from Libya*, 29 September 1995,  
<http://domino.un.org/unispal.nsf/f45643a78fcba719852560f6005987ad/53f734fb0da3bd99852562520064c3b1!OpenDocument> (Download 24 September 2008).
- United Nations Department of Public Information, News and Media Division, New York, *Press Conference on Situation of Palestine Relief Agency*, 7 November 2007,  
[http://www.un.org/News/briefings/docs/2007/071107\\_UNRWA.doc.htm](http://www.un.org/News/briefings/docs/2007/071107_UNRWA.doc.htm)  
(Download 16 September 2008).
- UN News Center, *UN agency condemns Israeli tank fire on Palestinian school in Gaza Strip*, 02 June 2004,  
<http://www.un.org/apps/news/story.asp?NewsID=10933&Cr=Palestin&Cr1>  
(Download 24 September 2008).

Personal Interview:

- Lex Takkenberg, 7 October 2008.

## **8. Annex**

### **8.1. Glossary**

AI:	Amnesty International
ECOSOC:	Economic and Social Council
ICJ:	International Court of Justice
ICRC:	International Committee of the Red Cross
GA:	General Assembly of the United Nations
HRW:	Human Rights Watch
ODA:	Official Development Aid
OD:	Organisational Development
OPT:	Occupied Palestinian Territory
PIP:	Peace Implementation Programme
SC:	Security Council of the United Nations
UDHR:	The Universal Declaration of Human Rights
UNCCP:	United Nations Conciliation Commission for Palestine
UNHCR:	United Nations High Commissioner for Refugees
UNRWA:	United Nations Relief and Works Agency in the Near East

## 8.2. Abstract (English)

Almost 60 years after the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established by the General Assembly as a temporary agency, it remains active, and one might argue that it is more established in the region than ever. This thesis tries to explore the reasons for this fact by focusing on UNRWA's role in *development* and the *protection* of refugees. In her research the author was guided by the questions “why did UNRWA's mandate expand?”, “who initiated the changes?” and “whose interest does UNRWA serve?”

The concept and the implementation of development have changed considerably – a change that can be documented and shown. The agency's engagement in protection issues has changed as well and discussions within the agency on its protection role are still ongoing. For years authors have focused on the protection gap and on the fact that UNRWA does not have an explicit mandate – in contrast to UNHCR. But recent developments within the UN and within UNRWA have changed this focus fundamentally. Today UNRWA takes it as a given that it possesses a protection mandate. The author sees still potential within the organization to increase its efforts concerning protection. Nonetheless UNRWA always needs to be careful in order not to risk the fact that it is perceived as a rather apolitical actor.

The thesis concludes that most changes to UNRWA's mandate were initiated by the General Assembly or the Secretary-General of the UN or were in response to necessities on the ground. When UNRWA took on new responsibilities without a clear mandate, these were repeatedly given consent by the General Assembly retroactively. Taking into account the bigger picture of the issue UNRWA cannot be held responsible for its own existence or for perpetuating the refugee problem. At the same time it is not just a passive player carrying out the functions laid down by the UN, but rather it disposes of a relatively large discretion to take its own decisions.

### **8.3.Abstract (German)**

Die Diplomarbeit behandelt die Veränderungen, die innerhalb der UNRWA stattgefunden haben. Die grundsätzliche Frage hierbei ist, „wieso existiert die UNRWA eigentlich noch“? Sie wurde vor fast 60 Jahren als „temporäre“ Organisation von der Generalversammlung der Vereinten Nationen ins Leben gerufen, aber sie ist nach wie vor aktiv im Nahen Osten tätig. In ihrer täglichen Arbeit gibt es wenig Anzeichen dafür, dass es sich um eine temporäre Organisation handelt, sondern es macht den Anschein, als hätte sie sich dauerhaft eingerichtet. Im Ursprung hat sie sich hauptsächlich um Nothilfe für Palästina-Flüchtlinge gekümmert. Im Laufe der Jahre hat sie sich jedoch in einen Anbieter von quasi-staatlichen Leistungen gewandelt, mit einem umfangreichen Angebot an Grundschulen, Gesundheitseinrichtungen und sozialen Auffangmechanismen.

In der Arbeit werden die wichtigsten Veränderungen des Aufgabenbereichs der Organisation im Laufe der Zeit dargestellt. Dabei wird immer gefragt „warum ist es zu diesen Veränderungen gekommen?“, „wer hat diese Veränderungen initiiert?“ und „wer hat ein Interesse daran, dass UNRWA ihre Arbeit weiterführt bzw. erweitert?“

Die Autorin hat sich in der Suche nach Antworten auf diese Fragen auf zwei Themen konzentriert: Entwicklung und Menschenrechtsschutz der Flüchtlinge. Das Thema Entwicklung eignet sich besonders um die Veränderungen in der Organisation zu verdeutlichen, da in diesem Bereich offensichtliche Veränderungen stattgefunden haben, die gut dokumentiert und nachvollziehbar sind. Menschenrechtsschutz ist ein sehr aktuelles Thema, welches in der UNRWA selbst noch Diskussionen mit sich bringt und dessen Rolle noch nicht genau geklärt ist. Es ist ein kontroverses Thema, da bei dem Schutz von Menschenrechten immer die eigentlich Verantwortlichen auf ihre Versäumnisse aufmerksam gemacht werden müssen – in diesem Fall bedeutet das Kritik an den Gastländern, in denen UNRWA arbeitet und von dessen gutem Willen sie abhängig ist.

Im Bereich Entwicklung hat UNRWA wichtige Errungenschaften zu verzeichnen, jedoch wäre es von Vorteil wenn sie besser in internationale Mechanismen eingebunden wäre, die es auch erlauben die Arbeit mit Bezug auf bestimmte Kriterien regelmäßig zu evaluieren.



Im Bereich Menschenrechtsschutz ist es vor allem seit der Besetzung der palästinensischen Gebiete im Jahr 1967 zu einem Umdenken innerhalb der Organisation gekommen. Obwohl UNRWA nicht über ein explizites Mandat für den Schutz von Menschenrechten verfügt – ganz im Gegenteil zu UNHCR – und sich jahrelang auf dieses Defizit konzentriert worden ist, geht die Organisation heute davon aus, dass sie im Rahmen einer globalen Verantwortung zum Schutze dieser Rechte über eben dieses Mandat verfügt.

Die Arbeit kommt zu dem Schluss, dass die Mandatserweiterungen der UNRWA meistens von anderen Akteuren, wie dem Generalsekretär oder der Generalversammlung der Vereinten Nationen initiiert wurden oder durch Notwendigkeiten vor Ort begründet waren. Beim selbstständigen Übernehmen neuer Aufgaben hat im Nachhinein meistens eine Billigung dieser Veränderungen durch die Generalversammlung stattgefunden.

Des Weiteren muss man sich bei Kritik an der Organisation bewusst sein, dass nur durch die Unfähigkeit der internationalen Gemeinschaft eine gerechte Lösung des Flüchtlingsproblems zu finden die Existenz der UNRWA überhaupt noch nötig ist. Sie kann als Unterorganisation der UNO auch nicht für ihre eigene Existenz verantwortlich gemacht werden. Trotzdem besitzt sie in der Ausrichtung ihrer Arbeit über beträchtlichen Spielraum und Autonomie.

## 8.4.CV of the Author (German)

Name: Sophie Sutrich

Geboren am: 06.04.1983

Kontakt: sophie@sutrich.de

### Bildungsweg:

10.2004 – 11.2008      Diplomstudium Internationale Entwicklung an der Universität  
Wien

03.2007 – 07.2007      Praktikum bei den Vereinten Nationen (UNRWA) in Genf,  
Schweiz

10.2006 – 02.2007      Studium des Völkerrechts an der Universität Genf, Zertifikat  
für transnationales Recht

06.2003                  Abitur am Theodolinden-Gymnasium in München,  
Deutschland

08.2000 – 06.2001      Austauschjahr an der Burrillville High School in Rhode  
Island, USA