

# THE MANDATE OF UNRWA AT SIXTY

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*The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or “the Agency”) was established as a subsidiary organ of the General Assembly in 1949 and commenced operations in 1950. The Agency’s mandate has evolved since its establishment in response to the sometimes dramatic developments in the political, operational, and financial context. After considering the meaning of the term “mandate” and how UNRWA’s mandate is derived, this article sets out the content of UNRWA’s contemporary mandate by addressing the following questions: To whom does UNRWA’s mandate extend? Where is UNRWA mandated to act? For which activities? Until when does UNRWA’s mandate extend? Particular attention is devoted to the evolution of the protection and human development aspects of the Agency’s mandate.*

## 1. Introduction

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or “the Agency”) was established as a subsidiary organ of the General Assembly pursuant to General Assembly resolution 302 (IV) of 8 December 1949 and commenced operations on 1 May 1950. The Agency’s mandate has evolved since its establishment in response to the sometimes dramatic developments in the political, operational, and financial context. What are the contours of UNRWA’s mandate at sixty? And how have important parts of the mandate evolved?

After considering the meaning of the term “mandate” and how UNRWA’s mandate is derived, the author addresses its content. Attention is devoted to the evolution of some aspects of the Agency’s mandate, in particular human development and protection. The study does not examine the more technical aspects of the Agency’s mandate, which are primarily of internal interest, for example, its power to issue financial rules and regulations or its place within the UN system. The article concludes with some remarks on the overall nature of UNRWA’s mandate.

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## 2. What is a “mandate” and how is UNRWA’s mandate derived?

In broad terms, UNRWA’s “mandate” means what the Agency may or must do. The Agency’s mandate and its actual activities are distinct: UNRWA’s actual activities at a given time are a subset of the activities within its mandate.

A more precise working definition of a mandate is difficult but necessary to determine how UNRWA’s mandate is derived. The Secretary-General recently discussed the meaning of the term for the purposes of identifying and analysing mandates originating from resolutions of the General Assembly and other organs.<sup>1</sup> The Secretary-General referred to the nature and definition of mandates for the purpose of his exercise:

The resolutions adopted from year to year by each of the principal organs are the primary source of mandates [for the Secretariat and the other parts of the United Nations system]. Mandates are both conceptual and specific; they can articulate newly developed international norms, provide strategic policy direction on substantive and administrative issues, or request specific conferences, activities, operations and reports.

For this reason, mandates are not easily defined or quantifiable; a concrete legal definition of a mandate does not exist. Resolutions often signify directives for action by employing words such as “requests”, “calls upon”, or “encourages”, but an assessment to distinguish the level of legal obligation arising from the use of these different words has yielded no definitive answers. Such ambiguity in resolutions may be deliberate – to make it easier for Member States to reach decisions. But since the membership has indicated a wish to use its review of mandates to examine opportunities for programmatic shifts, it is both necessary and desirable to identify a working definition of the unit of analysis and delineate the scope of the exercise.

Guided by the 2005 World Summit Outcome and subsequent discussions in the plenary, I have defined a mandate as a request or a direction, for action by the United Nations Secretariat or other implementing entities that derives from a resolution of the General Assembly or one of the other relevant organs.<sup>2</sup>

Before identifying the sources of UNRWA’s mandate, let us consider the nature of UNRWA. The Agency is a subsidiary organ of the General Assembly – and of

<sup>1</sup> Report of the Secretary-General to the General Assembly, “Mandating and delivering: analysis and recommendations to facilitate the review of mandates”, UN Doc. A/60/733, 30 Mar. 2006, para. 1: “In September 2005, world leaders . . . called on States Members of the United Nations to “review all mandates older than five years originating from resolutions of the General Assembly and other organs.” [See resolution 60/1, para. 163 (b).] To facilitate that review, they asked the Secretary-General to provide analysis and recommendations. The present report provides a framework for consideration by the Member States, and the initial tools to undertake this exercise. It does not contain the full range of analyses of the Organization’s work that can be made.” The Secretary-General also established a UN Mandate Registry as part of the exercise, available at: [www.un.org/mandatereview/](http://www.un.org/mandatereview/) (last visited 29 Mar. 2009).

<sup>2</sup> Report of the Secretary-General to the General Assembly, “Mandating and delivering: analysis and recommendations to facilitate the review of mandates”, UN Doc. A/60/733, 30 Mar. 2006, para. 9–11.

the UN as a whole – established under Articles 7(2) and 22 of the UN Charter.<sup>3</sup> UNRWA's chief executive officer is the Commissioner-General, an Under-Secretary-General of the UN, who is "responsible to the General Assembly for the operation of the programme".<sup>4</sup> UNRWA is one of only two UN agencies that report directly to the General Assembly.<sup>5</sup> The Agency's staff is selected and appointed by the Commissioner-General under the Agency's own staff rules and regulations.<sup>6</sup> UNRWA is a temporary Agency and its mandate is renewed periodically. With the exception of some 119 international staff posts funded by the General Assembly through assessed contributions, UNRWA operations, projects and emergency appeals are funded by the voluntary contributions of donors.<sup>7</sup> UNRWA's budget is considered and approved by the General Assembly, pursuant to Article 17(1) of the UN Charter.<sup>8</sup>

The principal source of UNRWA's mandate is the resolutions of its principal organ, the General Assembly.<sup>9</sup> Other sources include requests from other organs, including the Secretary-General.<sup>10</sup> UNRWA does not have a constituent instrument (unlike the World Health Organization [WHO]) or a statute (unlike the Office of the United Nations High Commissioner for Refugees [UNHCR]); its mandate is not conveniently stated in one place and must be derived from all relevant resolutions and requests.<sup>11</sup>

Each year the General Assembly passes a series of resolutions germane to UNRWA; notably, resolutions entitled "Operations of the United Nations Relief

<sup>3</sup> Secretary-General's Bulletin, "Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East", UN Doc. ST/SGB/2000/6, 17 Feb. 2000, note 1. As to the power of the General Assembly to establish an operational agency such as UNRWA, see W. Dale, "UNRWA – A Subsidiary Organ of the UN", *International & Comparative Law Quarterly*, Vol. 23, 1974, 582–83. As to the nature of UN subsidiary organs, see: D. Sarooshi, "The Legal Framework Governing United Nations Subsidiary Organs", *British Yearbook of International Law*, Vol. 67, 1997, 413–78.

<sup>4</sup> UNGA res. 302(IV), 8 Dec. 1949, para. 9(a).

<sup>5</sup> The other agency is the United Nations Institute for Disarmament Research (UNIDIR): see Organization Chart of the UN System, available at: [www.un.org/aboutun/chart\\_en.pdf](http://www.un.org/aboutun/chart_en.pdf) (last visited 29 Dec. 2008).

<sup>6</sup> UNGA res. 302(IV), 8 Dec. 1949, para. 9(b) states: "The Director [Commissioner-General] shall select and appoint his staff in accordance with general arrangements made in agreement with the Secretary-General, including such of the staff rules and regulations of the United Nations as the Director and Secretary-General shall agree are applicable, and to the extent possible utilize the facilities and assistance of the Secretary-General." See also Secretary-General's Bulletin, *Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UN Doc. ST/SGB/2000/6, 17 Feb. 2000, paras. 2.4, 3.1, note 1.

<sup>7</sup> Report of the Commissioner-General of [UNRWA], 1 Jan.–31 Dec. 2007, UN Doc. A/63/13, para. 70.

<sup>8</sup> "The General Assembly shall consider and approve the budget of the Organization": Charter of the United Nations, Art. 17(1).

<sup>9</sup> The terms of reference of a subsidiary organ of the General Assembly "are determined, and may be modified by, or under the authority of, [the] principal organ", *Repertory of Practice of United Nations Organs*, Vol. 1, 228, quoted in: Sarooshi, "The Legal Framework Governing United Nations Subsidiary Organs", *op. cit.* fn.3, 416. On General Assembly resolutions, see: B. Sloan, *United Nations General Assembly Resolutions in our Changing World*, New York, Transnational Publ., 1991.

<sup>10</sup> For example, the Secretary-General has contributed to UNRWA's protection mandate. The Agency has also had a mandate from a Security Council subsidiary organ, the UN Compensation Commission.

<sup>11</sup> UNHCR's contemporary mandate is derived from General Assembly and ECOSOC resolutions as well as from its original statute: see UNHCR, *A Guide to International Protection: Protecting persons of concern to UNHCR*, 1 Jan. 2005, 12–14, 81–91, available at: [www.unhcr.org/publ/PUBL/3ae6bd5a0.pdf](http://www.unhcr.org/publ/PUBL/3ae6bd5a0.pdf) (last visited 29 Apr. 2009).

and Works Agency for Palestine Refugees in the Near East” and “Persons displaced as a result of the June 1967 and subsequent hostilities”.<sup>12</sup> Typically, the mandate is extended periodically by a paragraph in the General Assembly resolution entitled “Assistance to Palestine refugees”. Also important to UNRWA’s mandate are General Assembly resolutions relating to the Agency’s budget.<sup>13</sup> When the General Assembly considers and approves UNRWA’s budget and resources to be provided to UNRWA from assessed contributions, it implicitly approves the Agency’s mandate to perform the activities for which budget and resources are approved.<sup>14</sup> For example, the General Assembly approved financing of some 119 international posts through the regular UN budget in a resolution entitled “Questions Relating to Proposed Programme Budget 2008–09”.<sup>15</sup> The General Assembly also implicitly approved the 2008–09 programme budget for UNRWA, charged on voluntary contributions, in resolution 62/104 entitled “Operations of [UNRWA]” when it considered the report and commended “the continuing efforts of the Commissioner-General to increase the budgetary transparency and efficiency of the Agency, as reflected in the Agency’s programme budget for the biennium 2008–2009”.<sup>16</sup> The General Assembly also considers and approves UNRWA’s financial reports and financial statements after audit by the UN Board of Auditors.<sup>17</sup>

Although the actions of UNRWA would be presumed to be within its mandate,<sup>18</sup> it is legitimate to ask which entities are competent to determine questions concerning the Agency’s mandate. In the first instance it is the function of a subsidiary organ itself to determine its mandate in accordance with applicable procedures and, should the competence of the organ be questioned again in the parent organ, it would be for the parent organ to decide and its

<sup>12</sup> The most recent resolutions at the time of writing were UNGA res. 63/93, 5 Dec. 2008 and UNGA res. 63/92, 5 Dec. 2008, respectively.

<sup>13</sup> This source for UNRWA’s mandate has been neglected in the literature; it is not referred to by Dale, for example, when he analyses the Agency’s mandate: contrast W. Dale, UNRWA – A Subsidiary Organ of the UN”, *op. cit.*, 583–86.

<sup>14</sup> Compare the UN Legal Counsel’s advice to the Chief of the Governing Council Secretariat of the UN Environmental Programme: “If a choice of languages is desired that would contravene a General Assembly or Economic and Social Council decision, then permission of the Assembly or Council must be secured. This can be granted by an explicit resolution or decision, or implicitly through the approval of a financial implications statement anticipating the use of fewer languages than those normally authorized”, in: *UN Juridical Yearbook*, 1983, 169.

<sup>15</sup> UNGA res. 62/236, 22 Dec. 2007, paras. 107–9. The budget pertaining to UNRWA was submitted by the Secretary-General in UN Doc. A/62/6 Corr. 1 (Sects 25–27). The General Assembly approved the overall appropriations in UNGA res. 62/237 A-C, 1 Feb. 2008, “Programme budget for the biennium 2008–2009.”

<sup>16</sup> UNGA res. 62/104, 3rd preambular para, para. 4.

<sup>17</sup> For example, the General Assembly considered and accepted the financial reports and audited financial statements for UNRWA for the period 2006–07 in UNGA res. 63/246, 24 Dec. 2008. The Financial Regulations and Rules of the United Nations, UN Doc. ST/SGB/2003/7, 9 May 2003, provide in Regulation 7.6: “The Board of Auditors shall be completely independent and solely responsible for the conduct of the audit.”

<sup>18</sup> As the International Court of Justice said in the *Expenses* case “. . . when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the UN, the presumption is that such action is not *ultra vires* the Organization”, in: Advisory Opinion, *International Court of Justice Reports*, 1962, 168.

decision would be final.<sup>19</sup> In the case of UNRWA, it would be for the Commissioner-General, as the Agency's chief executive officer, to determine in good faith any questions about mandate, in consultation with the Advisory Commission, as appropriate.<sup>20</sup> The General Assembly could reconsider the matter and its decision would be final.<sup>21</sup> The Commissioner-General set out the main elements of the Agency's mandate in a letter to the Secretary-General of 28 November 2005, submitted as part of the mandate review following the General Assembly's Millennium Outcome and incorporated into the UN Mandate Registry.

Although states may legitimately ask questions about the extent of UNRWA's mandate, it is not their role to determine aspects of UNRWA's mandate as a UN subsidiary organ. States do take part in the political process leading to resolutions of UN organs relevant to the Agency's mandate and some states are members of the Agency's Advisory Commission.

### 3. UNRWA's contemporary mandate

We can identify the most important parts of UNRWA's mandate by addressing the following questions: to whom does UNRWA's mandate extend? Where is UNRWA mandated to act? For which activities? Until when does UNRWA's mandate extend?

#### 3.1. *To whom does UNRWA's mandate extend?*

UNRWA's mandate focuses on Palestine refugees. It also extends to persons displaced by "the 1967 and subsequent hostilities" and, occasionally, to a broader cross-section of the local community. Several categories of persons have long been registered as eligible to receive UNRWA services although not "Palestine refugees".

##### 3.1.1. *Palestine refugees*

From the beginning, UNRWA's core focus has been the Palestine refugees. The phrase "Palestine refugees" is part of UNRWA's full name. When the

<sup>19</sup> Compare the UN Legal Counsel's advice to the Under-Secretary-General for Political and General Assembly Affairs: "Where the terms of reference are not clear and a question arises as to the competence of a subsidiary organ to take action on a particular matter it would, in the first instance, be settled by that organ in accordance with its rules of procedure. Should the manner in which it is settled be questioned again in the parent organ it would then be for the parent organ to decide the issue, and its decision would be final", *UN Juridical Yearbook*, 1984, 135, in: Sarooshi, "The Legal Framework Governing United Nations Subsidiary Organs", *op. cit.*, fn 3, 49.

<sup>20</sup> The General Assembly established an Advisory Commission "to advise and assist" the Commissioner-General "in the execution of the programme": UNGA res. 302(IV), 8 Dec. 1949, para. 8.

<sup>21</sup> It is possible that the International Court of Justice (ICJ) could have a role in determining the competence of a subsidiary organ such as UNRWA. The ICJ is the principal judicial organ of the UN and the General Assembly may request it to give an advisory opinion on any legal question. See: *Charter of the United Nations*, Arts. 92 and 96(a).

General Assembly resolution on the operations of UNRWA refers to the Agency's beneficiaries, its focus is clearly on Palestine refugees.<sup>22</sup>

Although the term "Palestine refugee" is central to UNRWA's mandate, the General Assembly has not expressly defined it. The General Assembly has tacitly approved the operational definition used in annual reports of the Commissioner-General setting out the definition.<sup>23</sup> The operational definition has evolved slightly through Agency internal instructions but in practice there are political and institutional limits on the extent to which the Agency is able to develop the definition itself.<sup>24</sup>

The criteria for registration as a Palestine refugee are set out in the Agency's Consolidated Eligibility and Registration Instructions, the latest version of which was issued in October 2009:

Persons who meet UNRWA's Palestine Refugee criteria.

These are persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services. The Agency accepts new applications from persons who wish to be registered as Palestine Refugees.

### 3.1.2. "Jerusalem poor", "Gaza poor" and other persons in need, "frontier villages", and others

Before UNRWA was established in 1949, several organizations were addressing the needs of persons affected by the Israeli–Arab conflict, including the UN Relief for Palestine Refugees (UNRPR), which provided relief to Palestine refugees.<sup>25</sup> UNRWA took over from UNRPR and inherited rolls of relief recipients from its predecessor; the rolls included persons who did not fulfil the criteria of

<sup>22</sup> See, for example, references to "Palestine refugees" in UNGA res. 63/93, 5 Dec. 2008 (Operations of [UNRWA]): Compare: "significant negative impact on the provision of necessary Agency services to the Palestine refugees, including its emergency-related and development programmes" (preambular para. 5); "Aware of the continuing needs of the Palestine refugees throughout the Occupied Palestinian Territory and in the other fields of operation"; (preambular para. 9); "Gravely concerned about the extremely difficult living conditions being faced by the Palestine refugees" (preambular para. 10) "Aware of the valuable work done by the Agency in providing protection to the Palestinian people, in particular Palestine refugees" (preambular para. 13); "Expressing deep concern about the gravely negative impact of the continuing closures... on the socio-economic situation of the Palestine refugees" (preambular para. 17) "grants and scholarships for higher education to Palestine refugees... the establishment of vocational training centres for Palestine refugees" (operative para. 18) "the Agency's valuable and necessary work in assisting the Palestine refugees in all fields of operation" (operative para. 19).

<sup>23</sup> The Secretary-General (Dag Hammarskjöld) recalled in a report in 1959 "that UNRWA's working definition of a person eligible for its services... is not contained in any resolution of the General Assembly but has been stated in Annual Reports of the Director and tacitly approved by the Assembly." See: UN Doc. A/4121, 15 Jun. 1959, paras. 4–8.

<sup>24</sup> On the development of the definition of a Palestine refugee, see: L. Takkenberg, *The Status of Palestinian Refugees in International Law*, Oxford, Clarendon Press, 1998, 68–83.

<sup>25</sup> *Ibid.*, 23–4.

a “Palestine refugee” outlined above. As UNRWA’s Commissioner-General (then Director) stated in his annual report to the General Assembly in 1961:

The Agency’s definition of a refugee eligible for assistance is narrowly drawn and stipulates the loss of both home and means of livelihood as a result of the 1948 hostilities. Substantial numbers of Palestine Arabs do not qualify for Agency relief on the technical grounds that they did not lose both home and means of livelihood, i.e. they may have lost their source of income and may be wholly destitute, but did not lose their home. This category has become known as “economic refugees” and includes frontier villagers in Jordan, some destitute inhabitants of Jerusalem and the Gaza Strip, and certain Bedouin expelled after 1948. The General Assembly has more than once confirmed that, despite the undoubted need of these unfortunate people, the Agency’s mandate does not extend to them and that Agency relief should not be given to new claimants within these classes. While thus the extent of error known to exist in the Agency’s registration records is substantial, there are counter-balancing features which lead to the conclusion that basically the volume of the relief dispensed by the Agency may not be excessive in relation to the number of persons still in need as a result of the 1948 conflict.<sup>26</sup>

The present Agency position is that, while registered for the purposes of receiving UNRWA services, these persons are not counted as part of the official registered Palestine refugee population. Except for descendants through the male line, UNRWA does not accept new applications from persons wishing to be registered in these categories.<sup>27</sup>

Aware of the issue of these “other claimants” and other problems with the ration rolls, until 1970 the General Assembly routinely directed the Commissioner-General “to take such measures, including rectification of the relief rolls – a problem which has been and continues to be of major concern to the General Assembly – as to assure, in co-operation with the Governments concerned, the most equitable distribution of relief based on need”.<sup>28</sup> As L. Takkenberg has summed up:

several attempts were made by UNRWA to cancel their registration and have the governments concerned – Egypt and Jordan – take care of them. These attempts, however, generally failed due to lack of cooperation by the host governments as well as by the registered persons themselves.

<sup>26</sup> UNRWA, “Annual Report of the Director of [UNRWA], 1 July 1960–30 June 1961”, UN Doc. A/4861, para. 42. The General Assembly noted the report in UNGA res. 1725 (XVI), 20 Dec. 1961. For a summary of earlier discussion of the issue, see Annual Report of the Director of [UNRWA], 1 July 1958–30 June 1959, UN Doc. A/4213, paras. 29–33.

<sup>27</sup> UNRWA, “UNRWA Consolidated Eligibility and Registration Instructions”, October 2009, Part III.A.2. Categories include “Jerusalem Poor”, “Gaza Poor”, “Frontier Villagers,” and “Compromise cases.” As to these “other claimants”, see: Takkenberg, *op. cit.*, fn. 24, 70–6; and B. Schiff, *Refugees unto the Third Generation: UN Aid to Palestinians*, New York, Syracuse University Press, 1995, 24.

<sup>28</sup> See UNGA res. 2052 (XX), 15 Dec. 1965, para. 6; UNGA res. 2672 (XXV), 8 Dec. 1970, Part A, para. 3.

As a result, most of them continue to be registered with UNRWA to this day.<sup>29</sup>

### 3.1.3. *Persons displaced by the 1967 and subsequent hostilities*

The Six-Day War from 5 to 10 June 1967 radically changed the region's geopolitics. It resulted in Israel's occupation of the West Bank, the Gaza Strip, the Golan Heights, and the Sinai Peninsula. In the immediate aftermath it was reported that over 300,000 persons, including some 120,000 registered Palestine refugees, had been rendered homeless or left their homes as a result of the hostilities.<sup>30</sup> The Agency acted immediately:

Shortly after the outbreak of the conflict the Commissioner-General authorized his staff to distribute certain supplies, on an emergency basis and subject, where appropriate, to reimbursement to persons in need not registered with UNRWA, and to institutions.<sup>31</sup>

The Commissioner-General's decision was reported to the General Assembly on 19 June 1967,<sup>32</sup> and on 4 July 1967 the General Assembly:

Commend[ed] the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East for his efforts to continue the activities of the Agency in the present situation with respect to all persons coming within his mandate;  
Endorse[d], bearing in mind the objectives of the above-mentioned Security Council resolution, the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities.<sup>33</sup>

Since 1967 the General Assembly has restated UNRWA's mandate for the "1967 displaced" in much the same terms. In 1982, following displacements after Israel's invasion of Lebanon on 6 June 1982, the General Assembly

<sup>29</sup> Takkenberg, *op. cit.*, fn. 24, 71.

<sup>30</sup> UNRWA, "Report of the Commissioner-General of [UNRWA], 1 July 1966–30 June 1967", UN Doc. A/6713, para. 1. Precise figures for either "1967 displaced" or returnees are not known and UNRWA does not register them as such: compare Report of the Secretary-General, Persons displaced as a result of the June 1967 and subsequent hostilities, UN Doc. A/63/315, 20 Aug. 2008, para. 4. As at 2003 the Government of Jordan estimated the number of "1967 displaced" in Jordan to be some 195,000.

<sup>31</sup> UNRWA, "Report of the Commissioner-General of [UNRWA], 1 July 1966–30 June 1967", UN Doc. A/6713, para. 25.

<sup>32</sup> "Note by the Secretary-General submitting a report of the Commissioner-General of UNRWA", UN Doc. A/6723, 19 Jun. 1967, para. 6.

<sup>33</sup> UNGA res. 2252 (ES-V), 4 Jul. 1967, paras. 5 and 6.

expanded the scope of UNRWA's mandate to persons displaced by "subsequent hostilities".<sup>34</sup> In 2006, UNRWA provided emergency assistance to persons displaced by the hostilities in Lebanon and the Gaza Strip, many of who were not Palestine refugees (in Lebanon many were Lebanese). After the event, the General Assembly specifically included these classes of displaced persons within UNRWA's mandate. As at 2008, UNRWA's mandate to assist persons displaced by the "1967 and subsequent hostilities" was set out in two General Assembly resolutions.<sup>35</sup>

### 3.1.4. *Other beneficiaries*

From time to time UNRWA's mandate has extended to a wide range of persons. Notably, from 1993 to 2002 the Agency had a mandate, in close cooperation with the Office of the UN Special Coordinator for the Middle East Peace Process (UNSCO) and specialized UN agencies including the World Bank, to contribute to the development of economic and social stability in the occupied Palestinian territory (OPT). During this period UNRWA's mandate in the OPT extended beyond Palestine refugees and 1967 displaced.

UNRWA's mandate to provide services has recently extended to the family members of registered refugee women married to non-refugee husbands.<sup>36</sup> This extension is consistent with the General Assembly's encouragement to make further progress in considering the needs and rights of women and children in its operations. The Agency's approved budget has also referred to the extension.

### 3.2. *Where is UNRWA mandated to act?*

As indicated by the Agency's full name, UNRWA's five fields of operation are in the "Near East": in Jordan, Lebanon, the Syrian Arab Republic, West Bank, and the Gaza Strip. General Assembly resolutions routinely state that UNRWA's operations in these areas remains "essential".<sup>37</sup> UNRWA operated within Israel until 1952. Although some Palestine refugees went to Egypt as a result of the 1948 conflict, owing to insufficient resources, UNRWA did not extend its services to them.<sup>38</sup>

<sup>34</sup> See UNRWA, "Report of the Commissioner-General of [UNRWA], 1 July 1981–30 June 1982", UN Doc. A/37/13, paras. 1–3; UNGA res. 37/120, Part B, para. 2.

<sup>35</sup> UNGA res. 63/92, 5 Dec. 2008 (Persons displaced as a result of the June 1967 and subsequent hostilities), para. 3; UNGA res. 63/93, 5 Dec. 2008 (Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East), para. 7 (referring specifically to persons displaced in the OPT and Lebanon).

<sup>36</sup> See, UNRWA Consolidated Eligibility and Registration Instructions, June 2006, *op. cit.*, fn. 27.

<sup>37</sup> UNGA res. 63/93, 5 Dec. 2008, para. 1.

<sup>38</sup> UNRWA, "Special Report of the Director concerning other claimants for relief", UN Doc. A/2978/Add.1, 15 Oct. 1955, paras. 50–60. The Commissioner-General has stated that the General Assembly did not regard UNRWA as the appropriate vehicle for assistance to this group: see *Annual Report of the Director of [UNRWA]*, 1 July 1958–30 June 1959, UN Doc. A/4213, paras. 30–31. The Agency has, however, long maintained a small office in Cairo for the purpose of liaison with the Egyptian authorities. In its first years of operation the Agency also had liaison officers in Iraq and Libya: UNRWA, *Report of the Director of [UNRWA]*, UN Doc. A/1905, 28 Sep. 1951, para. 90.

Unlike UN missions or agencies established under a Chapter VII decision of the Security Council, UNRWA relies on the host governments' continued consent, which is regularly expressed.<sup>39</sup> In 1967, Israel requested UNRWA to continue its operations in the West Bank and Gaza Strip and routinely states its support for the Agency's humanitarian mission.<sup>40</sup>

General Assembly resolutions do not explicitly exclude UNRWA from operating in other areas. Questions about the geographical limits of UNRWA's mandate rarely arise in practice because UNRWA almost invariably provides its services only in its five fields of operation. There have been exceptions. First, UNRWA has cooperated closely over the last few years with UNHCR – as well as the Jordanian and Syrian governments – to assist Palestinians situated along the Iraqi borders with Syria and Jordan.<sup>41</sup> Secondly, in 1992 the UN Compensation Commission (UNCC) requested UNRWA to submit claims on behalf of Palestinians in Egypt (as well as Lebanon, Syria, and Jordan) and UNRWA agreed.<sup>42</sup> Thirdly, UNRWA also responds to requests from individuals (or their authorized representatives) outside the Agency's fields of operation to verify their registration as Palestine refugees.<sup>43</sup>

### *3.3. To which activities does UNRWA's mandate extend?*

UNRWA's contemporary mandate from the General Assembly includes a wide range of specific activities as well as activities for specified purposes. After outlining specific activities, this section discusses in some detail the Agency's mandate to engage in activities related to particular purposes, notably human development and protection and, lastly, considers the extent to which UNRWA has a mandate to participate in solutions to the Palestine refugee question.

In 2000, the Secretary-General described UNRWA's mandate rather sparsely as follows:

Under its mandate, as set out in paragraph 7 of resolution 302 (IV), the scope of the Agency's activities is mainly humanitarian in nature, and

<sup>39</sup> For example, the Agency's host States invariably vote in favour of General Assembly resolutions renewing the Agency's mandate. Note also Art. 2(5) of the UN Charter, which provides "All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter..."

<sup>40</sup> See: Comay–Michelmores exchange of letters constituting a provisional agreement between UNRWA and Israel concerning assistance to Palestine refugees, 14 June 1967, *UN Juridical Yearbook*, 1968, 47–49; Note verbale of 7 Aug. 2008 to the Secretary-General from the Permanent Representative of Israel to the UN, set out in UN Doc. A/63/315, 20 Aug. 2008, para. 3.

<sup>41</sup> See: UNRWA, "Report of the Commissioner-General of (UNRWA), 1 January–31 December 2005", UN Doc. A/61/13, para. 18.

<sup>42</sup> The UNCC requested the UN Development Programme (UNDP) to submit claims on behalf of Palestinians in the OPT and Kuwait. The UNCC's invitation followed UNCC Governing Council decision 5 (1991) that "(t)he international community, represented by the UNCC, bears the overall responsibility for protecting the interests of" "individuals... most likely not... in a position to have their claims submitted by a Government [notably] individual Palestinians": UN Doc. S/AC.26/1991/5, 23 Oct. 1991, paras. 3–5.

<sup>43</sup> Verification of registration of an individual as a Palestine refugee has implications for the responsibility of UNHCR: see UNHCR, "Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees", October 2009.

includes a development component carried out through its three main programmes, namely, education, health and relief and social services. In subsequent years the Agency's mandate has been expanded by the Assembly, which has added other activities to its traditional programmes. Certain development activities were added. In this context, paragraph 5 of Assembly resolution 48/40 A of 10 December 1993 called upon the Agency "to make a decisive contribution towards giving a fresh impetus to the economic and social stability of the occupied territories".<sup>44</sup>

### 3.3.1. *Specific activities*

UNRWA's mandate to engage in specific activities such as education, health and relief and social services, microfinance, infrastructure and camp improvement, and emergency assistance including food aid is apparent from both the annual General Assembly resolutions concerning UNRWA and the General Assembly's approval of UNRWA's budgets.

The General Assembly routinely acknowledges the "essential role that (UNRWA) has played... since its establishment in ameliorating the plight of the Palestine refugees through its provision of education, health, relief and social services, and emergency assistance".<sup>45</sup> The General Assembly also routinely "Notes the success of the Agency's microfinance and microenterprise programmes".<sup>46</sup>

UNRWA's Programme Budget for 2008–09 relates to activities of all Agency programmes – education, health, relief and social services, microfinance and microenterprise, and infrastructure and camp improvement – and support departments. The General Assembly's approval of the budget specifically mandates all the Agency's activities referred to in the budget. By reference to the approved budget document, the Agency's mandate can be seen to extend to a variety of specific activities, including:

- to provide basic subsistence support to family members of registered refugee women married to non-refugee husbands
- to mobilize large-scale emergency disaster responses (particularly food aid and cash assistance) as needed, in cooperation with other Agency programmes and local/international efforts
- to "improve the quality of life for camp residents living in substandard habitat by means of integrated social and physical action which promotes environmentally and socially sustainable neighbourhoods in accordance with strategic camp development plans"

<sup>44</sup> Secretary-General's Bulletin, "Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East", UN Doc. ST/SGB/2000/6, 17 Feb. 2000, note 1.

<sup>45</sup> See, for example, UNGA res. 63/91, 5 Dec. 2008 ("Assistance to Palestine refugees"), preambular para. 6. The resolution establishing UNRWA specifically referred to "direct relief": UNGA res. 302(IV), 8 Dec. 1949, para. 7(a). There are other references to UNRWA's emergency assistance in the most recent GA resolutions, for example, UNGA res. 63/91 of 5 Dec. 2008, para. 4, and UNGA res. 63/93, 5 Dec. 2008, preambular paras. 5, 11, and 18.

<sup>46</sup> See, for example, UNGA res. 63/93 of 5 Dec. 2008, para. 17; UNGA res. 56/56 of 10 Dec. 2001, para. 13.

- to “improve environmental health conditions in refugee camps by ensuring safe-water supply (and) solid waste management”
- to “foster and promote amongst teaching staff and students the awareness and understanding of human rights, conflict resolution, and tolerance”
- to engage in “indirect credit provision through community-based lending (via Community-Based Organizations)”
- “provision of credit for enterprise, household consumption, and housing needs that will (amongst other things) . . . provide income-generating opportunities for Palestine refugees and other proximate poor and marginal groups”
- to “open up the prospect of savings to poor refugees and other marginal groups that do not have access to the banking sector because they are unable to meet the minimum deposit requirements”
- to meet “all the direct costs of (business development) training . . . from participation fees and only the overhead and administrative costs are subsidised from donor contributions”.<sup>47</sup>

The detail in the Agency’s approved budget is particularly useful to address several questions, which arise in practice about the extent of the Agency’s mandate.

Another important specific activity was the Agency’s Peace Implementation Programme (PIP), which was initiated following the signing in September 1993 of the Declaration of Principles on Interim Self-Government Arrangements by Israel and the Palestine Liberation Organization. After noting the Commissioner-General’s hope that his report for the year ended 30 June 1993 “covers an era which is gone forever”, the General Assembly noted that the new context created by the 1993 Declaration would “have major consequences for the activities of the Agency”. The General Assembly therefore “called upon [the Agency], within the framework of strengthened cooperation with the specialized agencies and the World Bank, to make a decisive contribution towards giving a fresh impetus to the economic and social stability of the occupied territories”.<sup>48</sup>

The Commissioner-General’s report for the year ended 30 June 1994 referred to the development and content of the Agency’s PIP:

[Immediately after the signing of the 1993 Declaration] UNRWA carried out consultations with the PLO leadership in Tunis and with the Agency’s major donors to reach a common understanding of the Agency’s role during the initial critical period of the transition. On 6 October 1993, at a meeting of its Advisory Commission, the Agency formally launched the Peace Implementation Programme (PIP). From the beginning of the peace process, UNRWA had frequently stated that during the interim period it would strive to meet Palestinian requests for assistance and priorities, to the extent

<sup>47</sup> See UNRWA, “Report of the Commissioner-General of (UNRWA), Programme Budget, 2008–2009”, UN Doc. 62/13/Add.1, paras. 72, 79, 90, 67, 58, 75, 82, 87, and 86, respectively.

<sup>48</sup> UNGA res. 48/40, 10 Dec. 1993, Part A, preambular para. 2, operative para. 5.

that the international donor community provided financial backing. That policy was embodied in PIP... [which] would contribute to stabilizing socio-economic conditions, especially in the Gaza Strip where the situation was particularly volatile and critical... [UNRWA's response] included encouraging a greater degree of self-reliance among refugees, increasing income-generation opportunities to help alleviate poverty, expanding beneficiary participation in developing and implementing programmes, supporting the private sector through the revolving loan fund and training for Palestinian businesses, and initiating an extensive process of comprehensive planning and then construction of environmental infrastructure in the Gaza Strip.<sup>49</sup>

After taking note of the report, the General Assembly noted "the significant success of the peace implementation programme of the Agency", thus confirming the Agency's mandate to engage in the PIP's activities.<sup>50</sup>

### 3.3.2. *Human development*

UNRWA has a clear mandate to engage in human development, as defined by the UN Development Programme:

Human development is a process of enlarging people's choices. In principle, these choices can be infinite and change over time. But at all levels of development, the three essential ones are for people to lead a long and healthy life, to acquire knowledge and to have access to resources needed for a decent standard of living. If these essential choices are not available, many other opportunities remain inaccessible. But human development does not end there. Additional choices, highly valued by many people, range from political, economic and social freedom to opportunities for being creative and productive, and enjoying personal self-respect and guaranteed human rights. Human development has two sides: the formation of human capabilities – such as improved health, knowledge and skills – and the use people make of their acquired abilities – for leisure, productive purposes or being active in cultural, social and political affairs. If the scales of human development do not finely balance the two sides, considerable human frustration may result. According to this concept of human development, income is clearly only one option that people would like to have albeit an important one. But it is not the sum total of their lives.

<sup>49</sup> UNRWA, "Report of the Commissioner-General of [UNRWA], 1 July 1993–30 June 1994", UN Doc. A/49/13, para. 5. The annual report also noted "The Agency provided urgently needed assistance to the Palestinian Authority and its emerging structures." (para. 11)

<sup>50</sup> UNGA res. 49/35, 9 Dec. 1994, Part A, para. 5, Part E, para. 10.

Development must therefore be more than just the expansion of income and wealth; its focus must be people.<sup>51</sup>

Since 2007, the General Assembly has explicitly recognized UNRWA's human development role by affirming the importance of UNRWA's "provision of services for the well-being and human development of the Palestine refugees".<sup>52</sup>

The General Assembly need not have specifically stated that UNRWA had a human development role since its long-standing programmes for health, education and relief, and social services have always promoted the "three essential capabilities for human development" outlined above. The Secretary-General acknowledged as much when, in 2000, he stated:

Under its mandate, as set out in paragraph 7 of resolution 302 (IV), the scope of the Agency's activities... includes a development component carried out through its three main programmes, namely, education, health and relief and social services.<sup>53</sup>

An important part of the Agency's development mandate is its long-standing role "in close cooperation with the relevant agencies, to continue to contribute to the development of the economic and social stability of the Palestine refugees in all fields of operation".<sup>54</sup> In evolving terms, the General Assembly has called on the Agency to undertake this role annually since 1993.<sup>55</sup> The reference to "all fields of operation" was introduced in 2004,<sup>56</sup> and in 2002 the specific reference to "Palestine refugees" replaced a geographical reference to "economic and social stability *in the occupied territory*" (emphasis added).<sup>57</sup>

<sup>51</sup> See UNDP, "Human Development Report (1990)", 10, available at: [http://hdr.undp.org/en/media/hdr\\_1990\\_en\\_chap1.pdf](http://hdr.undp.org/en/media/hdr_1990_en_chap1.pdf) (last visited 1 Apr. 2009). UNRWA has made operational this definition; the Agency's Programme Budget for 2008–09 states that "Palestine refugees should (a) Have long and healthy lives; (b) Acquire appropriate knowledge and skills; (c) Enjoy a decent standard of living; and (d) Enjoy human rights to the fullest extent possible": UNRWA, "Report of the Commissioner-General of (UNRWA), Programme Budget, 2008–2009", UN Doc. 62/13/Add.1, para. 2; UNRWA, "Interim Programme Strategy 2008–2009", Section 2.2, "Human Development – the Conceptual Framework: Definition and Applicability", available at: [www.un.org/unrwa/organization/od/InterimProgStrategy08-09.pdf](http://www.un.org/unrwa/organization/od/InterimProgStrategy08-09.pdf) (last visited 29 Mar. 2009). This operational definition of human development underpins the Agency's current overall strategy and programme management.

<sup>52</sup> UNGA res. 63/91, 5 Dec. 2008, para. 3; UNGA res. 62/102 of 17 Dec. 2007, para. 3.

<sup>53</sup> Secretary-General's Bulletin, "Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East", UN Doc. ST/SGB/2000/6, 17 Feb. 2000, note 1.

<sup>54</sup> See, most recently, UNGA res. 63/93, 5 Dec. 2008, para. 17. The "relevant agencies" referred to in the resolution are "the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority [UNSCO], the specialized agencies and the World Bank." The initial reference to this part of the mandate, in UNGA res. 48/40, 10 Dec. 1993, Part A, para. 5, referred only to "the specialized agencies and the World Bank." The reference to UNSCO was added in 1994, after the Coordinator's appointment: see: UNGA res. 49/35, 9 Dec. 1994, Part E, para. 8.

<sup>55</sup> Note that the Agency's early mandate with respect to "reintegration" of Palestine refugees also promoted their economic and social stability.

<sup>56</sup> UNGA res. 59/119, 10 Dec. 2004, para. 15.

<sup>57</sup> Compare UNGA res. 57/121, 11 Dec. 2002, para. 12 and UNGA res. 56/56, 10 Dec. 2001, para. 11.

### 3.3.3. Protection

UNRWA has a very clear mandate for protection within the meaning of that term as adopted by the Inter-Agency Standing Committee (IASC), which defines protection as referring to “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (that is, human rights law, international humanitarian law, refugee law).”<sup>58</sup> This section identifies the basis of the Agency’s protection mandate in the most recent General Assembly resolutions and then discusses its historical development. Unlike UNHCR, UNRWA has not had a statute with an express reference to “protection”.<sup>59</sup>

The Agency’s protection mandate is shown clearly in the General Assembly’s latest resolution concerning the operations of UNRWA, resolution 63/93 of 5 December 2008.

First, the General Assembly restated that it was “*Aware of the valuable work done by the Agency in providing protection to the Palestinian people, in particular, Palestine refugees*”.<sup>60</sup> The General Assembly had expressed its awareness in the same terms in 2007.<sup>61</sup>

Secondly, the General Assembly reconfirmed the Agency’s protection mandate in respect of children and women when it encouraged:

the Agency, in close cooperation with other relevant United Nations entities, to continue making progress in addressing the needs and rights of children and women in its operations in accordance with the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, respectively.<sup>62</sup>

<sup>58</sup> IASC, *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action*, 2002, 11. This definition of protection was developed over several years in the late 1990s through workshops led by the International Red Cross (ICRC) and is currently the most broadly accepted definition of protection within the international humanitarian community. The IASC brings together a broad range of UN and non-UN humanitarian partners including UN humanitarian agencies (the Food and Agriculture Organization [FAO], the Office for the Coordination of Humanitarian Affairs [OCHA], the UN Children’s Fund [UNICEF], UNDP, UNHCR, the World Food Programme [WFP], WHO), the Red Cross movement represented by ICRC and the International Federation of the Red Cross and Red Crescent (IFRC), the International Organization for Migration (IOM), and three consortia of major international non-governmental organizations (NGOs). The primary role of the IASC is to formulate humanitarian policy to ensure coordinated and effective humanitarian response to both complex emergencies and natural disasters.

<sup>59</sup> See: UNHCR, “Statute of the Office of the High Commissioner for Refugees”, UNGA res. 428, 14 Dec. 1950, Annex, Art. 1: “The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing *international protection*, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute . . .” (emphasis added).

<sup>60</sup> UNGA res. 63/93, 5 Dec. 2008, preambular para. 13.

<sup>61</sup> UNGA res. 62/104, 17 Dec. 2007, preambular para. 12.

<sup>62</sup> UNGA res. 63/93, 5 Dec. 2008, para. 9.

General Assembly resolutions had encouraged the Agency to address the needs and rights of children and women in its operations since 2004 and 2007, respectively.<sup>63</sup>

Thirdly, the General Assembly “considered” the Commissioner-General’s annual report for the calendar year 2007,<sup>64</sup> and thus approved the statement in her report that “UNRWA is a global advocate for the protection and care of Palestine refugees”.<sup>65</sup> As in previous years, the Commissioner-General’s 2007 annual report contained other references to protection. Notably, the report stated: “The Operations Support Officer programme... in both the West Bank and the Gaza Strip... played an invaluable role... in providing a measure of protection to refugees, including the displaced.”<sup>66</sup>

When, in 2007, the General Assembly approved the establishment of an additional senior post (P-5) for a Senior Protection Policy Adviser for UNRWA to be funded through the regular budget of the UN, it further confirmed in a concrete way the importance and continuing nature of the Agency’s protection mandate.<sup>67</sup>

The Agency’s protection mandate is not recent. Indeed, considering that the IASC definition of protection extends to activities aimed at obtaining full respect for the individual’s economic and social rights, the Agency’s long-standing mandate to provide education, health, and relief services can be seen as having had a protection aspect since the beginning.

The General Assembly’s first explicit reference to “protection” and a role for UNRWA in the same resolution was in 1982, when, under the heading “Protection of Palestine refugees”, the General Assembly urged:

The Secretary-General, in consultation with [UNRWA], and pending the withdrawal of Israeli forces from the Palestinian and other Arab territories

<sup>63</sup> See UNGA res. 59/119, 10 Dec. 2004, para. 7 (“Encourages the Agency’s further consideration of the needs and rights of children in its operations in accordance with the Convention on the Rights of the Child”); and UNGA res. 62/104, 17 Dec. 2007, para. 8 (“Encourages the Agency to also make further progress in addressing the needs and rights of women in accordance with the Convention on the Elimination of All Forms of Discrimination against Women”).

<sup>64</sup> UNGA res. 63/93, 5 Dec. 2008, preambular para. 3. The General Assembly also took note of the same report in UNGA res. 63/91, 5 Dec. 2008, preambular para. 7.

<sup>65</sup> UNRWA, “Report of the Commissioner-General of [UNRWA]”, 1 Jan.–31 Dec. 2007, UN Doc. A/63/13, para. 4. The statement had also been made in the previous year’s report: Report of the Commissioner-General of [UNRWA], 1 Jan.–31 Dec. 2006, UN Doc. A/62/13, para. 4. As to the legal effect of the General Assembly’s consideration of the Commissioner-General’s annual report to it, see note 23.

<sup>66</sup> UNRWA, “Report of the Commissioner-General of (UNRWA), 1 Jan.–31 Dec. 2007”, UN Doc. A/63/13, para. 60. For similar statements in earlier reports, see UN Doc. A/62/13, para. 51; UN Doc. A/61/13, para. 53; See also UNRWA, Report of the Commissioner-General of (UNRWA), 1 Jan.–31 Dec. 2005, UN Doc. A/61/13, para. 29 (“the Agency has committed to developing an operationally oriented policy framework for addressing the protection needs of Palestine refugees and other UNRWA beneficiaries. In November 2005, a senior protection policy adviser was appointed.”).

<sup>67</sup> UNGA res. 62/236, 22 Dec. 2007, para. 109. UNRWA has made operational the concept of protection for its purposes: see N. Morris, “What protection means for UNRWA in concept and practice”, 31 Mar. 2008, paras. 3.1 to 3.5, available at: [www.un.org/unrwa/publications/pubs08/ProtectionReport\\_mar08.pdf](http://www.un.org/unrwa/publications/pubs08/ProtectionReport_mar08.pdf) (last visited 29 Mar. 2009).

occupied by Israel since 1967, including Jerusalem, to undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestinian refugees in the occupied territories.<sup>68</sup>

Under the same heading, “Protection of Palestine refugees”, from 1983–89 the General Assembly urged, and then welcomed, the Commissioner-General’s remedial protective action “to provide housing, in consultation with the Government of Lebanon, to the Palestine refugees whose houses were demolished or razed by the Israeli forces”.<sup>69</sup>

Over time, the General Assembly subtly strengthened the role of UNRWA in relation to measures to uphold the “legal and human rights” of Palestine refugees. In 1988, the General Assembly urged the Secretary-General, in consultation with UNRWA’s Commissioner-General to “continue *their efforts* in support of the upholding of... the legal and human rights of the Palestine refugees in all the territories under Israeli occupation in 1967 and thereafter” (emphasis added).<sup>70</sup> While the General Assembly appeared to downplay somewhat UNRWA’s role in 1989 and 1990,<sup>71</sup> from 1991 it returned to a reference to the efforts of both the Secretary-General and UNRWA’s Commissioner-General by urging:

the Secretary-General and the Commissioner-General of [UNRWA] to continue their efforts in support of the upholding of the safety and security and the legal and human rights of the Palestine refugees in all the territories under Israeli occupation since 1967.<sup>72</sup>

In a 1988 report requested by the Security Council pursuant to resolution 605 (1987), the Secretary-General recognized that, as far as registered Palestine refugees are concerned, “UNRWA has the leading role and provides a wide variety of assistance and protection” described in the report as protection in the form

<sup>68</sup> UNGA res. 37/120, 16 Dec. 1982, Part (J), para. 1.

<sup>69</sup> See, for example, UNGA res. 38/83, 15 Dec. 1983, Part (I), para. 6 (“6. Urges the Commissioner-General to provide housing, in consultation with the Government of Lebanon, to the Palestine refugees whose houses were demolished or razed by the Israeli forces”); UNGA res. 44/47, 8 Dec. 1989, Part (I), para. 6 (“6. Welcomes the provision by the Commissioner-General, in consultation with the Government of Lebanon, to provide housing to the Palestine refugees whose houses were demolished or razed”).

<sup>70</sup> UNGA res. 43/47, 6 Dec. 1988, Part (I), para. 4.

<sup>71</sup> UNGA res. 44/47, 8 Dec. 1989, Part (I), para. 4: “Urges the Secretary-General, in consultation with the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to continue *his efforts* in support of the upholding of the safety and security and the legal and human rights of the Palestine refugees in all the territories under Israeli occupation in 1967 and thereafter” (emphasis added). UNGA res. 45/73, 11 Dec. 1990, Part (I), para. 4, was in identical terms.

<sup>72</sup> See UNGA res. 49/35 (A–G), 9 Dec. 1994, Part E; and UNGA res. 61/114, 14 Dec. 2006. Contrast UNGA res. 48/40 (A–J), 10 Dec. 1993.

of “general assistance”.<sup>73</sup> The Secretary-General also requested the Agency’s Commissioner-General “to examine the addition to UNRWA establishment (*sic*) in the occupied territories of extra international staff... to improve the general assistance provided to the refugee population”.<sup>74</sup> This request can be seen as part of the mandate underlying the Agency’s establishment of the refugee affairs officer programme.<sup>75</sup> Although the Security Council did not formally note the report, the General Assembly did.<sup>76</sup>

From 1994 to 2006, the General Assembly confirmed annually that the Agency had provided “protection to the Palestinian people, in particular Palestine refugees” through its refugee affairs officers, who operated in the West Bank and Gaza Strip from 1988 to about 1994 and 1996, respectively, and were the predecessors of the current Operations Support Officer programme.<sup>77</sup>

The Commissioner-General confirmed the Agency’s protection mandate in a letter to the Secretary-General of 28 November 2005, submitted as part of the mandate review following the General Assembly’s Millennium Outcome, which also “call[ed] upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates”.<sup>78</sup>

### 3.3.4. Durable solutions for Palestine refugees

The Agency’s protection mandate provides a firm basis for at least limited interventions relevant to durable solutions for Palestine refugees.<sup>79</sup> The IASC’s

<sup>73</sup> “Report submitted to the Security Council by the Secretary-General in accordance with Security Council resolution 605 (1987)”, UN Doc. S/19443, 21 Jan. 1988, para. 37. The report is referred to by some commentators as the “Goulding report”, after the USG for Special Political Affairs who conducted the mission for the Secretary-General. The Security Council had requested the Secretary-General to recommend “ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation”: UNSC res. 605 (1987), 22 Dec. 1987, para. 6. The report defined protection for its purposes as encompassing physical protection, legal protection, protection in the form of general assistance and protection by publicity. “General assistance” was where “an outside agency intervenes with the authorities of the occupying Power to help individuals or groups of individuals to resist violations of their rights (for example, land confiscations) and to cope with day-to-day difficulties of life under occupation, such as security restrictions, curfews, harassment, bureaucratic difficulties and so on”: *Ibid.*, para. 28. The definition now used is that of the IASC (see above).

<sup>74</sup> *Ibid.*, para. 39.

<sup>75</sup> See: UNRWA, “Annual report of the Commissioner-General of [UNRWA], 1 July 1987–30 June 1988”, UN Doc. A/43/13, para. 55.

<sup>76</sup> See, for example, UNGA res. 43/57, 6 Dec. 1988, Part I “Protection of Palestine refugees”, preambular para. 4. After the report was submitted to the Security Council a draft resolution, which included consideration of the report, was vetoed: see UN Doc. S/19466, 29 Jan. 1988. (A subsequent draft resolution recalling the report was also vetoed: see UN Doc. S/19780, 14 Apr. 1988.) Thereafter, the General Assembly urged the Security Council “to consider the current situation in the occupied Palestinian territory, taking into account the recommendations contained in the report of the Secretary-General” of 21 Jan. 1988: see, for example, UNGA res. 43/57, 6 Dec. 1988, Part I, para. 3.

<sup>77</sup> For further details of the refugee affairs officer programme, see Takkenberg, *op. cit.*, fn. 24.

<sup>78</sup> UNGA res. 60/1, 16 Sep. 2005, para. 119. The UN Mandate Registry refers to elements of the Agency’s protection mandate: see, for example, mandate ID 12640, shown as a recurrent and current mandate: see <http://webapps01.un.org/mandatereview/searchStart.do>.

<sup>79</sup> An element of human development in UNRWA’s context is for Palestine refugees to “Enjoy human rights to the fullest extent possible” (see above).

above mentioned definition of protection, which refers to “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of . . . human rights law, international humanitarian law [and] refugee law”, should be recalled in this context. Nicholas Morris, a consultant to UNRWA, considers that one component of protection for the purposes of UNRWA:

concerns the right of Palestinians to a just and durable solution to their plight. Achieving this is the responsibility of political actors: UNRWA’s role is to highlight the urgent need for that solution and to help ensure that in its elaboration the rights and interests of the refugees are safeguarded, with particular reference to those areas where UNRWA’s long experience with and knowledge of the refugees are relevant.<sup>80</sup>

The Commissioner-General has on several occasions made public statements in accordance with this part of the Agency’s mandate. For example, on World Refugee Day in June 2008, the Commissioner-General stated that the actions to address the continuing plight of the Palestine refugees could include:

Foster[ing] a climate of inclusion in the international community’s engagement with Palestinian issues. Past experience demonstrates that a prerequisite for the success of any peace process is a sense of ownership among those whose lives and future are at stake.

Finally, let Palestine refugees be heard. Grant them the dignity of acknowledgement. The demographic weight of Palestine refugees globally, the unprecedented duration of their dispossession and the imperative to offer the ultimate protection of a just and durable solution are three compelling reasons why refugees must be given a say in determining the future of Palestine.<sup>81</sup>

Furthermore, in her statement to the Security Council on 27 January 2009, the Commissioner-General said:

There are challenges, however, that go well beyond the humanitarian realm. They lie in the province of political action. For this reason, it is on this Council and its esteemed members that part of the burden of restoring normalcy to Gaza rests. This burden is a heavy one, but it is far from insurmountable if we act in concert in the following well-known areas: Negotiations to end the occupation and peacefully resolve the Israeli–Palestinian conflict are now more vital than ever;

<sup>80</sup> N. Morris, “What protection means for UNRWA in concept and practice”, *op. cit.*, para. 3.2. N. Morris was engaged by the Agency to “help develop an understanding of what protection means for UNRWA in its unique operational context and of how it can best become a part of the Agency’s daily work”: *Ibid.*, para. 1.1. See also N. Morris contribution in this volume.

<sup>81</sup> K. AbuZayd, “Exile, Exclusion and Isolation: the Palestine Refugee Experience”, *Op. Ed. To Mark World Refugee Day: 20 June 2008*, available at: [www.un.org/unrwa/news/statements/2008/WRD\\_20jun08.html](http://www.un.org/unrwa/news/statements/2008/WRD_20jun08.html) (last visited 5 Apr. 2009).

Negotiations that are inclusive and balanced, that allow for refugee representation, and address, along with other final status matters, the question of Palestine refugees in a manner consistent with their rights.<sup>82</sup>

More formally, the Agency has a mandate to consult with relevant governments about transitional arrangements in case of a durable solution. This part of the mandate is derived from a broader mandate existing since the Agency's establishment:

To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available.<sup>83</sup>

UNRWA nevertheless does not have a mandate as such to seek durable solutions for Palestine refugees, although in its early years it had a mandate to engage in activities that promoted the integration of refugees into their host country.<sup>84</sup>

Thus, while UNRWA's mandate permits it to perform an incidental role, other entities have a central role in the resolution of the Palestine refugee issue, notably the UN Conciliation Commission for Palestine (UNCCP), the Security Council, the Secretary-General, UNSCO, the General Assembly, and the Palestine Liberation Organization (PLO).

Paragraph 11 of the General Assembly's well-known resolution 194 (III) not only resolved "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", it also instructed the UNCCP "to facilitate the repatriation, resettlement, and economic and social rehabilitation of the refugees".<sup>85</sup> The General Assembly resolution establishing UNRWA directed it "to consult with [UNCCP] in the best interests of their respective tasks, with particular reference

<sup>82</sup> UNRWA, "Statement by UNRWA Commissioner-General Karen AbuZayd", United Nations Security Council Closed Consultations Session, 27 Jan. 2009, available at: [www.unrwa.org](http://www.unrwa.org) (last visited 5 Apr. 2009).

<sup>83</sup> UNGA res. 302 (IV), 8 Dec. 1949, para. 7(b).

<sup>84</sup> As to UNRWA's mandate to engage in activities to promote reintegration, see UNGA res. 393 (V) of 2 Dec. 1950 where the General Assembly "Instruct[ed] the Agency to establish a reintegration fund which shall be utilized for projects requested by any government in the Near East and approved by the Agency for the permanent re-establishment of refugees and their removal from relief" (para. 5) after "Consider[ing] that, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, the reintegration of the refugees into the economic life of the Near East, either by repatriation or resettlement, is essential in preparation for the time when international assistance is no longer available, and for the realization of conditions of peace and stability in the area" (para. 4). This part of the mandate probably ended by 1960 when reference to "reintegration" was dropped from General Assembly resolutions relating to UNRWA, reflecting some acknowledgment that this objective had been defeated: see W. Dale, "UNRWA – A Subsidiary Organ of the UN", *op. cit.*, 584–5.

<sup>85</sup> The UNCCP's mandate is still current. However, the General Assembly routinely "notes with regret" that the UNCCP has been "unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and reiterates its request to [it] to continue exerting efforts towards the implementation of that paragraph": see, for example, UNGA res. 63/91 of 5 Dec. 2008, para. 2.

to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948".<sup>86</sup>

The Security Council has "primary responsibility for the maintenance of international peace and security"<sup>87</sup> and has adopted the Roadmap, which envisaged as a final outcome:

Parties reach final and comprehensive permanent status agreement that ends the Israel–Palestinian conflict in 2005, through a settlement negotiated between the parties based on UNSCR 242, 338, and 1397, that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue.

The Secretary-General has, pursuant to Article 99 of the UN Charter, a broad mandate that he has used to engage in resolution of the Israeli–Palestinian conflict.<sup>88</sup> Notably, the Secretary-General represents the UN in the "Quartet" and, in May 1994, appointed the UNSCO who, since 1999, "represents the Secretary-General in discussions with the parties and the international community in all matters related to continuing United Nations support to the peace process".<sup>89</sup>

Overall, the UN has "a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy".<sup>90</sup> The Palestine Liberation Organization also has a key role in resolution of the refugee question; the General Assembly has reaffirmed it as "the sole legitimate representative of the Palestinian People".<sup>91</sup>

The role of UNRWA in relation to durable solutions for Palestine refugees is quite different from that of UNHCR relative to refugees within its mandate (Palestine refugees within UNRWA's fields of operation do not fall within UNHCR's mandate and are excluded from the operation of the 1951

<sup>86</sup> UNGA res. 302(IV), 8 Dec. 1949, para. 20.

<sup>87</sup> Charter of the UN, Art. 24(1).

<sup>88</sup> Art. 99 of the Charter of the UN provides: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security." In practice successive Secretaries-General have expansively interpreted their powers under this Article; see B. Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd ed., Oxford, Oxford University Press, 2000, Vol. II, Art. 99; and S. Chesterman, (ed.), *Secretary or General?: The UN Secretary-General in World Politics*, Cambridge, Cambridge University Press, 2007. See also, UNSC res. 1515 (2003) endorsing the Roadmap.

<sup>89</sup> Letter dated 10 September 1999 from the Secretary-General to the President of the Security Council, UN Doc. S/1999/983, 16 Sep. 1999. From 1994 to 1999 the post title was United Nations Special Coordinator in the Occupied Territories.

<sup>90</sup> UNGA res. 57/107, 3 Dec. 2002, quoted in ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136, para. 49. The ICJ also stated: "The responsibility of the United Nations in this matter also has its origin in the Mandate and the Partition Resolution concerning Palestine. . . Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people." (para. 49).

<sup>91</sup> See, for example, UNGA res. 42/209(A), 11 Dec. 1987, para. 1.

Convention relating to the Status of Refugees under Article 1D.)<sup>92</sup>. UNHCR has two functions, not only providing international protection but also seeking “permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities”.<sup>93</sup> In other words, as part of its mandate, UNHCR “strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally, or to resettle in a third country”.<sup>94</sup>

### 3.4. *Until when does UNRWA’s mandate extend?*

The period of UNRWA’s mandate has been intimately connected with resolution of the refugee question. When the General Assembly established the Agency it recognized that:

without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to the termination of international assistance for relief.<sup>95</sup>

The General Assembly routinely affirms the necessity for UNRWA’s work to continue “pending the just resolution of the question of the Palestine refugees”.<sup>96</sup> In the absence of a political solution, UNRWA’s mandate has been regularly renewed, typically every three years, and most recently until 30 June 2011.<sup>97</sup>

## 4. Concluding remarks

As stated at the outset, in broad terms, UNRWA’s “mandate” means what the Agency may or must do. We have seen that UNRWA’s mandate is rarely expressed in terms of what UNRWA may not do. Even though the language used in some resolutions such as “directs”, “instructs”, “essential”, and

<sup>92</sup> UNHCR, “Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees”, October 2009. Art. 1D provides: “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.” See: G. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, 3rd ed., Oxford, Oxford University Press, 2007, 151–60; see also B. Goddard’s contribution to this volume.

<sup>93</sup> UNGA res. 428 of 14 Dec. 1950, Annex, Art. 1.

<sup>94</sup> UNHCR, Basic facts, available at: [www.unhcr.org/basics.html](http://www.unhcr.org/basics.html) (last visited 1 Mar. 2009).

<sup>95</sup> UNGA res. 302(IV), 8 Dec. 1949, para. 5.

<sup>96</sup> See, for example, UNGA res. 63/91, 5 Dec. 2008, para. 3.

<sup>97</sup> UNGA res. 62/102, 17 Dec. 2007, para. 5.

“necessary” might indicate a compulsory nature, considering the context – in particular that UNRWA is almost entirely voluntarily funded and its actual income has generally fallen far short of budgeted income – most of the Agency’s operational mandate can be seen to be permissive, albeit strongly encouraged in parts. In any event, as the Secretary-General has indicated, “an assessment to distinguish the level of legal obligation arising from the use of...different words has yielded no definitive answers”.<sup>98</sup> Moreover, most important to UNRWA’s beneficiaries is what the Agency in fact does and what the Agency will be able to do within its mandate will depend quite heavily on financial and political considerations.

For almost sixty years, in response to developments in the region, the General Assembly has mandated the Agency to engage in a rich and evolving variety of activities, for many purposes and for several classes of beneficiaries. The Assembly has provided UNRWA with a flexible mandate designed to facilitate, rather than restrict, the Agency’s ability to act as and when the Commissioner-General, in consultation with the Advisory Commission as appropriate, sees fit. In emergencies the Commissioner-General has been able to react quickly and report to the General Assembly for subsequent endorsement. With this richness and flexibility, UNRWA’s contemporary mandate equips it to address the challenges that lie ahead.

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<sup>98</sup> Report of the Secretary-General to the General Assembly, “Mandating and delivering: analysis and recommendations to facilitate the review of mandates”, *op. cit.*, para. 10.