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Internationalised Regulation: UNRWA's institutional framework before and after Oslo

Since 1950, the complex range of regulatory frameworks governing the everyday lives of Palestinians have included an international constant: the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).¹ In its role as the long-term *de facto* governing authority for registered Palestinian refugees, UNRWA produced a series of normative principles that continuously impacted Palestinian lives. Its significance in this sense has transcended the impact of the Oslo Accords, with the changes of the latter generally serving to highlight rather than undermine or shift UNRWA's regulatory role.

The normative impact of UNRWA's work is best understood with regard to its purpose and function. UNRWA is a quasi-autonomous UN body, mandated by and answerable to the General Assembly (UNGA). It was created in December 1949, when UNGA Resolution 302(IV) established the Agency with a mandate to 'carry out... direct relief and works programmes' and provide assistance to refugees from Palestine.² UNRWA began operations on 1 May 1950 in areas that would later come to be known as its 'five fields' of operation: the West Bank and the Gaza Strip (collectively known after 1967 as the 'occupied Palestinian territories' or OPT), as well as Syria, Lebanon, and Jordan. While remaining temporary, UNRWA's mandate has been regularly renewed over the years, most recently until June 2020.³

As an institution, UNRWA is unique. It is the only UN body mandated to serve a particular group of people exclusively in one region. This set-up has resulted in the Palestinians' exclusion from the mandate of UNHCR, which serves all other refugees. In fact, the Palestinians are the only group in the world not entitled to UNHCR's services.⁴ The considerable scholarly debate over how this exclusion disadvantages them is too extensive and complex to cover here.⁵ The more pertinent point is that UNRWA's uniqueness created a distinctive humanitarian regime for the Palestinians, whereby they were governed by their own separate institution. The significance of UNRWA's unique humanitarian regime is exacerbated by the fact that the vast majority of registered Palestinian refugees are stateless (the exceptions being those with Jordanian citizenship).⁶ This has led to UNRWA becoming a *de facto* government for the refugees, its authority buttressed by its UN status.

UNRWA's quasi-governmental role is manifested in its responsibility for issuing Palestinian refugees with legal documents that enable them to verify their identity, establish their entitlement to services, work and travel - much as state-issued passports and ID cards otherwise do. For many decades UNRWA also issued birth certificates, annotated with the Agency's emblem and the

signature of an Agency official.⁷ While Palestinians in the OPT have also held Israeli-issued ID cards since 1967, UNRWA's documentation has continued to hold its own unassailable importance as the only 'official' evidence of one's Palestinian identity and refugee status.⁸ The result is that Palestinian refugee identity has become inextricably tied to the international sphere and particularly the UN, by way of UNRWA's hybrid nature as a 'Palestinianised' international organisation.

The Oslo Accords had the potential to alter this situation with the creation of alternative national authorities in the OPT. Indeed, UNRWA's quasi-governmental role was initially reduced so as to accommodate the establishment of the Palestinian Authority (PA) in 1994. With the PA intended as a mechanism for Palestinian self-government in a future state, UNRWA's remit shrunk amidst talk of an eventual complete handover. PA-issued passports undermined the former significance of UNRWA documentation; a fledgling Palestinian infrastructure meant that UNRWA was no longer the only 'Palestinianised' system in the OPT. Yet the ultimate failure of the Oslo process precipitated a reversal of this early trend, as the need for UNRWA's services continued and in some cases increased. In particular, the Agency's services have been paramount in Gaza since the beginning of the ongoing Israeli blockade in 2007.⁹ It can thus be argued that the Oslo Accords' impact on UNRWA's regulatory framework in the OPT was minimal in the long run, resulting in alterations rather than fundamental change.

The Oslo Accords also failed to eradicate the distinction between those Palestinians who are registered with UNRWA and those who are not – a distinction that constitutes one of the most important elements of the Agency's impact on Palestinian lives. When assessing UNRWA's regulatory impact, it is crucial to note that the Agency has never provided services to all Palestinians, or even to all Palestinian refugees - either in the OPT or elsewhere. Instead, registration is limited to individuals who meet its eligibility criteria as:

a person whose normal residence was Palestine for a minimum of two years preceding the conflict in 1948, and who, as a result of this conflict, lost both his home and his means of livelihood and took refuge in 1948 in one of the countries where UNRWA provides relief, along with his descendants in the male line.¹⁰

This criteria excludes a considerable number of Palestinians who might otherwise be considered refugees, including those who were working or studying abroad at any time from 1946-48, and those who took refuge outside of the five fields. It also reinforces a patriarchal system, whereby men can pass on their refugee status to their children but women cannot.

UNRWA's exclusionary criteria means that an estimated two-thirds of Palestinian refugees,¹¹ and just under half the global Palestinian population (including non-refugees),¹² are registered with the Agency. While this includes around a quarter of Palestinians in the West Bank,¹³ in Gaza more than 70% of the population are eligible for UNRWA services.¹⁴ As a result, the majority of the Gazan population receive services from an international organisation, upon which they are often

dependent but which they cannot formally hold to account.¹⁵ These dynamics reinforce the impact of the Palestinians' non-citizenship, as their *de facto* government is funded not by their taxes but by donations from the 'international' (mostly Western) community – thus undermining the Palestinians' ability to formally regulate or exert pressure on the structures that govern their lives.

The impact of UNRWA's eligibility terms has also affected the internal dynamics of Palestinian society. The distinction between registered and unregistered Palestinians is not merely abstract but has direct practical consequences. UNRWA's normative framework has created a reality on the ground whereby one's refugee status - and the institutional recognition of it - becomes a direct determinant of one's entitlements and conditions. Unregistered Palestinians in the OPT can be denied access to UNRWA's services and welfare programmes, despite the fact that their need may actually be greater than that of their registered counterparts. UNRWA's codification of formal refugee status has thus created an internal demarcation within Palestinian society that has sometimes caused considerable resentment.¹⁶ The establishment and impact of the Oslo structures have failed to eradicate this demarcation. However, they have created a parallel system in the form of the PA, whereby the distinction is not between the registered and the unregistered but between Palestinians in the OPT and those in the *shatāat*.

The Palestinian response to UNRWA's exclusionary registration practices constitutes one of the most striking examples of their attempts to negotiate and even resist the normative framework that its work engenders. The population has long seen UNRWA's services as a right to which they are entitled by virtue of being Palestinian; as such, any discrimination between different 'categories' of Palestinian refugees is unacceptable. The post-Nakba decades accordingly saw Palestinian communities organise regular protests against moves by UNRWA to add further restrictions to its eligibility criteria, or charge unregistered Palestinians for using its services.¹⁷

Again, this is one area where the impact of the Oslo Accords has arguably been minimal. In fact, Palestinian demand for the full provision of services from UNRWA has increased rather than lessened in recent years, as the Agency's deficit has resulted in swingeing cuts to many of its programmes. In 2015, there were protests in camps across both the OPT and the Arab host states when UNRWA postponed the start of the school year due to insufficient funding.¹⁸ Many refugees argued that the education programme is their right as Palestinians and as such cannot be curtailed. More recently, the closure of an UNRWA hospital in the West Bank has led to further protests.¹⁹

Service cuts have not been the only area of UNRWA's work that has met with Palestinian resistance. The Agency's political positioning has also been the source of considerable contestation. UNRWA's work is ostensibly apolitical - a point continually reiterated by successive Directors and Commissioner-Generals.²⁰ Yet in reality, its normative impact on Palestinian lives has been inseparable from the inherently political nature of their situation. Numerous Palestinian refugees, along with other commentators, have accordingly argued that UNRWA's insistence on framing its

work in apolitical terms has actually served to marginalise the refugees' agency.²¹ Some even suspect UNRWA of secretly being in league with their political enemies.²²

As a result, many Palestinian refugees have continually sought to turn UNRWA's apolitical status on its head. They have frequently campaigned and petitioned the Agency to advocate for their rights on the world stage.²³ In 1970, a group of Palestinian UNRWA employees even wrote to the Commissioner-General complaining about the UN's perceived bias against the Palestinian nationalist struggle.²⁴ Again, the Oslo era has changed neither these demands nor these suspicions. Protests in Gaza in July 2017 saw large numbers of refugees accuse UNRWA of failing to campaign for their rights; some even charged it with being part of the Israeli siege.²⁵

The evidence thus suggests that the case of UNRWA ultimately demonstrates the failed promise of the Oslo Accords. While the impact of the latter initially resulted in the Agency re-positioning its quasi-governmental role in the OPT, the changes have been secondary rather than elementary. Oslo failed to fundamentally reconfigure the key features of UNRWA's normative impact, particularly in terms of its registration policy and eligibility criteria. Meanwhile Palestinian perceptions of the Agency, the population's tendency to contest and resist its framework, and the issues that cause particular tension, have all remained constant. When it comes to UNRWA's regulatory framework, the post-Oslo era has been characterised by more continuity than change.

¹ UNRWA webpage: <https://www.unrwa.org>, accessed 21 November 2017.

² UNGA Resolution 302(IV), A/RES/302(IV), 8 December 1949, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/AF5F909791DE7FB0852560E500687282>, accessed 21 November 2017.

³ UNGA Resolution 71/91, A/RES/71/91, 22 December 2016, <http://undocs.org/A/RES/71/91>, accessed 21 November 2017.

⁴ Article 1D, Convention Relating to the Status of Refugees, 1951, <http://www.unhcr.org/4ca34be29.pdf>, accessed 22 November 2017.

⁵ On the 'protection gap' engendered by the distinction between UNHCR and UNRWA, see: Michael Kagan, 'Is there Really a Protection Gap? UNRWA's Role vis-à-vis Palestinian Refugees', *Refugee Survey Quarterly* 28:2-3 (2009), pp. 511-530; Susan Akram, 'Reinterpreting Palestinian Refugee Rights under International Law', in Naseer Aruri (ed.), *Palestinian Refugees: The Right of Return* (London: Sterling, 2011), pp. 165-194; Randa Farah, 'The Marginalization of Palestinian Refugees', in Niklaus Steiner, Mark Gibney and Gil Loescher (ed.s), *Problems of Protection: The UNHCR, Refugees, and Human Rights* (New York: Routledge, 2003), pp. 155-178.

⁶ On Palestinian citizenship in Jordan see: Elia Zureik, *Palestinian Refugees and the Peace Process* (Beirut: Institute for Palestine Studies, 1996), p. 32; Najeh Jarrar, 'Citizenship and Palestinian Refugees', *Palestine-Israel Journal of Politics, Economics and Culture* 3:3-4, Summer/Autumn 1996, pp. 61-67.

⁷ Acting DUA/Jordan, letter to Comptroller, 4 February 1973, File RE210/03(J), Box RE7, UNRWA Headquarters Archive (UHA), Amman, Jordan.

⁸ Ilana Feldman, 'The Challenge of Categories: UNRWA and the Definition of a "Palestine Refugee"', *Journal of Refugee Studies* 25:3, May 2012, pp. 387-406. Jalal Al Hussein, 'UNRWA and the Palestinian Nation-Building Process', *Journal of Palestine Studies*, 29:2, 2000, pp. 51-64.

⁹ On the expansion of UNRWA services in Gaza since the blockade began, see: Bo Schack, 'Denied a human standard of living: The Gaza Blockade has entered its tenth year', 21 October 2016, <https://www.unrwa.org/newsroom/features/denied-human-standard-living-gaza-blockade-has-entered-its-tenth-year>, accessed 22 November 2017.

¹⁰ 'UNRWA: A Brief History 1950-82', File RE 100 III, Box RE2, UHA. See also: <https://www.unrwa.org/who-we-are/frequently-asked-questions>, accessed 21 November 2017.

¹¹ BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey of Palestinian Refugees and Internationally Displaced Persons 2004-2005* (Bethlehem: Badil, 2006).

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- ¹² Palestinian Central Bureau of Statistics (PCBS), Palestinians at the End of 2015, <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=1566>, accessed 22 November 2017.
- ¹³ UNRWA: The West Bank, <https://www.unrwa.org/where-we-work/west-bank>; PCBS, 2017 Census, <http://www.pcbs.gov.ps/site/881/default.aspx>, both accessed 22 November 2017.
- ¹⁴ UNRWA: The Gaza Strip, <https://www.unrwa.org/where-we-work/gaza-strip>; PCBS, 2017 Census, <http://www.pcbs.gov.ps/site/881/default.aspx>, both accessed 22 November 2017.
- ¹⁵ On UNRWA's historical role in Gaza see: Ilana Feldman, *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917-1967* (Durham: Duke University Press, 2008).
- ¹⁶ Randa Farah, 'The Marginalization of Palestinian Refugees', in Niklaus Steiner, Mark Gibney and Gil Loescher (ed.s), *Problems of Protection: The UNHCR, Refugees, and Human Rights* (New York: Routledge, 2003), pp. 163-164. Feldman, *Governing Gaza*, pp. 128-135, 148-149. Ilana Feldman, 'Home as a Refrain: Remembering and Living Displacement in Gaza', *History and Memory* 18:2, Fall-Winter 2006, p. 27.
- ¹⁷ Information on these protests is recoded in: UNRWA Public Information Office, Press note, 11 November 1967, File RE140-1(3) I, Box RE3; Chief of UNRWA Relief Operations, Memo to Comptroller, 16 February 1973, File RE210-03 III, Box RE7; DUA/Lebanon, Memo to Acting Commissioner-General, 19 December 1970, File RE210-03(L), Box RE7; Note for the Record of a Meeting with the Minister of Development & Reconstruction at 10:00 on 6 April 1970, File RE230(J) III, Box RE20, all UHA.
- ¹⁸ Mohammed Omer, 'Protests across Gaza as UNRWA threatens to delay start of school', 11 August 2015, <http://www.middleeasteye.net/news/protests-across-gaza-un-shortfall-threatens-delay-start-school-283678309>; Lebanese National News Agency, 'Palestinian refugees in Tyre protest UNRWA decision to postpone school year', 13 August 2015, <http://nna-leb.gov.lb/en/show-news/48079/nna-leb.gov.lb/en>, The New Arab, 'Jordan: UNRWA crisis leaves 120,000 students in limbo', 13 August 2015, <https://www.alaraby.co.uk/english/news/2015/8/13/jordan-unrwa-crisis-leaves-120-000-students-in-limbo>, all accessed 22 November 2017.
- ¹⁹ Ma'an News Agency, 'Palestinians protest closure of UNRWA hospital in Qalqiliya', 13 August 2017, <https://www.maannews.com/Content.aspx?id=778661>, accessed 22 November 2017.
- ²⁰ Nell Gabiam, *The Politics of Suffering: Syria's Palestinian Refugee Camps* (Bloomington: Indiana University Press, 2016), p. 57. See for example: Howard Kennedy, Press Statement, 15 June 1950, FO1018/73, The National Archive (TNA), London, UK; Dr D. W. Bowett, 'Opinion on the Effect of the Jordanian Education Law on UNRWA's Educational Programme', 30 March 1968, File RE230(8) I, Box RE28, UHA; UNRWA, *Palestine Refugees Today*, 70, December 1971, Institute for Palestine Studies (IPS), Beirut, Lebanon.
- ²¹ Sari Hanafi, 'UNRWA as a "phantom sovereign": Governance practices in Lebanon', in Sari Hanafi, Leila Hilal and Lex Takkenberg (ed.s), *UNRWA and Palestinian Refugees: From Relief and Works to Human Development* (New York: Routledge, 2014), pp. 132-133.
- ²² See for example: General Union of Palestinian Teachers, Statement, 21 February 1971, File RE230(L-5), Box RE21, UHA. See also: Rosemary Sayigh, *The Palestinians: From Peasants to Revolutionaries* (London: Zed Books, 2007 edition), p. 113.
- ²³ Nell Gabiam, 'When "Humanitarianism" Becomes "Development": The Politics of International Aid in Syria's Palestinian Refugee Camps', *American Anthropologist*, 114:1, March 2012, pp. 95-107. Gabiam, *The Politics of Suffering*, p. 55. See for example: Michelmores, letter to Thant, 28 December 1967, S-1066-0065-0004, UN Headquarters Archive (UNHQA), New York, USA.
- ²⁴ Code Cable No. 61, Michelmores to Thant, 11 September 1970, S-0290-0028-05, UNHQA.
- ²⁵ 'Palestinians protest at UNRWA office in Gaza', 20 July 2017, <https://www.middleeastmonitor.com/20170720-protests-against-electricity-crisis-in-gaza/>, accessed 22 November 2017.