

PEACE PROSPECTS AND IMPLICATIONS FOR UNRWA'S FUTURE: AN INTERNATIONAL LAW PERSPECTIVE

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The United Nations Relief and Works Agency is mandated by the United Nations General Assembly to provide humanitarian and development assistance, pending the just resolution of the Palestinian refugee question. This article examines what roles the Agency may be suited to fulfill in a post-conflict transition and peace-building scenario for Palestinian refugees. The article sets out the framework for considering UNRWA's future contributions, taking into account its current mandate, the historical exclusion of Palestine refugees from the benefits of the international protection system, and current policy approaches to resolving the refugee question. It argues that the Agency's decades-long relationship with the refugees and countries of asylum, its long-standing development activities with refugee communities, and recent institutional reforms could aid the implementation of durable solutions for Palestine refugees. Rather than a precipitous winding-down, a targeted transformation of the Agency should be considered for the day when a just resolution is achieved, taking into account its suitable role as a leading implementing partner in a transitional period.

1. Introduction

At present, peace prospects in the Palestinian-Israeli conflict appear dim, especially with regard to the sixty-year old Palestinian refugee problem. Nevertheless, the huge challenges and international demands that would flow from a political settlement resolving the problem warrant using the present period in-between to prepare for the day when a just and lasting solution will be a reality. This article discusses implementation issues stemming from a solution as they concern United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the UN agency entrusted with aiding the refugees. It sets out a framework for thinking about the Agency's future and reflects on the role that UNRWA may play in relation to solutions. The article

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approaches the subject from the standpoint of international law while taking into account specificities of the conflict, including recent policy developments.

A Palestinian-Israeli peace accord marking an end of the conflict would undoubtedly have a substantial and far-reaching impact for UNRWA, its staff and the Palestinian refugees it serves. For six decades, UNRWA has been dispensing essential services to a beneficiary refugee population that now numbers some 4.6 million persons in five distinct fields of operation. In 2008, nearly half a million students attended UNRWA schools. Around 9.5 million patient visits were made to UNRWA health care facilities, more than 250,000 special hardship cases received relief and social services. Almost 166,000 microfinance and micro-enterprise loans were awarded to the refugees and other members of their communities. Some 29,000 UNRWA area staff members, many of whom are refugees themselves, are providing these services. In the event that a real peace were to take hold, UNRWA would likely be faced with the massive task of winding-down or handing-over its services while coping with a potential reorientation of its mandate and operations to assist in peace-building efforts, all within what will likely be a politically-charged environment affecting fundamental interests amongst refugees and UNRWA staff.²

Despite the magnitude of this potential transformation and its meaning for Middle East peace, research and analysis on the future of UNRWA has been limited.³ The lack of attention to UNRWA's future is in large part the combined result of missing political will to resolve the root causes of the Israeli-Palestinian conflict that have given rise to UNRWA's existence and the political sensitivities surrounding UNRWA and the refugee issue. On the Israeli side, according to the misperception that UNRWA perpetuates the refugee problem, there is a tendency to avoid addressing issues such as the role of UNRWA in facilitating a post-conflict transition out of a desire to see UNRWA

² International Development Research Centre (IDRC), *Workshop on the Future of UNRWA*, Workshop Report, Final Version, 19–20 Feb. 2000, available at: <http://www.arts.mcgill.ca/MEPP/PRRN/prunrwa3.html> (last visited 25 Apr. 2009).

³ The few published pieces include M. Dumper, *The Future for Palestinian Refugees: Toward Equity and Peace*, Boulder, Lynne Rienner, 2007; L. Takkenberg, "The Search for Durable Solutions for Palestinian Refugees: A Role for UNRWA?", in E. Benvenisti, C. Gans, and S. Hanafi (eds.), *Israel and the Palestinian Refugees*, Heidelberg, Springer, 2007, 373; IDRC, *Workshop on the Future of UNRWA*, *op. cit.*; J. Hussein, "The Future of UNRWA and the Refugee Camps", Palestinian Centre for Policy and Survey Research, unpublished paper (on file with the author), 2003.

“eliminated” as quickly as possible. Israeli representatives have made the quick dissolution of UNRWA a central demand for a final peace with the Palestinians, often without due regard to the consequences of a precipitous ending of the Agency. On the Palestinian side, discussions concerning UNRWA’s future are frequently associated with attempts to “liquidate” the refugees’ rights, leading to an opposition to inquiries that hint at the transformation of the Agency. These sensitivities are, for the most part, unfounded and short-sighted and should not preclude serious policy analysis regarding the unique contribution of UNRWA and its future. As this article seeks to highlight, open and detailed dialogue about the future of UNRWA can in fact contribute to strengthening approaches to durable solutions for Palestinian refugees and increase chances for the successful implementation of a peace agreement, and in turn, long-term stability in the region.

2. A framework for discussions on UNRWA’s future

2.1 What constitutes UNRWA’s future?

This article concerns UNRWA’s future in the longer-term, specifically in the event of a permanent status agreement on the Palestinian refugee question. UNRWA’s perennial budget shortfalls have reached crisis proportions. Severe financial pressures on the Agency, along with repeated and sustained emergency situations, certainly threaten its ability to provide quality services and meet its development goals. The financial constraints of UNRWA today are, however, markedly distinct from issues that would be raised by a just and lasting solution for the refugees. The latter invokes questions related to the future role of UNRWA and post-peace agreement transitional needs, including the lasting protection of the refugees. These issues in turn require a particularly deliberate analysis, taking into account relevant international principles and best practices regarding durable solutions for refugees, as well as specific contextual aspects of the Palestinian refugee problem, UNRWA’s current activities and its longer-term contributions.

In its annual review of UNRWA and periodic renewal of the Agency’s mandate, the United Nations General Assembly (UNGA) has consistently noted the lack of effect

given to paragraph 11 of UNGA resolution 194 (III)⁴ and the corresponding need for UNRWA to assist Palestine refugees to meet basic health, education and living needs.⁵ In this context, the UNGA has affirmed that UNRWA should continue its humanitarian and development services, “pending the just resolution of the question of the Palestine refugees.”⁶ In the absence of a resolution, the UNGA has continued to renew UNRWA’s mandate.

The qualifying language repeatedly adopted by the UNGA in renewing UNRWA’s mandate suggests that a “just resolution” for Palestinian refugees is at least a formal precondition to a time when UNRWA would be asked to wind-down its services or undertake any major transformation of its role vis-à-vis Palestinian refugees. A “just resolution” is most likely consistent with universal legal standards. Given that the UNGA defines the ongoing refugee problem in relation to the lack of implementation of paragraph 11, resolution 194, it may be argued that the intended standards include those affirmed by resolution 194.⁷

The continuation of UNRWA’s mandate and functions is born out of humanitarian necessity. UNRWA is responsible for the well-being of the largest and longest-standing refugee population in the world.⁸ Nearly half of all refugees registered with UNRWA (“Palestine refugees”) are stateless and living without full national protection. Even in Jordan where Palestinians were granted a form of citizenship under the country’s nationality law of 1954, over 300,000 refugees continue to dwell in urban and rural camps. The Palestinian refugees in Jordan who fled from the Gaza Strip in 1967 are not entitled to Jordanian citizenship and are unable to access government benefits or

⁴ UNGA res. 194 was adopted in 1948 establishing the United Nations Conciliation Commission for Palestine (UNCCP). In para. 11, the UNGA affirmed “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 or damage to property which, under principles of international law or equity, should be made good by the Governments or authorities responsible.” UNGA res. 194 (III), 11 Dec. 1948, para. 11.

⁵ UNGA res. 63/91, 18 Dec. 2008, *op. cit.*, para. 1.

⁶ *Ibid.*

⁷ UNGA res. 194 is said to affirm the right of return, restitution and compensation. See, M. Kagan, “The Decline of Palestinian Exceptionalism and its Consequences for Refugee Studies in the Middle East”, *Journal of Refugee Studies*, 22, published online 5 Oct. 2009, available at <http://jrs.oxfordjournals.org/cgi/content/full/fep023v1..>

⁸ United Nations High Commissioner for Refugees (UNHCR), *The State of the World’s Refugees 2006*, Geneva, UNHCR, 2006, ch. 5, box. 5.1, 112

free public services.⁹ UNRWA serves these refugees although they are not registered with the Agency as “Palestine refugees.” In Lebanon, Palestinian refugees continue to suffer from systemic economic and social exclusion in spite of the Government’s efforts since 2005 to address these concerns.¹⁰ Some 40 per cent of all registered Palestine refugees are living under prolonged military occupation in the West Bank and Gaza Strip in increasingly deplorable conditions. In the Gaza Strip alone, where more than one million registered Palestine refugees reside, the World Food Programme (WFP) has recently reported that 85 per cent of the population is dependent on food aid. The unresolved statelessness and other conditions of vulnerability amongst Palestinian refugees in the Middle East have led the UN to continue to provide for their international protection, albeit on a limited scale.¹¹

As discussed elsewhere, the Agency’s development agenda is also important for enabling refugee self-sufficiency.¹² Refugee self-sufficiency is considered a basis to prepare for any durable solution.¹³ UNRWA’s work is therefore serving long-term objectives, as well as immediate and medium-term humanitarian needs.

There are of course critics of UNRWA’s prolonged existence, with some arguing that the Agency should be eliminated without a resolution of the Palestinian refugee question. Many of these critics are motivated by a desire to see the refugee issue dropped from the international agenda. They do not normally take into account the status of Palestinian refugees, their living conditions, or the long-term contribution of UNRWA in facilitating an end to the problem.

2.2 *How will UNRWA’s future be determined?*

⁹ United States Committee for Refugees and Immigrants, *World Refugee Survey 2008 – Jordan*, available at: www.unhcr.org/refworld/docid/485f50dcc.html (last visited 9 May 2009).

¹⁰ Amnesty International, *Exiled and Suffering: Palestinian Refugees in Lebanon*, available at: <http://www.amnesty.org/en/library/info/MDE18/010/2007> (last visited 9 May 2009).

¹¹ UNHCR, *The State of the World’s Refugees 2006*, *op. cit.* 113. The scale of protection is limited because UNRWA does not operate in all countries where Palestinian refugees reside. Furthermore, no UN agency is presently searching for durable solutions for Palestinian refugees, resulting in a gap in their protection. See: S. Akram and T. Rempel, “Temporary protection as an Instrument for Implementing the Right of Return for Palestinian Refugees”, *Boston University International Law Journal*, 22, 2003, 1–162.

¹² L. Takkenberg, “The Search for Durable Solutions for Palestinian Refugees”, *op cit.* 383.

¹³ UNHCR, “54th Session of the ExCom: Report on the Pre-ExCom Consultations with NGOs, 24–26 Sep. 2003”, available at: www.unhcr.org/partners/PARTNERS/3fb0a4304.pdf (last visited 19 Apr. 2009).

There are limited means through which a just resolution to the Palestine refugee question may be reached: a) peace accord; b) intervention by the UN Security Council; or c) other third party intervention.¹⁴ In the case of the Palestinian-Israeli conflict, the expectation has been that a durable solution for the refugees would be agreed upon through a bi-lateral negotiation process on “permanent status” issues. These issues cover the key areas of conflict – refugees, borders, settlements, Jerusalem, security, state-to-state relations and economic arrangements. The peace process has been configured around a comprehensive settlement between Palestinians and Israelis on each of these issues. Ultimately, a just and lasting resolution of the Palestinian refugee issue would require multi-lateral engagements with host countries and donor states.

A bi-lateral permanent status agreement on refugees would ideally include framework principles and modalities for their implementation. Past talks have also touched on the mechanism for implementing an agreement on refugees and the role of UNRWA. As alluded to above, the dissolution of UNRWA has been treated as a substantive sub-issue in the bi-lateral negotiations on refugees. Israeli representatives have consistently sought agreement from Palestinians on a time-line for phasing-out the Agency.¹⁵

It would be counter-productive to set a rigid, abstract deadline for dissolving UNRWA, especially without due consideration of the full scope of transitional needs. The Agency’s services, such as basic education, health care and social welfare, are counted as a stabilizing force in the region. It also has established networks with refugee communities and operational facilities throughout the region. It houses extensive data on individual refugees and their families and possesses other technical capacities relevant to the implementation of a peace accord. Beyond its present activities, UNRWA may play important roles in the implementation of a just resolution of the refugee question. In the

¹⁴ See further, UNHCR, *Handbook for Repatriation and Reintegration Activities*, Geneva, UNHCR, Module One, 2004: 16, available at: <http://www.unhcr.org/refworld/pdfid/416bd1194.pdf>.

¹⁵ By way of example, the informal Geneva Accord agreed between individual Palestinians and Israelis imposed a maximum five-year time-line for the dissolution of UNRWA. Geneva Accord, Art. 7, para. 13, available at: <http://www.ppc.org.ps/inner.php?contents=geneva.accord.8> (last visited 25 Apr. 2005). It is not clear what factors were taken into account in setting this limitation. The time-line also did not account for the functions UNRWA may undertake to facilitate the implementation of a permanent status agreement and the accompanying transitional period.

next section of the article, I elaborate the prospective roles that the Agency may be asked to take on by the UNGA and Member States.

It will ultimately be up to the UNGA and its Member States to set in motion any major alterations to UNRWA's mandate, especially a wrapping-up of its services.¹⁶ While the UNGA has thus far extended relatively little guidance on such an evolution of UNRWA's mandate, significant changes would certainly require the approval of that body. The UNGA would have to take into account many factors, including: 1) refugee needs; 2) the benchmark of a just resolution to the Palestinian refugees; 3) the responsibility of UNRWA to consult with host governments about transitional arrangements;¹⁷ 4) the future role of the Agency; and 5) hand-over processes.

3. UNRWA and a just and lasting resolution for Palestinian refugees

Before undertaking a review of UNRWA's role, this section briefly touches on the principles of a just and lasting resolution, which may be agreed within a comprehensive settlement of the conflict.

3.1 What does a just and lasting resolution for Palestinian refugees entail?

Palestinian refugees have traditionally been viewed as falling outside the international refugee rights regime, led by the United Nations High Commissioner for Refugees (UNHCR), leading to a general disregard of international principles in the Palestinian refugee case. This trend has been noted to be in relative decline due to the growing influence of Palestinian refugee rights advocates coupled with recent scholarly and policy interventions that frame durable solutions and other permanent status remedies for the refugees within the context of international law and practice.¹⁸

In general, in order to ensure the acceptability of any peace agreement to the refugees and, thus, its chances for realization, an agreement to resolve the refugee question should be based on international law and policy.¹⁹ As mentioned, the UNGA has also repeatedly called for a solution consistent with international law. This would include

¹⁶ L. Takkenberg, "The Search for Durable Solutions for Palestinian Refugees", *op cit.* 385–6.

¹⁷ UNGA res. 302 (IV), 8 Dec. 1949, para. 7(b).

¹⁸ M. Kagan, "The Decline of Palestinian Exceptionalism", *op. cit.*

¹⁹ L. Takkenberg, , "The Search for Durable Solutions for Palestinian Refugees", *op cit.* 374.

a permanent solution based on the three preferred durable solutions for refugees: voluntary repatriation, local integration, and third country resettlement. Under international refugee policy, repatriation refers to “the free and voluntary return to one’s country of origin in safety and dignity.”²⁰ For Palestine refugees, who fled from their homes following the UN partition plan of 1947, this would mean return to areas within Israel. Some politicians and international interlocutors have sought to cast refugee relocation to the West Bank and Gaza Strip once a sovereign Palestinian State has been established in these territories as equivalent to return, as refugees would be moving to a Palestinian national homeland. As proposed by U.S. President Clinton:

The fundamental gap is on how to handle the concept of the right of return ... Under the two-state solution, the guiding principle should be that the Palestinian state will be the focal point for Palestinians who choose to return to the area without ruling out that Israel will accept some of these refugees. In light of the above, I propose two alternatives: 1. Both sides recognize the right of Palestinian refugees to return to Historic Palestine. Or, 2. Both sides recognize the right of Palestinian refugees to return to their homeland.²¹

Under international law, however, the relocation of Palestinian refugees to the West Bank and the Gaza Strip would constitute a form of resettlement, as it would be to areas other than that from which they originated and would be offered as an alternative to repatriation to Israel. The approach of framing resettlement to a Palestinian State as “repatriation” has not been widely accepted or appreciated by Palestinian refugees, as in their understanding, voluntary repatriation refers to return to their places of origin.

Many familiar with the Israeli-Palestinian peace track believe that the most practical and likely outcome of a peace accord based on a two-state solution would be unfettered refugee access to settle in the Palestinian State, similar to what was intended under the Clinton Parameters. Accordingly, many interlocutors have focused on refugee resettlement in a Palestinian state as the focal point of inquiries into UNRWA’s future. In terms of thinking about UNRWA’s future within the context of a just and lasting resolution to the refugee question, however, all durable solutions should be considered as

²⁰ UNHCR, *The State of the World’s Refugees 2006*, *op. cit.* 2.

²¹ Clinton Parameters, 23 Dec. 2000 available at: <http://www.ipcri.org/files/clinton-parameters.html> (last visited 25 Apr. 2009).

possible and analysis should be conducted for each option, including return to Israel.²² In practice, these options may be implemented according to a fluid migratory regime that allows for citizenship in one location and residency in another.²³

At the centre of Palestinian refugee demands for a solution to their plight has been the right of return. Under international human rights law, the right of return is based on the principle of freedom of movement and states are obligated not to arbitrarily interfere with the right, implying refugee choice.²⁴ The denial of freedom of choice regarding whether to return has defined the Palestinian refugee experience. Providing refugees maximum options based on the three internationally recognized durable solutions (that is, voluntary repatriation, local integration and resettlement) would contribute to reversing the conditions of Palestinian “refugeehood” and promote a sense amongst the refugees that their rights have been addressed in a legitimate fashion. Recognizing the importance of honouring the principle of refugee choice, just as compromise proposals including that put forward by U.S. President Clinton in 2000 is crucial. Such proposals have envisioned the availability of all three durable solutions to the refugees as permanent status options.²⁵ In Palestinian-Israeli peace jargon, this has been referred to as a “menu of permanent destination choices.”

Programmes to ensure that communities are socially and economically integrated in the places of their final destination and able to pursue sustainable livelihoods and/or resume normal patterns of life would ideally complement the provision of durable solutions to the refugees. Such programmes are commonly pursued as part of

²² In practice, these options may be implemented according to a fluid migratory regime that allows for citizenship in one location and residency in another.

²³ N. Shehadeh, *Palestinian Refugees: The Regional Perspective*, London, Chatham House, 2009, 13.

²⁴ See Universal Declaration of Human Rights, Art. 13; UNGA res. 217 A (III), 10 Dec. 1948; the International Covenant on Civil and Political Rights, Art. 12, UNGA res. 2200A (XXI), 16 Dec. 1966. See also the general comment adopted by the Human Rights Committee (HRC) on the meaning and scope of Article 12 of the ICCPR. General Comment No. 27 (Freedom of Movement) Art. 12: CCPR/C/21/Rev.1/Add.9, 27 Nov. 1999.

²⁵ “The agreement ... would list five possible final homes for the refugees: 1. The state of Palestine, 2. Areas in Israel being transferred to Palestine in the land swap, 3. Resettlement in a host country, 4. Resettlement in a third country, 5. Admission to Israel. Clinton Parameters, 23 Dec. 2000 available at: <http://www.ipcri.org/files/clinton-parameters.html> (last visited 25 Apr. 2009) Key amongst the contentious issues has been the scope of these options and the level of state discretion in implementing them.

reintegration and rehabilitation initiatives.²⁶ The programmatic efforts would have to be matched by legal reforms to allow the refugees to achieve full national protection and equal opportunities in their final place of settlement. These measures would likely be required in at least Israel, the West Bank and the Gaza Strip, Syria, and Lebanon.

Additional remedies such as property restitution or compensation should also be made available to the refugees.²⁷ Non-material damages compensation and Israeli acknowledgement (“symbolic justice”) have also figured prominently in Palestinian-Israeli negotiations. Restitution and compensation claims would likely be processed through a mass claims program in order to accommodate the large numbers of expected claims in an efficient manner.²⁸ Such a program, along with programs to implement durable solutions and the integration and rehabilitation of the refugees, would most likely be implemented by an international mechanism.

According to the terms of its present mandate, UNRWA would likely continue its humanitarian and development work until substantial implementation of any prospective peace agreement has been achieved and Palestinian refugees have obtained national protection and fundamental rights through the exercise of informed choice, thus, marking the just resolution of the refugee problem. It is envisaged that prior to dissolution of UNRWA, a hand-over of its facilities and installations to an appropriate entity in accordance with the objectives of a peace agreement would be required.

3.2 Does UNRWA have a role to play in the search for durable solutions?

The United Nations Conciliation Commission for Palestine (UNCCP) established in 1948 by the UNGA, was the UN agency assigned to mediate a solution to the Arab-Israeli

²⁶ UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, Geneva, UNHCR, 2003.

²⁷ In the past 15 years, property restitution has been affirmed by international refugee policy-makers and activists as a separate right of refugees, important for facilitating just and complete solutions. See UNHCR, “Principles on Housing and Property Restitution for Refugees and Displaced Persons”, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005. The right of Palestinian refugees to restitution has been addressed, although its recognition by Israeli negotiators and its scope of implementation remains in question. M. Kagan, “Restitution as a Remedy for Refugee Property Claims in the Israeli-Palestinian Conflict”, *Florida Journal of International Law*, 19(2), 2007, 421–489.

²⁸ L. Hilal, “Reparations for Lost Palestinian Refugee Property inside Israel: A Review of International Developments”, *Jerusalem Studies Quarterly*, 33, 2008, 56–64.

conflict.²⁹ One of the specific functions given to the UNCCP was essentially to facilitate durable solutions for the refugees.³⁰ During the first years after its creation, the UNCCP was directly engaged with the parties in pursuit of a solution for the refugees as a component of a political settlement. Each side made proposals for settling the issue, although no common ground was achieved.³¹ UNRWA, created one year after the UNCCP and while that Agency was still actively pursuing durable solutions for the refugees, was assigned a temporary mandate to aid the refugees through direct relief and works programmes. The UNCCP, however, then turned its attention to identifying and valuing Palestinian property losses, eventually ceasing all functions although remaining formally intact.³² Neither the UNHCR nor UNRWA has yet been tasked by the UN with resuming the mandate of the UNCCP, despite its inactivity.³³ The UN Special Coordinator for the Middle East Peace Process (UNSCO) has a mandate that would allow him or her to engage the parties on the issue of durable solutions for Palestinian refugees.³⁴ In practice, however, the matter has been left almost entirely to the political sphere of bi-lateral negotiations.

While UNRWA has not been tasked with mediating agreement between Israelis and Palestinians on durable solutions for the refugees or reaching out to resettlement states, its work is inherently linked to creating conditions that have a bearing on advancing solutions for the refugees communities. Development assistance for refugees – a primary component of UNRWA’s mandate – is considered a key factor in equipping refugees in situations of protracted displacement for any durable solution. The development assistance provided by UNRWA, including universal access to education and health care, skills training, infrastructural improvements and micro-enterprise services, is geared towards enabling the refugees to become self-reliant. The small percentage of refugees receiving ongoing relief assistance, despite the persistence of

²⁹ UNGA res. 194 (III), 11 Dec. 1948.

³⁰ *Ibid.*, para. 11.

³¹ M.R. Fischbach, *Records of Dispossession. Palestinian Refugee Property and the Arab-Israeli Conflict*. New York, Columbia University Press, 2003, 83–102.

³² *Ibid.*, 108–113.

³³ S. Akram and T. Rempel, “Temporary protection as an Instrument”, *op. cit.*

³⁴ See: UNSC, *Letter dated 10 September 1999 from the Secretary-General to the President of the Security Council*, UN Doc. S/1999/983, 16 Sep. 1999. The Letter appoints the UNSCO to represent the Secretary-General in discussions with the parties and the international community in all matters pertaining to the peace process.

conditions of vulnerability, attests to the Agency's success in promoting self-reliance.³⁵ In addition to its more traditional services, UNRWA has been supporting refugee self-reliance and empowerment through other activities, such as the systematic upgrade of refugee shelters, community development initiatives, camp improvement projects, human rights, tolerance and conflict resolution programs and increasingly through its protection advocacy. UNRWA's role, therefore, is laying the foundation for a successful resolution of the refugee issue, once it is agreed.³⁶

At the same time, the UN's and UNRWA's role in bringing about a solution should not be conceived merely as a passive one. As a UN agency, UNRWA has an obligation to promote human rights and fundamental freedoms in accordance with its mandate.³⁷ Even if UNRWA is not currently engaged in negotiating repatriation or resettlement options with states concerned, it holds a protection mandate. Protection as recognized by international humanitarian agencies includes activities "aimed at obtaining individual rights in line with international human rights, humanitarian and refugee law."³⁸ Moreover, as the UN agency mandated to care for Palestine refugees, it has an obligation to promote their protection until a just resolution is achieved. Ultimately such an obligation may translate into a responsibility to ensure that refugee rights and interests are adequately addressed by those negotiating their future and as the implementation of any agreement proceeds. A peace agreement would place considerable institutional demands on the Agency beyond its international duties and significantly impact its staff and refugee beneficiary population, arguably making the Agency a stakeholder in the peace process.³⁹

3.3 What Role for the Future?

This section elaborates on the roles UNRWA may fulfil in assisting the implementation of a just resolution of the refugee question. There are a variety of specific functions that may be suitable for UNRWA to carry out in the implementation process.

³⁵ This excludes refugees in the West Bank and the Gaza Strip where emergency situations prevail.

³⁶ See: L. Takkenberg, "The Search for Durable Solutions for Palestinian Refugees", *op. cit.* 383.

³⁷ This obligation was noted by the General Assembly's Millennium Outcome, UNGA res. 60/1, 16 Sept. 2005, para. 119.

³⁸ UNHCR, *Handbook for Repatriation and Reintegration Activities*, *op. cit.* 2.

³⁹ For a discussion of the operational and financial implications of a peace agreement on UNRWA, see: IDRC, *Workshop on the Future of UNRWA*, *op. cit.*

UNRWA would likely be one of many implementing agencies, cooperating with other UN and humanitarian organizations and community groups if, as assumed, the implementation is carried out in accordance with an international mechanism. Ultimately, in deciding whether and how to modify UNRWA's role, the UNGA and Member States will have to take into account an array of factors, including stakeholder priorities, available funds and the continuing needs of the refugees, among other factors.⁴⁰ The remainder of this article, however, considers what roles UNRWA may play according to its relevant expertise and technical capacity measured against international law and best practices relative to durable solutions and the anticipated contextual needs of Palestinian refugees.

Following a peace agreement, one obvious role for UNRWA would be to continue providing its current regular services to meet the continuing needs of the refugees as implementation of an agreement proceeds. Programming adjustments may be necessary to respond to changing social and political circumstances, population shifts and new donor priorities resulting from a post-agreement scenario. Given the host countries' reliance on UNRWA for basic education, health and relief and social services, eliminating the Agency's programs too quickly could risk undermining the social and economic standing of the refugees, and possibly jeopardize any post-conflict transition. Ensuring a gradual winding-down and the provision of quality services would help to guarantee the well-being of the refugees and facilitate the transitional process by building and maintaining beneficiary support. Continuing with its services would not require altering the Agency's mandate, although internally UNRWA may have to modify its programming and financial plans to respond to the changing context.

In order to cover the continuing needs of the refugees, any phasing-out of UNRWA services should be coordinated within the implementation of the agreement. This would require an adequate transitional period allowing time for the movement or re-housing of refugees and the provision of national protection. States would also require

⁴⁰ Following the conclusion of the 1993 Oslo Declaration of Principles "[s]ome major donors held the view that UNRWA 'represented the past' and the Palestinian Authority (PA) 'represented the future', and accordingly increased the size of their contribution to the latter while freezing levels of funding to the former." See: H. Parvathaneni, "The Impact of the Oslo Accords on UNRWA's funding: The case of Palestine", in M. Keating, A. Le More, and R. Lowe (eds.), *Aid, Diplomacy and Facts on the Ground: The Case of Palestine*, London, Chatham House, 2005, 94.

sufficient time in order to expand or establish their institutional capacities to match UNRWA's services. Again, the imperative of a gradual transition would caution against an end date for UNRWA that is artificially or randomly set for political objectives or without sufficient consideration of what it will take to achieve a sustainable solution and peace.⁴¹

Beyond continuing with its current humanitarian and development mission throughout a transitional period, UNRWA may contribute to the implementation of durable solutions for the refugees. In particular, UNRWA may assist in the actual return, resettlement and integration of refugees, including with respect to those coming from outside of the region and from regional host states outside of UNRWA's fields of operation (for example, Iraq).⁴²

The process of implementing durable solutions for Palestinian refugees would most likely be organized as an administrative programme. Specific tasks would include outreach to the refugee communities to notify them of and counsel them about their "permanent residency" options, processing repatriation and resettlement for individuals and families, moving persons to their final destination or re-housing refugees during integration. While UNRWA does not have institutional experience in carrying out these functions, it does have extensive infrastructure, equipment and data records in place in the locations where some two-thirds of Palestinian refugees reside. The Agency's area staff members, the majority of whom are Palestinian, are familiar with the refugee communities and possess needed Arabic language skills. These resources may be mobilized to assist in the swifter implementation of durable solutions for the refugees.⁴³

There has been some debate amongst scholars on the Palestinian refugee question as to whether UNHCR or UNRWA should take the lead in a repatriation and resettlement process.⁴⁴ If an international mechanism is established to implement a solution, however, neither agency is likely to act as a "lead agency" in the common understanding of the term. As described by Mick Dumper:

⁴¹ Chatham House, "The Regional Dimension of the Palestinian Refugee Issue", Simulation Exercise Report 23–5 June 2008, 9, 12, available at: www.chathamhouse.org.uk/files/12092 (last visited 25 Apr. 2009).

⁴² L. Takkenberg, "The Search for Durable Solutions for Palestinian Refugees", *op. cit.* 385; M. Dumper, *The Future for Palestinian Refugees*, *op. cit.* 120–9.

⁴³ L. Takkenberg, "The Search for Durable Solutions for Palestinian Refugees", *op. cit.* 385.

⁴⁴ M. Dumper, *The Future for Palestinian Refugees*, *op. cit.* 120.

The responsibilities of a lead agency can be divided into two levels (1) strategic and (2) operational or field tasks ... It acts as the main point of contact, allocating tasks and coordinating funding efforts. ... On the operational or field level, the lead agency is responsible for providing guidance, policy advice, and information; for coordinating field activities to avoid duplications; and for providing administrative and logistic support to the range of actors in involved.⁴⁵

Should an international mechanism be created to implement a permanent solution for Palestinian refugees, it would most likely establish a program for implementing the agreed durable solutions (the administrative program described above). This programme, staffed by experts, would probably make most of the strategic policy and coordination decisions. UNRWA and other UN agencies⁴⁶ would then assist in the implementation of those decisions according to assigned responsibilities. UNRWA (or other UN agencies or Non-Governmental Organizations) may take the lead in implementing certain aspects of the durable solutions program consistent with its expertise but it would not necessarily act as a “lead agency” planning and coordinating the overall durable solutions program.

In addition to assisting the repatriation, resettlement and local integration of refugees, UNRWA is well placed to contribute to the refugees’ subsequent re/integration and rehabilitation. The UNHCR “Framework for Durable Solutions for Refugees and Persons of Concern” sets out best practices with respect to durable solutions. It followed after a decade or more of post-conflict refugee repatriation experience. The Framework promotes a comprehensive, integrated approach to resolving refugee problems, including those of a protracted nature.⁴⁷ It recommends that the “reintegration/reinsertion” of returnees be pursued following repatriation:

⁴⁵ *Ibid.*, 106.

⁴⁶ In his discussion on lead agencies, Dumper names agencies involved in implementing other refugee solutions/post-conflict transitions. The obvious agency is UNHCR, which has a mandate for durable solutions and certain categories of internally displaced persons. The International Organization for Migration (IOM) and the German Agency for Technical Cooperation (GTZ) have experience in the logistical transport of refugees. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations Development Programme (UNDP) have contributed to post-conflict development initiatives. Other relevant agencies include the WFP, International Committee of the Red Cross (ICRC), and United Nations Children’s Fund (UNICEF), as well as others with humanitarian and development missions in the region. *Ibid.*, 108.

⁴⁷ The “Framework for Durable Solutions aims to achieve, through Development Assistance for Refugees (DAR), Repatriation, Reintegration, Rehabilitation and Reconstruction (4Rs) and Development through Local Integration (DLI), sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees [based on Goal 3 of the Agenda for Protection]; and redoubling the search for durable solutions [based on Goal 5 of the same Agenda]. See: UNHCR, “54th Session of the ExCom”, *op. cit.* 3.

This means among others, monitoring protection agreements, providing for the repair or reconstruction of family shelters, supporting small-scale micro-credit schemes and other types of productive activities, and reviving within the national/regional strategies, essential water, educational and health services in returnee communities. Such an approach should also serve as a framework for the coordinated phase out of UNHCR and phase in of development agencies.⁴⁸

UNRWA has long-standing operational experience in nearly all of these areas. The Agency's camp development and camp improvement activities and shelter repair, social, environmental health and micro-enterprise services are all deeply relevant activities to achieving a just and lasting solution according to the benchmarks identified by UNHCR. It would be well positioned to implement such measures in its current fields of operation in the case of local integration in the host countries and resettlement in a Palestinian State. UNRWA could also potentially assist in the reintegration and rehabilitation of returning refugees in Israel, although such a prospect would probably depend heavily on the context within which a peace agreement would be concluded. In any event, these regular activities of UNRWA could be modified as necessary to meet reintegration and rehabilitation aims as necessary. Once refugee rehabilitation moves to longer-term development, the United Nations Development Programme (UNDP) could take over these functions.⁴⁹ Involving UNRWA in this manner would also be consistent with the recommendation mentioned above, namely that UNRWA would continue to provide educational, health and relief services to meet the needs of the refugees until such time as their national protection is secured.

Leading up to and following the signing of a peace agreement, there would be an urgent need to engage with the refugee communities. UNRWA's long history of engagement with the refugees and the relatively high degree of trust in the Agency amongst the population⁵⁰ would enable it to conduct communication operations required for the implementation of durable solutions. This could include acting as a liaison for

⁴⁸ *Ibid.*, 18.

⁴⁹ L. Takkenberg, "The Search for Durable Solutions for Palestinian Refugees", *op. cit.* 385.

⁵⁰ In an opinion poll conducted in the West Bank and Gaza Strip by the Norwegian research institute FAFO, 66 per cent of respondents represented that they had a great deal or quite a bit of trust in UNRWA. 40 per cent said that they had the same level of trust in international NGOs and 44 per cent in the Palestinian Liberation Organization (PLO). See <http://www.faf.no> (last visited 9 May 2009).

refugees, informing refugees of their rights and options and registering their choices in cooperation with other acting agencies.

Whether or not UNRWA is mandated to assume such implementation roles, its sixty-year old history of working closely with Palestinian refugee communities in five geographical areas means that its resources will at a minimum be drawn on for implementation purposes. This may include secondment of staff to an implementation mechanism, leasing of UNRWA equipment or facilities, and use of the Agency's refugee records and archival material, as allowed by the UN and according to stakeholder rights. Drawing only on select capacities or aspects of the Agency – as opposed to giving it robust roles in the implementation process, could slow the process down as the UNHCR or other implementing agencies would have to deploy and gain the trust of the refugee communities before proceeding with the implementation tasks.

In one of the few policy sessions devoted to examining the possible future roles of UNRWA, analysts and academics familiar with the Agency discussed whether UNRWA could take on tasks outside of its present mandate and expertise.⁵¹ Some of the participants reportedly noted that the Agency's ability to adapt to new tasks may be limited by organizational weaknesses and a politicized refugee constituency, that donors would hesitate to place UNRWA in a position of “controlling its demise”, and that many implementation tasks would go beyond the capacity or expertise of the Agency.⁵² These concerns may have been muted since the workshop took place almost one decade earlier, while others are overstated. Moreover, they were apparently raised in response to considering whether UNRWA would act as a “lead agency” rather than an implementing agent under an international mechanism. The former would require a much more substantial transformation of UNRWA. It would also potentially detract from the Agency's role in meeting the humanitarian and development needs in a transitional period.

In addressing some of the stated concerns with respect to UNRWA's managerial/organizational capacity to adjust to a modified mandate, the Agency has

⁵¹ IDRC Workshop in 2000, *op. cit.*, 2000: 10. Mick Dumper's book on the future for Palestinian refugees also includes a summary of a debate by the Exeter Refugee Study Team on “UNRWA plus” and “UNRWA minus”; see: M. Dumper, *The Future for Palestinian Refugees*, *op. cit.* 121.

⁵² IDRC, *Workshop on the Future of UNRWA*, *op. cit.* 10.

undertaken numerous, agency-wide reforms in the past several years. Key among them is the Organizational Development (OD) reform process. The OD reform process has been conducted over a three-year period, involving all levels of the Agency. It has sought to instil a culture of change and build organizational capacity for adaptation within UNRWA. One of the main strategies has been to promote the decentralization of decision-making and empower middle managers. These reforms measured over time may demonstrate an increase in UNRWA's adaptive capacity. The Agency has also restructured and expanded its Advisory Commission (AdCom), which could offer improved opportunities for donor and host states to engage UNRWA over time regarding its planning for and execution of any transformation of its role. Following the signing of the Oslo Declaration of Principles in 1993, which established a five-year interim period before a permanent peace agreement addressing refugee rights was to be concluded, UNRWA had the occasion to consider these transitional issues and its future contributions. At that time, it began a process of preparing for a hand-over of services. It also sought to conduct periodic reviews of the transition through the AdCom with hosts and donors in order to gauge progress. In other words, UNRWA has proven its readiness to respond to major political developments in consultation with donors and other stakeholders. The Oslo Accords ultimately proved inadequate as a basis for a just settlement, leading to a breakdown in the peace process.

Concerns that refugee politics may preclude UNRWA from taking on expanded roles may also be exaggerated. Refugee communities are likely to embrace new roles by UNRWA in the peace process if they perceive a benefit with such an expansion. This in turn depends on the content of the peace agreement and whether the refugees are consulted. In addition, in the past several years, UNRWA has sought to increase its direct consultations with refugee communities. Through its Department of Infrastructure and Camp Improvement, UNRWA has undertaken camp improvement initiatives in Lebanon and the West Bank, utilizing community participatory methods. In 2007–8, UNRWA field offices conducted needs assessments through the use of refugee focus groups for the purpose of developing the Agency's Medium Term Strategy 2010–15.⁵³ In interviews

⁵³ UNRWA, *Medium Term Strategy 2010–15*, available at http://www.un.org/unrwa/publications/pubs08/mts_report_2010_2015.pdf.

conducted by the author for related research, it was revealed that UNRWA is slowly incorporating refugee consultations as a matter of practice to facilitate projects and reforms, albeit on a field-by-field basis. These processes further promote refugee trust in the Agency. Through the prioritization and application of its evolving communication strategies, UNRWA may be in a stronger position to assist in understanding and responding to refugee expectations throughout an implementation process; thus further minimizing concerns about refugee reactions.

The issue of a post-agreement role for UNRWA also has been subject to political controversy as it is perceived to contradict Israeli interests. This controversy may be subsiding as more attention has been devoted to the practical complexities of implementing a just and lasting resolution in the Palestinian refugee case during the Oslo years, mostly through second track engagements and through expert advisory input.⁵⁴ In addition, as mentioned elsewhere, UNRWA would likely act as a contributor rather than a leader in an implementation process; which may thereby result in a less vocal political opposition. In the end, in the interest of peace and stability, while UNRWA may gradually phase out its quasi-governmental services this should not preclude its other contributions where appropriate and mandated.

4. Conclusion

For the past six decades, the subject of durable solutions for Palestinian refugees has been dominated by high-level politics with taboos and redlines restricting engagement in all corners. As a result, the modalities for implementing a solution for Palestinian refugees have been neglected, including the future of UNRWA.

As this article has sought to highlight, serious practical implications would flow from any peace deal addressing in a just and lasting manner the situation of Palestinian refugees. Amongst these implications are those related to UNRWA. By considering in particular the Agency's post-agreement future, including the roles it would play in implementing a just and lasting solution, it becomes easier to begin to imagine a post-conflict situation or at least the components of building towards that end. At the same time, through examining these issues we are reminded of the challenging undertaking of

⁵⁴ Chatham House, "The Regional Dimension of the Palestinian Refugee Issue", *op. cit.* 12.

actually achieving a post-conflict situation in the Middle East (as opposed to a mere acceptable formulation of contentious principles). The potential transformation of UNRWA, involving hand-over of services to local governments and a modified role for the Agency in assisting the implementation of a solution for the refugees, would require more serious thinking, linking this process with the terms of the peace agreement and transitional needs. Although the moribund peace process makes it difficult to make the necessary concrete predictions according to which planning can begin, it is possible to engage in these discussions within the context of providing durable solutions for refugees. Doing so will increase chances for a successful implementation of a peace agreement and long-term regional stability.