

## The Legal Situation of Palestinian Refugees

The situation of the Palestinian refugees is one of the most persistent refugee crises in the world which has not seen any progress since its first appearance. Both, the total number of Palestinians worldwide (10,5 million) and the total number of Palestinian refugees (7 million) are only estimates and depend on the source and/or the definition. Not every refugee living in Diaspora is an exile, not every exile is a refugee, not every refugee is registered as such and not every displaced Palestinian is a refugee.

Palestinian refugees do not fall under the legal regime of refugee protection of the 1951 Refugee Convention, its companion instrument the 1967 Refugee Protocol, and the Statute of the United Nations High Commissioner for Refugees (**UNHCR**) which is eligible to all other refugees. For the Palestinian refugees a special legal regime was created. This regime comprises two special UN agencies - the United Nations Conciliation Commission on Palestine (**UNCCP**) and the United Nations Relief and Works Agency for Palestine Refugees (**UNRWA**) as well as certain provisions of the 1951 Refugee Convention and the UNHCR statute.

UNRWA was established in December 1948 with the dual mission of providing direct relief and establishing a “works program” for the approximately 700.000 refugees that fled what is now known as Israel in 1948. These services have been provided to those meeting UNRWA’s operational definition of “Palestine refugees”: persons whose normal place of residence was in Palestine between June 1946 and May 1948 and who lost their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict.<sup>1</sup>

UNRWA’s mandate today includes also provision of basic needs to those refugees and internally displaced people (IDP) that had to flee their homes in the 1967 war as well as the descendants of the original male Palestinian refugees from 1948 and 1967 under the precondition that they live in one of UNRWA’s five fields of operations, whether in a camp or not. Only one third of the registered refugees still live in refugee camps.<sup>2</sup>

UNRWA operates exclusively in the Gaza Strip, West Bank including East Jerusalem, Lebanon, Syria and Jordan with a total of 58 camps.<sup>3</sup> Today, around 5 million Palestinian refugees/IDPs are eligible for UNRWA services, while the estimated number of Palestinian refugees/IDPs

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<sup>1</sup> <http://www.unrwa.org/etemplate.php?id=86>

<sup>2</sup> <http://www.unrwa.org/userfiles/2010011791015.pdf>

<sup>3</sup> <http://www.unrwa.org/etemplate.php?id=253>

worldwide is seven million. Accordingly, not all Palestinians that had to flee their homes in the 1948 or the 1967 war are registered at UNWRA and receive services.

The definition of refugees used by UNRWA is limited to needy persons only. Till today, the beneficiaries that fall under the UNWRA mandate do receive only basic subsistence, like food, clothing and shelter, but are not granted the human rights and fundamental freedoms that are guaranteed by the 1951 Refugee Convention, its accompanying Protocol and the UNHCR statute. These rights and freedoms include freedom of religion (Art.4), rights in property (Art. 13), access to courts (Art. 16) freedom from undue restrictions on employment (Art. 17), primary education (Art. 22) and identity papers (Art. 27) but also the facilitation of a voluntary durable solution, such as repatriation, resettlement and integration.

As the legal regime for Palestinian refugees does not give comprehensive protection and not all Palestinian refugees and IDPs are eligible for UNRWA services, it is discussed controversially if, and to which degree the general refugee regulations as guaranteed in the 1951 Refugee Convention and the Statute of the UNHCR can be applied to Palestinian refugees as well.

Article 1D of the 1951 Refugee Convention states:

***“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this convention.”***

Paragraph 1 of Article 1D is an exclusion clause, while paragraph 2 of Article 1D includes those Palestinian refugees again that have ceased to receive protection or assistance from UNRWA for any reason.

Today it is generally believed that Palestinians which are refugees according to the definition of Art 1A.2 of the Refugee Convention and that are outside of UNRWA's area of operation are entitled to the benefits of the 1951 Convention, given that the perspective state is signatory to the Convention.<sup>4</sup> Regarding those Palestinian refugees that live within the area of UNRWA's operation, it is discussed between legal scholars if the “protection gaps” within the Palestinians legal regime might fall within the scope of “ceased protection or assistance” of Article 1D paragraph 2 of the Refugee Convention, and therefore make it applicable.

In most of their host states (with the exception of Jordan to some degree), Palestinian refugees are not granted those rights, as many Middle Eastern and Arab States and all of the

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<sup>4</sup> <http://www.unhcr.org/refworld/pdfid/4add77d42.pdf>

UNRWA states did not sign the Refugee Convention and Protocol and the vast majority of Palestinian refugees live in Middle Eastern and Arab States. Accordingly Palestinian refugees have a precarious existence in these states regarding their legal position and the safeguarding of human and civil rights, which remain subject to political and security considerations of the perspective government.<sup>5</sup>

Unlike most other refugees and IDP, who usually seek protection against refoulement (forcible return), Palestinian refugees are denied their right of reparations, including the return to their homes of origin by Israel. Although those rights are enshrined in international law and particularly in UN resolution 194 (1948) and 237 (1967), they are not been enforced. Palestinian refugees do not have access to courts that could provide effective remedies and reparations and no international agency is facilitating a comprehensive durable solution, including reparations.

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<sup>5</sup> Akram, Susan: Palestinian Refugees and Their Status: Rights, Politics and Implications for a Just Solution; Journal of Palestine Studies, Vol. 31, No.3, pp36-51; University of California Press