

USA-UNRWA FRAMEWORK AGREEMENT: ASSISTANCE OR SECURITIZATION?



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TABLE OF CONTENTS

1	1. Introduction
4	2. Framework Agreement’s Vetting and Screening: Humanitarian Principles and International Humanitarian Law
6	2.1. Violation of Humanitarian Principles of Humanity, Impartiality, Neutrality, and Independence
10	2.2. Burdening UNRWA’s Operations
12	3. Framework Agreement’s Legality: UNRWA’s Mandate and Capacity to Enter into Treaties
14	3.1. UNRWA’s Mandate: Framework Agreement Changing Operational Definition
16	3.2. Treaties and UNRWA’s Capacity to Sign the Framework Agreement
18	4. Counter-terrorism Measures and Human Rights
19	4.1. Counter-terrorism: Freedom of Expression and UNRWA’s Regulations
21	4.2. Counter-terrorism Measures, Palestinian Right to Education, and the Palestinian Curriculum
24	5. Conclusion

1. INTRODUCTION

On 14 July 2021, the U.S. Department of State and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) signed the “2021-2022 Framework for Cooperation Between [UNRWA] and the U.S.A” (Framework Agreement hereafter).¹ The agreement declares that the US intends to contribute \$135.8 million to UNRWA for the fiscal year of 2021-2022. At surface level, it can be assumed that the US’ restored financial support to UNRWA is positive as it allows the Agency to continue providing “life-saving services to eligible registered Palestin[ian] refugees across the Middle East;”² it is particularly so in light of UNRWA’s perpetual financial crisis. In line with that, the UNRWA Commissioner-General Philippe Lazzarini has stated that “[t]he signing of the US-UNRWA Framework and additional support demonstrates we once again have an ongoing partner in the United States that understands the need to provide critical assistance to some of the region’s most vulnerable refugees.”³ UNRWA has also asserted that the Framework Agreement is a “traditional mechanism” that reaffirms both the US’ and UNRWA’s commitment to international humanitarian principles.

Upon closer analysis, it becomes clear that the Framework Agreement is not as sincere as is purported. Rather than providing voluntary financial support, as is stipulated in UNRWA’s mandate, the Framework Agreement introduces so-called counter-terrorism regulations which condition funding on UNRWA carrying out vetting and screening mechanisms that the US deems ‘appropriate.’ For one, it includes section 301(c) of the Foreign Assistance Act of 1961, which states that “[n]o contributions by the United States shall be made to UNRWA except on the condition that UNRWA take all possible measures to assure that no part of the

1 U.S. Department of State’s Bureau of Population, Refugees, and Migration, “Framework for Cooperation between the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the United States of America 2021-2022,” 16 July 2021, available at: <https://www.state.gov/wp-content/uploads/2021/07/2021-2022-US-UNRWA-Framework-Signed.pdf>

2 UNRWA, “United States Announces Additional Support for Palestinian Refugees,” 17 July 2021, Press Release, available at: <https://www.unrwa.org/newsroom/press-releases/united-states-announces-additional-support-palestine-refugees> [accessed 20 December 2021].

3 *Ibid.*

United States contribution shall be used to furnish assistance to any refugee who is receiving military training as a member of the so-called Palestinian Liberation army or any other guerilla-type organized or who has engaged in any act of terrorism.”⁴ This includes labeling Palestinian political and resistance factions as terrorist groups and organizations,⁵ which contradicts the right of Palestinian people to struggle for self-determination.⁶ Additionally, this provision leads to the exclusion of a large number of Palestine refugees and other persons addressed in the Consolidated Eligibility and Registration Instructions (CERI), especially those who have engaged in the Palestinian resistance struggle. Section 301(c), in addition to other provisions specifying how UNRWA must undertake vetting and screening to follow this condition, are biased, politically-motivated, and advance the US-Israeli definition of terrorism in a contentious context where no universal definition of this term exists. In fact, they work to advance the Israeli-influenced US policy to liquidate the Palestinian refugee question without granting Palestinian refugees their enshrined rights.⁷

To fully understand how the Framework Agreement attempts to further this strategy, the following paper presents an analysis of the UNRWA-USA Agreement within the context of UNRWA’s mandate, international humanitarian law, and humanitarian principles. Through this, it argues that the agreement not only violates international humanitarian law and the humanitarian principles that UNRWA is obliged by, but it also changes the nature of UNRWA. To do so, the paper begins by (1) illustrating that the Framework Agreement actually demands UNRWA to violate its humanitarian principles obligations, (2) providing an overview of UNRWA’s mandate and how the Framework Agreement aims to

4 UNRWA-USA Framework, in *supra* 1, Section II. Shared Goal and Priorities, p. 1-2.

5 U.S. State of Department, “Foreign Terrorist Organizations,” Bureau of Counterterrorism, available at: <https://www.state.gov/foreign-terrorist-organizations/> [accessed 20 December 2021].

6 UN General Assembly, Resolution A/RES/3070 (XXVIII), *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, 30 November 1973, A/3070, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/439B978DA862DB9C85256CDA005CB3E3> [accessed 20 December 2021]; See BADIL, *Forced Population Transfer: The Case of Palestine – Suppression of Resistance*, working paper no. 19 (Bethlehem: BADIL, 2016), available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp19-Suppression-of-Resistance.pdf>.

7 BADIL, *Trump’s so-called Vision/Deal of the Century: A Move to End the Palestinian Refugee Issue through Serious Breaches of International Law*, Position Paper (Bethlehem: BADIL, 2020), available at: https://www.badil.org/cached_uploads/view/2021/04/20/deal-of-the-century-refugee-issue-positionpaper-may2020-1618905452.pdf

shift its operational definition, and (3) arguing that the US' conditions violate UNRWA staff and beneficiaries' freedom of expression, right to education, and their legitimate right to resist the colonizer.

2. FRAMEWORK AGREEMENT'S VETTING AND SCREENING: HUMANITARIAN PRINCIPLES AND INTERNATIONAL HUMANITARIAN LAW

According to the Agreement's annex, UNRWA is obliged "to conform to [...] conditions on US contributions for UNRWA," which allegedly aims to ensure the 'neutrality' of UNRWA staff/personnel, beneficiaries, and UNRWA facilities.⁸ To do so, the agreement states that UNRWA must take security measures, conduct and document checks of UNRWA staff, Palestine refugees and other eligible persons, contractors, vendors, and non-state donors against the Consolidated United Nations Security Sanctions List every six months.⁹ Contrary to its mandate and responsibility before the UNGA, UNRWA is obliged to report back to the US about these "section 301(c)-related issues" through engaging in monthly meetings with State Department officials and providing regular written communication.¹⁰ This instructs UNRWA to communicate certain information relating to persons and entities involved or receiving assistance, creating significant responsibilities for the management of the funded program,¹¹ and also raising concerns in terms of data protection and privacy rights.

Although these measures have originated from multilateral resolutions at the United Nations level, the US is changing their nature through applying different degrees of nuance and methods, which enables it to implement, monitor, and enforce its own constructed counter-terrorism policy. Examples of this include the mention of "terrorist activities" in section 301(c) which is vague enough to include any activity that criticizes Israel's colonial enterprise and the obligation for UNRWA to report back to the US individually as if it has the sole authority to determine if UNRWA is carrying out these measures in a way it finds adequate. Forcing UNRWA to comply with the US' own interpretation and manipulation

8 UNRWA-USA Framework, in *supra* 1, Annex: Activities Related to Conformance with U.S. Funding Conditions Pursuant to Section 301(c) of the 1961 Foreign Assistance Act, General para. 1.

9 *Id.*, Neutrality of UNRWA Staff/Personnel para. 4, Neutrality of Beneficiaries para. 10, Neutrality of Contractors, Vendors, and Non-State Donors para. 14.

10 *Id.*, General para. 2 and 3.

11 Jann Klabbers, *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On* (Brill: 2010).

of counter-terrorism policies is not only controversial, to say the least, but it also compromises the humanitarian principles that UNRWA is bound by and further restrict the Agency's capacity to effectively carry out its work per these standards, explained below.

This potential impact of counter-terrorism measures on principled humanitarian action was confirmed by United Nations Security Council Resolutions 2462 and 2482, which requires states to comply with international humanitarian law when acting to prevent terrorism and to “take into account the potential effect” of counter-terrorism measures on impartial humanitarian action.¹² The controversy in these measures is particularly evident when considering donor states' direct and indirect political conditions on funding which push forward donor interests at the expense of principled humanitarian action.

Importantly, UNRWA, as a UN agency, is bound by United Nations Security Council resolutions and other counter-terrorism international instruments.¹³ It has its own processes and mechanisms regardless of donors to make sure it respects United Nations as well as international regulations on use of funds and the prohibition to support terrorist activities through international funding. This includes a wide range of checking systems from biannual checks of staff names, suppliers, registered Palestine refugees, and micro-finance recipients against Security Council Resolution 1267 lists – UNRWA does not vet against individual state's national lists, as per United Nations policy. It additionally checks suppliers against United Nations Suspect Vendor reports and abides by strict internal reporting mechanisms. However, the UNRWA-USA Framework Agreement obliges the Agency to provide direct information and updates to the State Department, which in and of itself threatens the humanitarian principles that UNRWA is bound by. The Framework Agreement further requires UNRWA to

12 UN General Assembly, Resolution 2462, *Threats to International Peace and Security Caused by Terrorist Acts: Preventing and Combating the Financing of Terrorism*, 28 March 2019, S/RES/2462, available at: <http://unscr.com/en/resolutions/2462> [accessed 20 December 2021]; UN General Assembly, Resolution 2482, *Threats to International Peace and Security*, 19 July 2019, S/RES/2482, available at: <http://unscr.com/en/resolutions/2482> [accessed 20 December 2021].

13 “Counterterrorism legislation applies to humanitarian organizations through binding UNSC resolutions and other international instruments, and through states' domestic laws.” Norwegian Refugee Council, “Principles Under Pressure: The Impact of Counterterrorism Measures and Preventing/Countering Violent Extremism on Principled Humanitarian Action,” 2018, p. 14, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/nrc-principles_under_pressure-report-screen.pdf.

seek information from host countries and other authorities when staff members are detained,¹⁴ which undermines UNRWA's mandate and transfers it from a humanitarian agency to an agency that promotes the US' political agenda and Israel's so-called security.

2.1. Violation of Humanitarian Principles of Humanity, Impartiality, Neutrality, and Independence

As mentioned above, UNRWA already carries out satisfactory checking mechanisms in accordance with its international obligations. It necessarily executes those measures in a way that aligns with its mandate and the aim of the mandate: to provide humanitarian assistance and protection for Palestine refugees. This must be taken into consideration when applying counter-terrorism measures, which UNRWA has effectively done in line with UN relevant instructions/mechanisms. However, the UNRWA-USA Framework Agreement intends to strip that context away when applying those measures, thereby presenting UNRWA with a challenging trade-off between the principles of humanity and independence by deciding whether or not to accept the US' conditional funds. Moreover, the Israeli-influenced US pressure on UNRWA's work, which would allow it to service people in need only if they adjust their targeting criteria or exclude certain groups of Palestine refugees from the list of beneficiaries, represents a second trade-off between the principles of humanity, impartiality, and neutrality.¹⁵

1. The principle of humanity requires UNRWA to address human suffering wherever it is found.¹⁶ The Framework Agreement, however, limits its capacity to wholly abide by this principle as it introduces an additional (selective) criterion that excludes beneficiaries, thereby preventing the Agency from addressing human suffering wherever it is found. Importantly, UNRWA is already bound by international humanitarian law's exclusion criterion for

14 UNRWA-USA Framework, in *supra* 1, Annex, Neutrality of UNRWA Staff/Personnel 8.

15 Julia Steets, Claudia Meier, Adele Harmer, *et al.*, "Evaluation of World Food Programme Policies on Humanitarian Principles and Access in Humanitarian Contexts," World Food Programme Report: OEV/2016/014, May 2018, available at: <https://www.humanitarianoutcomes.org/sites/default/files/publications/evaluationofwfpolicies.pdf>

16 UNRWA, "Humanity," in Humanitarian Principles, available at: <https://www.unrwa.org/humanity> [accessed 20 December 2021].

its humanitarian assistance through the distinction between civilians and combatants, with the latter not eligible for humanitarian assistance. This criterion is regarded as legitimate considering that it operates in a way that “regulates the behavior of all parties to the conflict in an equal fashion,”¹⁷ regardless of their political, religious, and other personal beliefs and affiliations. In contrast, counter-terrorism measures impose criminal qualification – such as that of a terrorist label – on one party to a conflict over the other, based on a constantly-changing domestic policy and a cruel lack of internationally agreed definition of such a term. As a result, the limits of warfare are no longer defined, as required by international humanitarian law, by a balance between the principles of military necessity and of humanity, but seem to be eroded by counter-terrorism laws, which in turn, limits UNRWA’s ability to provide assistance to people affected by conflict.¹⁸ In other words, there is a difference between being a combatant under clearly defined criteria established in international humanitarian law, and being designated on a sanction list for a broad range of reasons, often based on individual states’ interests, many of which would not affect a person’s civilian status under international humanitarian law. Additionally, even in the case that an individual is recognized as a combatant under international humanitarian law, it does not garner denying his family humanitarian assistance. This would not be the case with the imposition of section 301(c) because UNRWA’s assistance to family members is usually dependent on the registration and eligibility of the head of the household. Thereby, the Framework Agreement leads to the exclusion of a large number of Palestinian families from UNRWA’s services and assistance, especially if the head of household is designated as a terrorist.

2. When considering the principle of impartiality, UNRWA is required to carry out its humanitarian action on the basis of needs alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class, or political opinion.¹⁹ Thus, the

17 Sara Pantuliano, Victoria Metcalfe, Humanitarian Policy Group, “Neutrality Undermined: The Impact of Counter-terrorism Legislation on Humanitarian Action in Somalia,” March 2012, available at: <https://odihpn.org/magazine/neutrality-undermined-the-impact-of-counter-terrorism-legislation-on-humanitarian-action-in-somalia/> [accessed 20 December 2021].

18 *Ibid.*

19 UNRWA, “Impartiality,” in Humanitarian Principles, available at: <https://www.unrwa.org/impartiality> [accessed 20 December 2021].

Framework Agreement's requirement to exclude beneficiaries for their sole affiliation to a political party and hence political opinion – whether alleged or verified – is a violation of the principle of impartiality. Put simply, the principle of impartiality's clear proposition that potential beneficiaries of aid must only be defined on a needs-basis deems the agreement in violation of this principle.

3. According to the principle of independence, humanitarian action including that of UNRWA must be “autonomous from the political, economic, military, or other objectives that any actor may hold in areas where humanitarian action is being implemented.”²⁰ The Framework Agreement, however, evidently follows a political agenda serving the latter.²¹ By requiring a UN Agency to vet its agents, beneficiaries, and vendors against the sanction list established by the US Department of State and not against the UN sanction list as required for every other UN agency, the USA-UNRWA Agreement is undermining the principle of independence which must be followed by UNRWA in its humanitarian work. Already in 2006, the UN Secretary General for Legal Affairs explained to the US Ambassador to the UN that “it would not be appropriate for the United Nations to establish a verification regime that includes a list of possible contractors developed by one Member State,” as “it [the United Nations] would not be in a position to justify and defend its decisions in respect to any individual or entity that is included in such lists.”²² As a result, the Security Council Resolution 1267 list is, in theory, the only vetting tool that could be legitimately used by United Nations entities and organizations. In practice and in the absence of a harmonized set of conducts, United Nations agencies have behaved in a different manner, depending on the context and on donors.²³
4. In relation to the principle of neutrality, UNRWA rightfully follows UN-

20 UNRWA, “Independence,” in Humanitarian Principles, available at: <https://www.unrwa.org/independence> [accessed 20 December 2021].

21 See Kate Mackintosh and Patrick Duplat, “Study of the Impact of Donor Counter-terrorism Measures on Principled Humanitarian Action,” July 2013, available at: <https://www.nrc.no/globalassets/pdf/reports/study-of-the-impact-of-donor-counterterrorism-measures-on-principled-humanitarian-action.pdf>

22 Letter dated 31 January 2006 from Nicolas Michel, United Nations Under-Secretary-General for Legal Affairs, The Legal Counsel, to His Excellency Mr. John R. Bolton, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the United States to the United Nations, available at: <https://www.nrc.no/globalassets/pdf/reports/study-of-the-impact-of-donor-counterterrorism-measures-on-principled-humanitarian-action.pdf>

23 Kate Mackintosh and Patrick Duplat, Impact of Donor Counter-terrorism Measures, in *supra* 21, p. 107.

based regulations to ensure that the Agency does not take sides. The Framework Agreement, however, compromises UNRWA's neutrality as it changes the nature of the Agency's work and therefore its mandate, shifting it from a UN humanitarian aid agency into a security body for the sake of the US' political agenda and objectives. In general, imposing these counter-terrorism measures through framework agreements, especially without an internationally agreed upon definition of terrorism, alters the nature of UNRWA's operations and thus impairs its work on the ground by virtue of lending itself to political influences and foreign policy objectives imposed by donors.²⁴

Therefore, the US-imposed counter-terrorism measures put humanitarian principles under pressure and restrict UNRWA's ability to implement its programs as per the applicable humanitarian principles.²⁵ The impact of political conditions, such as the counter-terrorism clauses in UNRWA funding agreements, does not only mean suspending a project or redesigning entire programs according to approved implementing partners instead of population's needs. Instead, it completely restricts impartial humanitarian action, and consequently disincentivizes or prevents UNRWA from reaching populations in need.²⁶ Depriving beneficiaries from the aid they are entitled to under these criteria would be incompatible with humanitarian principles and would hence be a violation of international humanitarian law.²⁷

24 DARA, "Humanitarian Response Index 2011: Addressing the Gender Challenge," 2 March 2012, p. 42, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3597.pdf; See also DARA, "The European Consensus on Humanitarian Aid: An NGO Perspective," May 2014, available at: http://resources.daraint.org/voice/study_consensus_humanitarian_aid.pdf

25 See Norwegian Refugee Council, Principles Under Pressure, in *supra* 13.

26 The International Committee of the Red Cross, "Statement to the United Nations Security Council debate: Threats to International Peace and Security Caused by Terrorist Acts: International Cooperation in Combating Terrorism 20 Years after the Adoption of Resolution 1373 (2001)," Statement, 12 January 2021, available at: <https://www.icrc.org/en/document/counter-terrorism-measures-must-not-restrict-impartial-humanitarian-organizations> [accessed 20 December 2021].

27 "Screening is not problematic per se. It is a tool for identifying whether someone is on a list of designated persons. [...] Screening can become problematic if it leads to exclusion of someone from humanitarian assistance that they have been determined as requiring. Once someone has been determined as in need of assistance on the basis of eligibility criteria developed by a humanitarian actor — which are frequently shared with the donor — depriving them of this assistance would go further than what the underlying sanctions require and would also be incompatible with IHL and humanitarian principles." in Diakonia International Humanitarian Law Center Lebanon, "Fact Sheet 4: Screening of Final Beneficiaries of Humanitarian Programmes," August 2021, available at: https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2021/08/Diakonia_FactSheets_Screening.pdf

2.2. Burdening UNRWA's Operations

The UNRWA-USA Framework Agreements' screening and vetting conditions do not only result in violations of the humanitarian principles that UNRWA's operations are bound by, but they also impose both administrative and legal burdens that obstruct the Agency's ability to effectively carry out its mandate.

As a result of such increasingly demanding and bureaucratic regulations, namely vetting and screening processes, UNRWA's humanitarian operations are suffering from increased operating costs and delayed operational responses that undermine humanitarian partnerships. Indeed, they create a climate of tension and mistrust with implementing local partners, which is detrimental to humanitarian work.²⁸ Specifically in relation to UNRWA, complying with conditions in donor funding agreements has affected its ability to provide assistance according to the principles of neutrality and impartiality, having an unnecessary adverse impact on efforts to provide lifesaving assistance.²⁹

Such requirements undermine the relationship between the donor, the implementing actors, and the beneficiaries. This is especially so in the context of the ongoing colonization pervasive in Palestine, where the donor state has a clear track record of siding with one of the parties to the conflict: US foreign policy has unequivocally supported Israel, largely under the Trump Administration.³⁰ Indeed, vetting of partners and beneficiaries – which means gathering and communicating personal information about the latter to the US government has been rightfully perceived as “invasive and accusatory” by local communities, hence compromising their relation with UNRWA,³¹ making it more difficult for the Agency to reach local acceptance, and potentially hindering access to people in need.³²

28 Kate Mackintosh and Patrick Duplat, Impact of Donor Counter-terrorism Measures, in *supra* 21, p. 107.

29 Interaction: A United Voice for Global Change, “Detrimental Impacts: How Counter-terror Measures Impede Humanitarian Action,” April 2021, available at: <https://www.interaction.org/wp-content/uploads/2021/04/Detrimental-Impacts-CT-Measures-Humanitarian-Action-InterAction-April-2021.pdf>

30 See BADIL, *Trump's so-called Vision/Deal of the Century*, in *supra* 7.

31 Sara Pantuliano, Kate Mackintosh, and Samir Elhawary, “Counter-terrorism and Humanitarian Action: Tensions, Impact, and Ways Forward,” *Humanitarian Policy Group*, October 2011, available at: <https://cdn.odi.org/media/documents/7347.pdf>

32 *Ibid.*...

As an example, UNRWA is particularly active in the Gaza strip, where the local authority, Hamas, is designated as a terrorist entity by most donor states albeit not listed in the UN Consolidated Sanction List. As a result, humanitarian programs are often firstly designed to avoid contact with Hamas, and only secondly to address humanitarian needs. This is not only detrimental to the quality of the humanitarian intervention but also deviates from the principle of impartiality and neutrality. Indeed, many humanitarian actors observe that engagement with the *de facto* authority in Gaza is necessary to operate, and in part, is evidence of their neutrality and impartiality. Moreover, the ability of UNRWA to provide aid to civilians is hindered by counter terrorism in a way that might lead UNRWA in the end to decide not to implement relief activities in certain areas at the expense of the Palestinian population.

Therefore, in addition to violating humanitarian principles, the UNRWA-USA Framework Agreement obstructs UNRWA's operations in that they impose significant administrative and operational strain on UNRWA, reducing its efficacy and effectiveness. The US' vetting and screening requirements effectively jeopardizes the work of the Agency as a humanitarian body and transforms its nature into a security proxy.

3. FRAMEWORK AGREEMENT’S LEGALITY: UNRWA’S MANDATE AND CAPACITY TO ENTER INTO TREATIES

To adequately analyze the UNRWA-US Framework Agreement’s legality, or lack thereof, it is paramount to first and foremost examine the foundation, evolution, and principal source of UNRWA’s mandate. United Nations General Assembly Resolution 302 (IV), which established UNRWA in December 1949, reveals that the Agency was not provided with a detailed or set-in-stone mandate, but was rather authorized to carry out “relief and works programmes,”³³ with the aim of “safeguarding and advancing the rights of Palestine refugees” and helping them achieve their full potential in human development through a “broad range of activities in the Agency’s five fields of operation.”³⁴

The absence of a detailed mandate in Resolution 302 was a strategic decision to ensure the mandate is provided with enough flexibility to allow the Agency to adjust its programs and operations as required, considering that the situation on the ground was evolving. It is further attributed to the fact that UNRWA was envisaged as a temporary humanitarian agency that would work alongside the United Nations Conciliation Commission for Palestine (UNCCP) to ensure Palestine refugees were provided humanitarian relief as a political solution was underway. As such, it was presumed that UNRWA would soon dissolve upon the UNCCP’s facilitation of “the repatriation, resettlement, and economic and social rehabilitation of the refugees and the payment of compensation [...],”³⁵ in accordance with the just and lasting solution guaranteed for Palestinian refugees under General Assembly Resolution 194 (III).

Considering that durable solutions have not materialized yet, Palestine refugees

33 UN General Assembly, Resolution 302(IV), *Assistance to Palestine Refugees*, 8 December 1949, A/RES/302(IV), para. 6, available at: <https://unispal.un.org/unispal.nsf/0/AF5F909791DE7FB0852560E500687282> [accessed 20 December 2021].

34 UNRWA, “What We Do,” website page, available at: <https://www.unrwa.org/what-we-do/protection> [accessed 20 December 2021].

35 UN General Assembly, Resolution 194(III), *Palestine -- Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194(III), para. 11, available at: <https://unispal.un.org/UNISPAL.NSF/0/C758572B78D1CD0085256BCF0077E51A> [accessed 20 December 2021].

have remained entitled to humanitarian assistance and protection over the past 73 years, which UNRWA has continued to provide to some degree. This has naturally led to respective evolutions of the Mandate, brought forth by periodic United Nations General Assembly Resolutions.

Importantly, while UNRWA's humanitarian and development mandate is flexible and adaptable, it can only be altered by the United Nations General Assembly. This is by virtue of the fact that the United Nations General Assembly is the parent, or principal, organ, and UNRWA is the subsidiary organ deriving its mandate from the General Assembly, specifically in the form of General Assembly Resolutions. The Repertory of Practice of the United Nations Organs clearly states that the mandate, or terms of reference, of a subsidiary organ of the General Assembly "may be modified by, or under the authority of, the principal organ."³⁶ This is reflected in the case of *Legality of the Threat or use of Nuclear Weapons*, where the ICJ affirmed that, in order to modify the field of activity or the area of competence of an international organization (in other words, its mandate), one must refer to the relevant rules of the organization, and, in the first place, to its constitution³⁷ – General Assembly Resolutions in the case of UNRWA.

This is further evidenced by the history of UNRWA's mandate's evolution. For instance, in 1967, following the Six-Day War, the United Nations General Assembly endorsed UNRWA's efforts 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."³⁸ Subsequently, the United Nations General Assembly in June 1968 specified the mandate of UNRWA as follows: "the term "refugees," "displaced refugees," or "newly displaced refugees" refers to those persons who were registered with UNRWA prior to the June 1967

36 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. I, 228, quoted in: Sarooshi, "The Legal Framework Governing United Nations Subsidiary Organs", p. 416

37 ICJ, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, International Court of Justice, 8 July 1996, available at: <https://www.refworld.org/cases,ICJ,4b2913d62.html> [accessed 20 December 2021].

38 UN General Assembly, Resolution 2252, *Humanitarian Assistance*, 4 July 1967, A/RES/2252(ES-V), para. 6, available at: <https://unispal.un.org/UNISPAL.NSF/0/F7575BE79BBC6930852560DF0056FC78> [accessed 20 December 2021].

hostilities; the term “displaced persons” or “other displaced persons” refers to those who were displaced after the outbreak of the June 1967 hostilities and who are not registered with UNRWA.”³⁹

UNRWA’s ability to change and expand its mandate, therefore, is not exercised in a vacuum and is intended to meet the ongoing needs of UNRWA’s beneficiaries: Palestine refugees. Additionally, the mandate alterations are always subject to the continuing approval of the General Assembly. Put simply, it is unlawful for the Agency’s mandate to be changed without the approval of the United Nations General Assembly and even more so when such alterations are enacted to serve political agendas at the expense of Palestinian refugee rights.

3.1. UNRWA’s Mandate: Framework Agreement Changing Operational Definition

Considering that the approval of the General Assembly and meeting the needs of Palestine refugees are prerequisites for changing UNRWA’s mandate, the Framework Agreement, which is attempting to change the mandate’s operational definition without going through the necessary mechanisms, is unlawful. Section 301(c),⁴⁰ expanded upon earlier, changes the function of UNRWA from an organization that provides humanitarian assistance to one that conducts security tasks. It additionally alters the definition of Palestine refugees and other persons of concerns as defined in UNRWA’s CERI,⁴¹ thereby changing UNRWA’s mandate. It stipulates that UNRWA cannot service anyone who is or has received “military training” or was involved in “terrorist activities.” It is important to note that the definition adopted by these counter-terrorism regulations were created by the US and influenced by Israel. Based on this conception, any activity that Israel perceives as a threat to its colonial-apartheid enterprise is deemed a terrorist

39 UN General Assembly, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East 1 July 1967 - 30 June 1968*, 1968, Supplement No. 13 (A/7213), para. 4, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/9a798adbf322aff38525617b006d88d7/9b785fa02fe8316f85256a7d00560076?OpenDocument> [accessed 20 December 2021].

40 UNRWA-USA Framework, in *supra* 1, Section II. Shared Goal and Priorities, p. 1-2.

41 UN Relief and Works Agency for Palestine Refugees in the Near East, *Consolidated Eligibility and Registration Criteria (CERI)*, Introduction, para. I, available at: <https://www.unrwa.org/sites/default/files/2010011995652.pdf>

activity, as is evident in the increasing shrinking space for Palestinian civil society.⁴² It is thus clear that this regulation, if applied rigorously, would exclude a large number of UNRWA beneficiaries and thus acts as a direct threat to Palestine refugee status and other persons eligible for UNRWA's services.

According to UNRWA, its relief, humanitarian and protection services are available to Palestine refugees who meet its definition, that is "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," in addition to other persons of concern in its area of operations.⁴³ The Framework Agreement's section 301(c), however, runs contrary to UNRWA's CERI as it adds an additional requirement which is not in the mandate to qualify for UNRWA's services. By excluding Palestine refugees who were allegedly involved in terrorist activities or in military service, UNRWA's beneficiaries are altered and thus its operational definition is altered.

Therefore, the Framework's imposition of domestic counter-terrorism regulations cannot be seriously fathomed within the scope of UNRWA's mandate. Instead, the application of these regulations violates UNRWA's own internal regulations and changes the Agency's mandate accordingly. As aforementioned, UNRWA's mandate can only be changed through the approval of its principal organ, the United Nations General Assembly.⁴⁴ The UNRWA-USA Framework Agreement is thus in violation of UNRWA regulations and public international law regulations since it alters the Agency's mandate and circumvents the appropriate decision-making procedures.

42 BADIL, *The GPRN Calls on the International Donor Community to rescind the anti-terrorism clauses and conditions in their granting contracts*, 12 December 2021, press releases, available at: <https://www.badil.org/press-releases/12749.html>

43 UNRWA, *CERI*, Section III, A.1., in *supra* 41.

44 UNRWA Letter to UNHCR Describing the UNRWA Mandate and Services, 22 September 2021, available at: https://www.unrwa.org/resources/about-unrwa/UNRWA_letter_to_UNHCR [accessed 20 December 2020].

3.2. Treaties and UNRWA's Capacity to Sign the Framework Agreement

In addition to the unlawfulness of altering UNRWA's operational definition, the signing of the Framework Agreement as a treaty in and of itself is unlawful. Generally, a subsidiary organ, such as UNRWA, is permitted to enter into treaties as long as the treaty aligns with the principal organ's relevant rules, United Nations General Assembly resolutions in the case of UNRWA. However, this is not exactly the case in the UNRWA-USA Framework Agreement.

The Vienna Convention on the Law of Treaties between States and International Organizations recognizes the capacity of international organizations to conclude treaties that are necessary for the exercise of their functions and fulfillment of their purpose,⁴⁵ but affirms in its preamble that such practice of international organizations in concluding treaties with states should be in accordance with their constituent instruments. Importantly, framework agreements are no different than any other multilateral agreements. Although they are not explicitly mentioned by the Vienna Conventions on the Law of Treaties (VCLT, 1969) or on the Law of Treaties between State and International Organizations (1986), their respective rules apply to agreements as well as to subsequent protocols and implementing agreements.⁴⁶ This has been confirmed in several International Court of Justice judgements, the most recent being the *Kasikili/Sedudu Island* case.⁴⁷ Critically, the canons of interpretation as enshrined in the 1969 VCLT form part and parcel of customary international law, indicating their pervasive relevance.

Considering the above, the UNRWA-USA Framework Agreement, as analyzed under the VCLT, must align with UNRWA's constituent instrument and rules – this is to ensure that the mandate is not altered without the appropriate decision-making mechanisms. However, as argued above, the Framework Agreement is

45 UN General Assembly, *Convention on the Law of Treaties between States and International Organizations or between International Organizations*, 16 December 1982, A/RES/37/112, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf

46 Jann Klabbers, *Treaty Interpretation and the Vienna Convention on the Law of Treaties*, in *supra* 11.

47 ICJ, *Kasikili/Sedudu Island (Bots. v. Namib.)*, I.C.J. 1999 1045 (Dec. 13), available at: http://www.worldcourts.com/iccj/eng/decisions/1999.12.13_kasikili.htm [accessed 20 December 2021].

not in line with the mandate as it is imposing an alternative operational definition and criteria for eligibility. This imposition also has consequences on the aim of UNRWA's mandate, which is to protect and assist Palestine refugees and other eligible persons in line with UNRWA's CERI.⁴⁸ It reduces the beneficiaries and thus the number of Palestine refugees who are allowed to access services.

Conclusively, the UNRWA-USA Framework Agreement alters the nature of the agency without following the proper decision-making procedure from the competent body of the United Nations General Assembly, as per UNRWA's constituting documents. It follows that the UNRWA-USA Framework Agreement is unlawful and thereby, the Agency should not be bound by such third-party state donations that change its mandate.

⁴⁸ UN General Assembly, Resolution 302(IV), in *supra* 33, para. 5.

4. COUNTER-TERRORISM MEASURES AND HUMAN RIGHTS

The anti-terrorism measures included in the UNRWA-USA Framework have serious human rights implications for both UNRWA employees' and beneficiaries. Generally, it is no surprise that fundamental freedoms protected by human rights law are often affected by attempts to fight terrorism.⁴⁹ Dunja Mijatovic, Council of Europe Commissioner for Human Rights, has explicitly recognized that counter-terrorism measures have become the biggest threat in Europe to fundamental freedoms, such as freedom of expression.⁵⁰ This is so because terrorism constitutes a threat to civil life, democracy, and human rights which implies that counter-terrorism measures are enacted to protect national security or public order and thus carry a high risk of unnecessary or disproportionate interference with freedom of expression. Indeed, counter-terrorism legislation usually leave little space for considering the human rights impact of mechanisms and the necessary safeguards.

UNRWA is particularly privy to succumbing to states' counter-terrorism measures, in the form of political conditional funding, which in turn jeopardize its human rights obligations. This is so because of its status as a United Nations agency that is devoid of core funding and is reliant on voluntary funding. The UNRWA-USA Framework Agreement is a case of this. Through using the vaguely-defined term of neutrality and setting up a professedly uniform standard of 'human rights,' the Agreement pushes for a depoliticized approach to the Palestinian refugee issue that violates the staff's and beneficiaries' freedom of expression, freedom of political affiliation, and right to education. It, in fact, goes beyond just that as the violation of these rights leads to Palestine refugees' prohibition of accessing the services that they are entitled to under international law. Such measures are perilous as they impede UNRWA's ability to carry out its mandate with its enshrined aims.

49 Dunja Mijatović, "Misuse of Anti-Terror Legislation Threatens Freedom of Expression," News 2018, Council of Europe, 4 December 2018, available at: <https://www.coe.int/en/web/portal/-/misuse-of-anti-terror-legislation-threatens-freedom-of-expression> [accessed 20 December 2021].

50 "Terrorism constitutes a serious threat to human rights and democracy and action by states is necessary to prevent and effectively sanction terrorist acts. However, the misuse of anti-terrorism legislation has become one of the most widespread threats to freedom of expression, including media freedom, in Europe." *Ibid.*

4.1. Counter-terrorism: Freedom of Expression and UNRWA's Regulations

Per the UNRWA-USA Framework Agreement, staff members and personnel are required to “uphold the Agency’s neutrality” and to not “take sides in hostilities or engage in controversies of a political, racial, religious, or ideological nature.”⁵¹ This includes “guidelines on the use of social media.” While these may seem like fundamental requirements, their vague and unclear definitions which are devoid of the Palestinian context make them, in reality, invasive and in violation of personal freedoms, most importantly freedom of expression. Importantly, UNRWA, while an international humanitarian organization, was founded to provide assistance and protection for Palestine refugees within a very specific context of an ongoing conflict. It is thus only natural that considerations of ‘neutrality’ and ‘controversies’ cannot be treated as empty canvases and neither should they be applied as a blanket policy. It is essential for these provisions, whether provided by the US or any other donor, to consider the Palestinian context, especially because UNRWA was created for the sole purpose of assisting Palestine refugees.

Such considerations are essential in the context of UNRWA staff. For its international staff, who hold an international civil servant status, general provisions regulating certain activities deemed to be incompatible with such international employment status are found in the International Staff Rules.⁵² As for its “area staff,” directives are more restrictive, especially with regard to political activities and public appearance.⁵³ As private citizens, UNRWA staff are allowed to vote and belong to political parties, as long as such membership does not entail action contrary to staff regulations. In this regard, political activity in the public sphere ought to be carried out with caution and care,⁵⁴ which is why training for staff

51 UNRWA-USA Framework, in *supra* 1, Section II. Shared Goals and Priorities, p. 2.

52 UNRWA, “International Staff Regulations,” COD.I/61/REV.7, 1 January 2018, available at: https://www.unrwa.org/sites/default/files/international_staff_regulations_effective_1jan2018.pdf

53 UNRWA, “Area Staff Regulations,” COD./A/59/Rev.25/Amend.120, 1 June 2010, available at: https://www.unrwa.org/sites/default/files/area_staff_regulations_dec2015.pdf

54 UN Ethics Office, “Putting Ethics to Work: A Guide for UN Staff,” October 2017, p. 21, available at: https://www.un.org/en/ethics/assets/pdfs/Attachment_2_EN_Putting%20Ethics%20to%20Work.pdf

on neutrality and social media is regularly provided.⁵⁵ Regulation 1.4 specifies that national sentiments, political, and religious convictions are not required to be given up by area staff, but they do have to “bear in mind the reserve and tact incumbent upon them by reasons of their employment with the Agency.”⁵⁶ The UNRWA-USA Framework Agreement’s clause to “not take sides and engage in controversies” runs contrary to this regulation as it inevitably asks staff members to give up their political and national sentiments which are deemed ‘controversial.’ Most UNRWA area staff are also Palestine refugees themselves, which must be taken into account as it inevitably means that “neutrality” cannot be applied to them in the same that it does to international staff members as they themselves are right-holders.

UNRWA, as previously mentioned, is bound by United Nations regulations and international law as its subject, with its own legal personality.⁵⁷ Article 19 of the International Covenant on Civil and Political Rights recognizes that restrictions on the freedom of expression are only permissible when not only lawful, but also necessary and proportionate to protect a public aim. This is the case when considering a) the protection of rights or reputations of others or b) the protection of national security or public order, public health, or morals. Additionally, to control the proportionality of the measure, it must be ensured that the restriction is appropriate and no more than necessary to address the concerned public issue.⁵⁸ General comment no. 34 of the United Nations Human Rights Committee additionally highlights the need for clear definition of certain offenses such as “encouragement of terrorism,” as well as “praising, glorifying or justifying terrorism” to ensure that they do not lead to unnecessary or disproportionate restrictions of freedom of expression.⁵⁹

55 *Ibid.*

56 UNRWA, “Area Staff Regulations,” in *supra* 46, Regulation 1.4

57 ICJ, *Reparations for Injuries Suffered in the Service of the United Nations*, *Advisory Opinion*, 7 December 1948, p. 179, available at: <https://www.icj-cij.org/public/files/case-related/4/004-19490411-ADV-01-00-BI.pdf> [accessed 20 December 2021].

58 Equality and Human Rights Commission, *Article 10: Freedom of Expression*, 3 June 2021, available at: <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression> [accessed 20 December 2021].

59 UN International Covenant on Civil and Political Rights, *General Comment No. 34*, CCPR/C/GC/34, 12 September 2021, para. 46, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/453/31/PDF/G1145331.pdf?OpenElement> [accessed 20 December 2021].

The Framework Agreement, however, does not apply this fine balance between UNRWA's obligation to respect and protect human rights and donor states' domestic preoccupations (often in the form of integrated counter-terrorism legislation). In fact, the US' Framework Agreements is attempting to overtake this balance and tip it in favor of its counter-terrorism legislation at the expense of freedom of expression, inducing UNRWA to violate the proportionality and necessity qualifications of such measures.

4.2. Counter-terrorism Measures, Palestinian Right to Education, and the Palestinian Curriculum

The UNRWA-USA Framework further prompts UNRWA to violate its humanitarian obligations, including independence, by means of intervention in the Palestinian curriculum, hence violating the Palestinian right to education. In the agreement, it is stated that UNRWA is obliged to “integrate enrichment materials on human rights, conflict resolution and tolerance into UNRWA's classrooms.”⁶⁰ In fact, these materials are imposed with the aim of neutralizing or stripping the curriculum of any national and Palestinian content, and hence decontextualizing the Palestinian curriculum. Within this context, UNRWA has distributed a guide to its school staff that requires teachers to not address any content that highlights the inalienable rights of Palestinian people and to nullify any content that covers the ongoing Israel violations and other issues that affect the Palestinian national identity. It additionally asserts that UNRWA must improve its capacity to “review local textbooks and quality assure education materials it uses to identify and take measures to address any content contrary to UN principles in educational materials.”⁶¹

Consistent with UN practice in refugee situations globally, UNRWA has always used the curriculum of the “host country” in its schools since its establishment. The US is now attempting to change that in the West Bank and Gaza Strip by conditioning its donations over fundamental changes of the Palestinian curriculum, masked as counter-terrorism regulations. For instance, “integrat[ing] conflict resolution and tolerance,” according to the US Israeli-

60 UNRWA-USA Framework, in *supra* 1, Section II. Shared Goals and Priorities, p. 3.

61 *Ibid.*

influenced perception, translates to excluding from textbooks the Nakba and the Palestinian people's right to self-determination on Mandatory Palestine or their right to return to their homes of origin.⁶² This therefore requires UNRWA to engage in reducing Palestinian children's awareness of human rights, including Palestinian national rights and political participation, which depoliticizes the situation of ongoing Israeli colonization in Mandatory Palestine.

Such measures do not only infringe on UNRWA's mandate requirement to teach the host country's curricula,⁶³ but are docile to Israel's long-established attempts to censor Palestinian books from the Palestinian people's identity and history. In addition to the imposition of the Israeli curriculum on Palestinians in Palestine 1948, from 1967 until the establishment of the Palestinian Authority in 1994, Israeli officials reviewed every book taught to Palestinian students in the West Bank and the Gaza Strip, and censored them accordingly. Now that Israel does not exert direct official control over Palestinian education in the occupied Palestinian territory, its strategy focuses on influencing the international donors' perception of Palestinian education in order to impose indirect external pressure on the Palestinian Authority to change its educational policies and educational contents. The case of the UNRWA-USA Framework Agreement, including these political conditions in relation to the Palestinian curriculum, is yet another Israeli method to promote a decolonized education in a clearly colonial context.

In fact, most criticism against Palestinian textbooks used by UNRWA in the occupied Palestinian territory has been based on a very selective interpretation of UNESCO standards – specifically focused on principles of peace and tolerance enshrined in international law. However, UNESCO grounds its mission in a much more comprehensive set of human rights instruments that are relevant to the context of colonization in Mandatory Palestine. Such instruments comprise not only the 2015 Education 2030 Framework for Action and the 2015 Incheon Declaration, but also the 1974 Recommendation concerning Education for

62 BADIL, *Israel's Apartheid-Colonial Education: Subjugating Palestinian Minds and Rights*, Working Paper No. 26 (Bethlehem: BADIL, 2020), available at: https://www.badil.org/cached_uploads/view/2021/04/19/wp26-right2education-1618824001.pdf

63 UNRWA, "UNRWA School Parliaments: Good Practices Booklet," 25 November 2015, available at: <https://www.unrwa.org/resources/reports/unrwa-school-parliaments-good-practices-booklet> [accessed 20 December 2021].

International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms, and the 1989 Convention on the Rights of the Child - all of which affirm the Palestinian people's right to human rights education as a colonized people.⁶⁴

Essentially, it should be understood that Palestinian textbooks are produced and located within an environment saturated with conflict, occupation and ongoing violence, all of which are reflected in the textbooks. While many of the quotations attributed to the Palestinian textbooks taught in UNRWA schools could be confirmed, these have been found to be often badly translated or quoted out of context, thus suggesting an anti-Jewish incitement that the books do not contain. This shows the inherent bias and manipulation of content to undermine Palestinian textbooks anytime the material does not completely align with the Zionist-Israeli narrative.

It should be understood that respect for the human dignity of the Palestinian people cannot be complied with or achieved within the context of colonial oppression, especially in the realm of education. The denial of the Palestinian people's existence and attempts to precipitate their erasure through the colonization of education is as such an infringement on their dignity and their entitlement to their inalienable rights. Any critical analysis on the curricula that is taught in UNRWA schools would be meaningless if devoid of the context and the general value framework in which they operate. A contextualized education curriculum must address the implications of life under the rule of Israel's apartheid-colonial regime. It is therefore illegitimate for the Framework Agreements to condition funding upon UNRWA changing the curriculum and is in violation of the Palestinian people's right to an education considerate of the context.

64 Id., p. 31 - 49.

5. CONCLUSION

Conclusively, the UNRWA-USA Framework, while providing financial assistance for UNRWA's operations, is profoundly unlawful and politically-motivated. Its ultimate aim is to serve Israel's interests in liquidating the Palestinian refugee question without granting Palestinian refugees their enshrined rights. To do so, it attempts to unlawfully change the Mandate's operational definition, which defines who UNRWA's beneficiaries are without going through the necessary procedures. This eventually confines the definition of Palestine refugees and thus reduces the number of right holders as well. In addition, the signing of the Framework Agreement as a treaty in and of itself is unlawful as it does not align with the mandate. Its imposition of an alternative operational definition has consequences on the aim of UNRWA's mandate, which is to protect and assist Palestine refugees in order to aid them in reaching their full potential in human development. The Agreement further undermines UNRWA's ability to carry out principled humanitarian action, compromising UNRWA's obligations to uphold humanity, impartiality, independence, and neutrality.

The UNRWA-USA Framework Agreement strips UNRWA's international and humanitarian nature as an agency that was founded to serve Palestine refugees. Instead, it imposes vague and allegedly objective conditions of "neutrality" on UNRWA staff and personnel without considering the specific context of Palestine. This, in return, violates the Palestinian freedom of expression. A similar imposition is exhibited in relation to the Palestinian curriculum by requiring UNRWA to review Palestinian textbooks taught in its schools and for them to align with Israeli interests by erasing the Palestinian identity and history.

Accordingly, BADIL calls on:

1. UNRWA to terminate the UNRWA-USA Framework Agreement and to not sign any agreements that violate Palestine refugees' rights and its mandate obligations, international humanitarian law, humanitarian principles.

2. International community to increase UNRWA's core funding to avoid it becoming vulnerable to political blackmailing in the form of political conditional funding.

3. UN General Assembly to enforce a system of obligatory financial contributions by State members in order to alleviate UNRWA's financial deficit and enabling it to fulfill its mandate and responsibilities towards displaced Palestinians.

“ The UNRWA-USA Framework Agreement strips UNRWA's international and humanitarian nature as an agency that was founded to serve Palestine refugees. ”