



UNRWA: Supporting Refugees or Supporting Terrorism?

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A. UNRWA: Born and Bred in Sin

This paper will focus on UNRWA's involvement in the incitement and support of terrorist activity against Israel and the legal measures and policy steps that should be considered against it.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was established in December 1949 by General Assembly Resolution 302 (IV)¹ at the insistence of the Arab States. Although the Palestinian refugee situation arose after the Office of the United Nations High Commissioner for Refugees (UNHCR) was already established to handle all refugee issues across the globe, the aforementioned resolution made the Palestinians an exception, and transferred all responsibility for the Palestinian refugees in Jordan, Syria, Lebanon, Judea, Samaria and Gaza to the newly established UNRWA. Under Resolution 302, the Director of the agency is appointed by the Secretary-General, without need of the General Assembly's ratification. The agency's management is largely located in Amman, Jordan and the Gaza Strip. Other field offices are maintained in its areas of operation (Judea and Samaria, Gaza, Jordan, Lebanon and Syria), with liaison offices in Cairo, Brussels, Washington and New York.

Although the original purpose of Resolution 302 was to establish a temporary body to facilitate the refugees' integration into their countries of refuge, intended to be dissolved in 1950, Palestinian and Arab states' opposition to the integration solution and their insistence on the refugees' return to Israeli territory led to the situation as it is today, where ever since 1950, UNRWA operates under a mandate that is renewed every three years by the UN General Assembly. During the 66 years that have passed since its establishment, UNRWA has transmogrified into an enormous agency incorporating welfare and education services that, in practice, crystallizes the Palestinians' refugee status and their insistence on

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“The UNRWA budget for 2013 was 1.18 billion dollars, with the bulk of it earmarked for the agency’s educational system. 92% of the budget was made up of contributions from governments worldwide: 294 million dollars from the United States, 216 million dollars from the European Commission, 151 million dollars from Saudi Arabia and lesser amounts from other countries.”

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This state of affairs is propped up by the Arab states, by the Palestinians and by Islamist movements in order to perpetuate the refugee issue, but it also feeds on an artificial inflation of refugee numbers and the generous funding transferred to UNRWA primarily from Western countries. As of January 2014, the agency provided aid to 5,428,712 “refugees” and others in need in Judea and Samaria, the Gaza Strip, Lebanon, Syria and Jordan, close to one and a half million of whom live in 58 refugee camps; the others in cities and towns.²

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UNRWA runs more than 600 elementary schools for refugee children, as well as welfare and healthcare systems, for which it employs 27,838 workers, the vast majority of whom are recruited from among “local refugees”. In both education and healthcare, the greatest number of employees is in the Gaza Strip.

The broader problem of UNRWA’s mandate and its conduct – including the fact that UNRWA’s documentation uses an inflated definition of the term “refugee” that doesn’t include a condition of privation and is applied to all descendants of the 1948 refugees – has been documented before and needn’t be repeated here.⁴ This paper will focus on UNRWA’s involvement in incitement and support of terrorist activity against Israel, and the legal measures and policy steps that should be considered against it.



B. UNRWA's Involvement in Incitement and Support of Terrorist Activities Against Israel

Since the vast majority of UNRWA employees are recruited from the refugee camps themselves, it is well within the realm of possibility that many of them support Hamas or are even active in the organization. According to a statement by former Commissioner-General Peter Hansen in 2004, this is not a problem: "I am sure that there are Hamas members on the UNRWA payroll, and I don't see that as a crime. Hamas as a political organization does not mean that every member is a militant, and we do not do political vetting and exclude people from one persuasion as against another".⁵ His stance might be justified if UNRWA workers did their jobs without being influenced by their support for Hamas, but this is unfortunately not the case: Hamas supporters' presence is keenly felt, and workers opposed to this phenomenon avoid voicing their disapproval, probably for fear of Hamas' violent gangs.⁶

Even worse, UNRWA's educational system in the Gaza Strip indoctrinates its students into radical political positions, boosts the hope for a return into Israeli territory as its borders stood on June 4, 1967 and promotes hatred and even violence towards the state of Israel and towards Jews. The children happily report on this themselves, as can be witnessed in the documentary made on the subject.⁷ A study that analyzed 150 curriculum textbooks for refugee children found the demonization of Israel, maps on which it does not exist and calls for violent resistance against the state. Jewish rights to live in Israel are never mentioned while the Arabic duty to fight is mentioned time and again, underscored by Islamic terms such as "jihad"(struggle) and "shahada" (martyrdom). The possibility of a compromise or peaceful resolution is never brought up.⁸ It is thus unsurprising that UNRWA senior officials are vocally political, despite the organization being defined as a humanitarian one or

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“A study that analyzed 150 curriculum textbooks for refugee children found the demonization of Israel, maps on which it does not exist and calls for violent resistance against the state.”

“Armed Hamas operatives used UNRWA facilities as rocket storage warehouses, going so far as to launch attacks on Israeli cities from within them. They thus committed two war crimes simultaneously: indiscriminate firing on Israeli citizens; and endangering the Gazan citizens who considered the UN facilities safe havens during the fighting.”

that equipment marked by UNRWA's logo⁹ was used to dig Hamas terror tunnels aimed at harming Israel and its citizens.

The support for Hamas in the refugee camps is not merely declaratory but expressed in actual aid to terrorist activity. As far back as “Operation Defensive Shield” in 2002, wanted terrorists were found in UNRWA schools; it was discovered that the agency's youth clubs served as meeting places for terrorists; and UNRWA ambulances transported Hamas combatants.¹⁰


During “Operation Protective Edge” in 2014, Hamas combatants used UNRWA facilities as safe havens, taking advantage of their special status as legally protected UN facilities and using the civilians residing there as human shields. Their cynical behavior created a win-win situation for them: they either lowered the chance Israel would strike, or they got the chance to smear Israel internationally if it decided to go ahead and strike the terrorists hiding in UN facilities.

Armed Hamas operatives also used UNRWA facilities as rocket storage warehouses, going so far as to launch attacks on Israeli cities from within them. They thus committed two war crimes simultaneously: indiscriminate firing on Israeli citizens; and endangering the Gazan citizens who considered the UN facilities safe havens during the fighting.¹¹ The agency itself confirmed that Hamas used its facilities in the past,¹² but did not do enough to prevent it happening again¹³, as indeed it did.¹⁴ UNRWA denounced the actions once more¹⁵, but again took no apparent steps to prevent them in the future.

There is evidence that during the fighting there were even more severe incidents: UNRWA employees allegedly removed missiles from the schools and handed them over to Hamas.¹⁶ It should go without saying, of course, that transferring weapons during hostilities to an organization the US and the European Union designated a terrorist organization, when it was well known they would be used against civilian populations is an obscene breach of UNRWA's mandate and all the special privileges accorded to humanitarian international organizations' workers and facilities. The following photos from the IDF Spokesperson demonstrate the way UNRWA facilities serve Hamas:

Map of Rocket Launch from an UNWRA School in Beit Lahiya



 DECLASSIFIED

Rocket Launch from an UNWRA Health Center in Jabalia, Gaza



 DECLASSIFIED



Tunnel digging equipment with UNRWA's logo



In short, UNRWA acts in contradiction to the mandate it was given and against the interests of the refugees themselves. Instead of working towards their rehabilitation and their advancement to a better future, it preserves their perpetual refugee status and fosters a false hope to obtain the "right of return", a concept unrecognized by international law and politically non-viable. The agency's educational system is used by Hamas operatives to disseminate radical Islamist ideology, indoctrinating young children into anti-Israeli and anti-Western violence; and to further minimize the possibility for a peaceful resolution to the conflict.

Moreover, when the terror organization Hamas uses UNRWA facilities to commit war crimes and fire at civilian populations in Israel, it severely damages the UN's image of neutrality and as a result, its ability to perform its duties. The funds granted by supporting States to UNWRA to complete its humanitarian mission are, in fact, used to pay the salaries of Hamas affiliates and to maintain facilities that house combatants who launch attacks on civilians. Obviously, such circumstances raise the risk that supporting states will become unwilling to continue funding UNRWA, or even the UN itself, which oversees its activities. When UNRWA employees are discovered over and over to be supportive of or actively involved in terrorism, and when UNRWA facilities are used as launching pads for missile attacks on Israeli cities, not only is the neutral image of the UN and its agency damaged, thus impairing the UN's ability to do its job in other places in the world, but the civilian population in Gaza is harmed as well, since they look to the agency for aid and protection and consider its facilities safe havens, thus becoming greatly endangered by hostilities between Israel and Hamas when the latter operates from within neighborhoods and UN facilities in the refugee camps.

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C. Legal Arguments and Policy Recommendations

Below are the steps that decision makers should consider taking:

1. Demand the UN Secretary-General use his authority to strip UNRWA of its immunity, under Article 2 of the 1946 Convention on the Privileges And Immunities of the United Nations (hereinafter: the Convention on Privileges and Immunities)¹⁷ to allow the filing of criminal or civil tort suits against the agency, as well as to draw international attention to its negative actions.

The UN and its agencies were exposed to criminal and civil lawsuits in the past, mainly in US and European courts.¹⁸ Most were rejected out of hand due to the US State Department's reliance (in the UN's favor) on the aforementioned convention's Article 2 that states: "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity".¹⁹ The immunity claim was generally upheld, as José Alvarez observed at the time of the Haitian cholera scandal: "There is no known instance where a national court in the U.S. or elsewhere has declined to recognize the United Nations' comprehensive immunity".²⁰ Nevertheless, it is possible to file an official request with the UN Secretary-General to waive UNRWA's immunity in this particular case, while arguing before the relevant parties in the US – the White House, the Secretary of State and Congress – that the US State Department should cease protecting UNRWA from civil suits filed against it in American courts. Although chances are high that both the UN Secretary-General and the American authorities will reject the request, it will nonetheless draw the attention of

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American media, UN member states and others to UNRWA’s negative behavior and stir them to take action to amend the situation.

2. On the (reasonable) assumption that the UN Secretary-General will refuse to waive immunity, a request can be made to arrange “appropriate modes of settlement” as per Article 29 of the Convention on Privileges and Immunities, requiring the provision of a mechanism within the UN itself to sue UNRWA for damages.

According to some interpretations, the immunity granted by Article 2 of the Convention on Privileges and Immunities is not absolute, and can be invoked only when the UN itself provides an avenue for obtaining relief, in accordance with Article 29 of the convention, under which provision the UN is charged with arranging “appropriate modes of settlement” in cases of *prima facie* justified complaints. Courts in Belgium and Italy, for instance, were open to the argument that international organizations’ immunity from civil suits against them was only valid if there existed a concrete alternative for receiving damages under the organization’s rules. In some cases the Courts refused to recognize an international organization’s immunity when it did not provide an appropriate response to claims made against it.²¹ Israel can argue that if the UN refuses to waive UNRWA’s immunity, it must provide a concrete alternative avenue for the organization to compensate for the harm caused by the agency, to punish the culprits and to grant relief to the victims.

3. As a final note, the argument can be made that UNRWA’s actions in the Gaza Strip are not protected at all by the immunity guaranteed by Article 2, since the legal basis for the Convention on Privileges and Immunities are Articles 104 and 105 of the UN charter, particularly Article 105(1)²² which states that: “The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”. Since the Gaza Strip is not in the territory of any member state, it can be deduced that it is an exception to the immunity clause.
4. Beyond the arguments against UNRWA as a body, it is possible to also make claims against UNRWA officials who bear personal responsibility for the agency’s conduct in the course of their duties. The UN charter does indeed grant immunity to UNRWA officials and employees from criminal or civil lawsuits; however, such immunity is not absolute, and under certain conditions the UN Secretary-General has the right and even the duty to waive it.

According to Article 105(2) of the UN Charter, people working under the authority of the organization or one of its organs "shall similarly enjoy such privileges as are necessary for the independent exercise of their functions in connection with the Organization". The logic behind this provision also restricts its applicability. The privileges and immunities are granted only for the fulfilment of the organization's functions (in this case UNRWA's task as per its mandate) and no more. The limits of UNRWA workers' immunity are also explained in the agency's founding document: The 1949 UN Resolution 302.²³ Resolution 302, among other provisions, calls for granting UNRWA immunities and privileges "for the fulfilment of its functions".²⁴ However, any action taken by an UNRWA official that strays outside the agency's functions as defined in its mandate is a breach of authority and as a matter of course, not protected by immunity.

It is clear that some actions taken by UNRWA workers – including the transfer of deadly weapons to Hamas and the potential supply of UNRWA equipment to combatants building terror tunnels – were not taken "in fulfilment of their function," in an official capacity, and can serve as grounds for waiving immunity. Moreover, as Michael Singer pointed out, the term "official capacity" should be interpreted narrowly when it comes to human life.²⁵

The Convention on Privileges and Immunities details how the UN Secretary-General can waive the immunity of any UN worker. Article V, Section 20 states that "Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations".

Storing weapons in an UNRWA warehouse was already denounced by UN Secretary-General Ban Ki-Moon.²⁶ For the sake of the UN's long term goals (preserving their neutrality and credibility), the Secretary-General should at the very least not impede legal proceedings, and waive UNRWA workers' immunity as a first step toward recompense.

5. Another direction for combatting UNRWA in this context centers on the organization's mandate. UNRWA's conduct in Gaza constitutes a severe violation of its official mandate as it is defined in Resolution 302. The Resolution defines UNRWA's mandate thus: "To prevent conditions of starvation and distress among them [the Palestinian refugees] and

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“When UNRWA gives aid to Hamas, whether by action or inaction, it violates the principles and spirit at the heart of international law regarding the war on terror, as demonstrated by a long series of Security Council resolutions and actions, particularly in the aftermath of the terror attack on September 11, 2001.”

to further conditions of peace and stability”.²⁷ In order to be granted the privileges and immunities of UN personnel in their official capacity, and in order to preserve the UN's neutrality and credibility, UNRWA workers must act strictly in accordance with the organization's defined mandate and not go beyond its bounds. If some specific UNRWA workers do exceed the bounds of their proscribed functions, and if the agency in Gaza violates its mandate, then it is incumbent on the Secretary-General to waive immunity, launch an investigation, take steps against infractors, recompense those harmed by the infractions and integrate rules to prevent such cases in the future.

6. UNRWA's conduct in the Gaza Strip is contrary to the UN Security Council's spirit and resolutions, particularly the September 2001 Resolution 1373, adopted within the framework of the UN's efforts at combatting terrorism. When UNRWA gives aid to Hamas, whether by action or inaction, it violates the principles and spirit at the heart of international law regarding the war on terror, as demonstrated by a long series of Security Council resolutions and actions, particularly in the aftermath of the terror attack on September 11, 2001. Although the resolutions are directed to UN member states, there is no doubt that the rules and principles set out in Resolution 1373 should be interpreted as applying, with the proper modifications, to UN agencies. Article 2 of Resolution 1373 (adopted under Chapter VII of the UN charter) orders all states to:
 - (a) "Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists" (2a).
 - (b) "Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens" (2c).
 - (c) "Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens"(2d).²⁸

It is clear that UNRWA's conduct in the Gaza Strip violates multiple provisions of the Resolution.

7. It must be clarified that UNRWA's actions during hostilities taking place between Israel and Palestinian organizations beginning from 2008 are in complete contradiction to the growing legal trend to hold international organizations responsible for their conduct. One of the reasons for the growing trend in international law that views interna-

tional organizations as responsible for their actions and inactions and demands compensation for victims was a raft of scandals in the past decade surrounding UN workers' behavior (trading gas for food, sexual assault by UN forces and the cholera outbreak in Haiti). The tendency to abandon the immunity approach in favor of responsibility was clearly expressed in the "Draft Articles on The Responsibility of International Organizations" submitted in 2011 by the UN International Law Commission (hereinafter the "Responsibility Articles Draft" or "the Draft").²⁹

A comprehensive analysis of the Responsibility Articles Draft is beyond the scope of this paper, but Israeli policy-makers and their allies will find it contains a range of principles and rules which can be utilized to underline the wrongs committed by UNRWA and to demand accountability and even reparations. For instance, Article 3 of the Draft places clear responsibility on all international organizations, stating that: "Every internationally wrongful act of an international organization entails the international responsibility of that organization". Article 4 clarifies that an act or omission committed by an international organization is considered internationally illegal when it is "attributable to that organization under international law; and constitutes a breach of an international obligation of that organization". Article 10 explains that a breach of an international obligation occurs when an act of an international organization "is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned".

The Responsibility Articles Draft contains certain restrictions regarding responsibility as well as a variety of avenues for redress such as "cessation", "non-repetition" and "reparation". So too, Articles 41 and 42 of the Draft set a particularly stringent standard for serious breaches of obligations arising under a peremptory norm of general international law - such as getting involved in armed conflict. Since UNRWA's actions in the Gaza Strip at the very least raise the suspicion that such breaches occurred, the Draft confers strong legal tools with which the organization it answers to, and more importantly the member states thereof, can sanction UNRWA.

- 8 **It is important to impress upon all who care about the UN's future that UNRWA's conduct in the Gaza Strip severely damages the organization's neutrality and credibility and can also impair its future work in other conflicts, as well as that of other international organizations.** The UN and UNRWA's primary financial supporters must

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establish appropriate mechanisms to punish culprits within the agency and prevent the repetition of such breaches in the future.

The bottom line is that Israel and its allies need to stress the broader implications of UNRWA's wrongdoing for the entire UN organization, as well as for other international organizations, on both the regional and global level. These organizations' moral strength derives from their credibility and integrity. Any hint that UNRWA is involved in military activity, quasi-military activity or terrorism severely undermines trust in the UN and has a negative impact on international organizations' ability to preserve peace and security around the world. States that are interested in protecting the UN and the liberal global order must take a severe approach to a UN agency that has apparently gone rogue.

9. To conclude, we will add that the immunity enjoyed by the UN in member states' territory is rooted in a custom created by the UN charter in the 1940s, that has since been progressively eroded. The custom derived from the "sacred aura" attributed to the organization in its early days, but also from the practice of sovereign immunity that was common at the time. The UN charter was adopted some seventy years ago though, and the approach to international law has changed, with the demand for UN responsibility and accountability growing, and sovereign immunity – especially in regards to civil and tort lawsuits – eroding. Sovereign immunity from civil suits was canceled in the UK in 1948. Although it still exists in American federal law, there are some exceptions today; in some cases, it is even possible to file suit against state governments. It is clear that the current trend is toward lifting sovereign immunity for state and state actors in cases of harm to citizens done in the name of a state or via its power or authority. On the backdrop of global developments, it is only natural that the anachronistic custom of granting blanket immunity to UN affiliates be dropped.
- . Most states today agree that state or quasi-state bodies powerful enough to infringe on citizens' liberties should not be allowed free reign with impunity.

If the UN and its organs knew they could be challenged in civil courts (or even criminal ones in some cases), it is safe to assume they would be more careful to conduct themselves lawfully. Israel and its allies should promote this urgent issue in their foreign affairs policies. Waiving immunity guarantees would require an amendment to the charter, which is subject to a General Assembly convention. Since a bargaining chip would be necessary for such to happen, we propose that Israel and its allies block the promotion of other conventions and initiatives until this issue is resolved for both Israeli citizens and other minorities and vulnerable groups around the world who are harmed by the actions of the UN and its organs.

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