



# Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement

Noura Erakat\*

## ABSTRACT

Palestinian refugees in the Middle East constitute a protracted refugee situation. In response to political considerations by multiple state actors, they are denied return to their homes of habitual residence and are refused meaningful legal protection in their host countries. Palestinians are therefore suspended between their political objectification in a prolonged conflict on the one hand, and the vulnerability of their humanitarian condition, like all other refugees, on the other. Unlike their refugee counterparts who are persons of concern to the United Nations High Commissioner for Refugees (UNHCR), Palestinian refugees endure an uneven legal regime. Since the United Nations Conciliation Commission for Palestine (UNCCP) fell into abeyance, no international agency has searched for durable solutions on behalf of Palestinian refugees, thus exposing them to a protection gap. Instead, the United Nations Relief Works Agency (UNRWA), established to furnish Palestinian refugees with aid and relief, has provided them with incremental protection, which, however significant, has been insufficient to close the gap. The extent of this protection gap has been vividly demonstrated during several episodes of secondary forced displacement in the Middle East. In response to their mass expulsion from Kuwait in 1991, Libya in 1996, and Iraq in 2003, UNRWA and UNHCR have closely collaborated in order to bridge this gap and provide Palestinian refugees with adequate protection. These incidents of inter-agency collaboration constitute *de facto* policies between the two agencies, which demonstrate the flexibility of otherwise rigid delineations between their existing mandates. In particular, past practice makes clear that UNRWA and UNCHR can have overlapping geographic and operational mandates. During the most recent crisis in Syria, these *de facto* policies have proven inadequate to protect Palestinian refugees. To overcome this challenge, UNHCR and UNRWA should formalize their inter-agency collaboration on behalf of Palestinian refugees during times of calm as well as crisis, in conformity with the spirit of the UNHCR Statute and the 1951 Refugee Convention as well as with past practice. Beyond crisis, the agencies should consider innovative approaches to definitively close the protection gap.

\* Assistant Professor, George Mason University; Adjunct Assistant Professor of International Human Rights Law in the Middle East, Georgetown University. This article benefits from the invaluable feedback of Andrew Schoenholtz, Elizabeth Campbell, Susan Akram, Francesca Albanese, Lex Takkenberg, Lance Bartholomeusz, Mark Brailsford, Lisa Gilliam, Catherine Richards, Leila Hilal, Roger Hearn, and Ahmed Ghappour. It would not have been possible without the many people who took the time to complete interviews with the author, including Kahin Ismail, Adam Shapiro, Kathryn Abu Zayd, Vincent Cochetel, Dominique Tohme, and Emily Krehm. Very special thanks, for research assistance, to Nishana Weerasooriya, Nusayba Hammad, and Nour Joudah.

## 1. INTRODUCTION

The Syrian crisis, which began in March 2011 and is ongoing at the time of writing, has forced one-third of Syria's residents to leave their homes.<sup>1</sup> More than two million of them have become refugees in surrounding countries.<sup>2</sup> Approximately 68,000 of these asylum seekers are Palestinian refugees who fled to Syria during the 1948 Arab-Israeli war and are currently enduring secondary forced displacement.<sup>3</sup> While the humanitarian needs of Palestinian refugees are generally indistinguishable from their Syrian counterparts, surrounding countries have treated them disparately at, and within, their respective borders. The inferior treatment of Palestinian refugees is largely attributed to their status as a protracted refugee situation (PRS).<sup>4</sup>

Like other PRS populations, Palestinian refugees are stuck 'in a long-standing and intractable state of limbo'<sup>5</sup> as a result of action or inaction within their country of origin as well as within their respective countries of asylum.<sup>6</sup> Their country of origin, Palestine, has been transformed into an ethnically based state, Israel,<sup>7</sup> and, with few exceptions, their host countries do not afford them meaningful legal protection.<sup>8</sup> The result is an undesirable condition of forced exile from their country of origin coupled with a lack of meaningful integration in surrounding Arab host states. This intractable limbo suspends Palestinian refugees between their status as a political object in a prolonged conflict on the one hand, and a humanitarian condition, like all other refugees, on the other. The lack of a robust protection mandate on behalf of Palestinian refugees exacerbates this condition.

International protection refers to 'all activities aimed at obtaining the full respect for the rights of the individuals in accordance with the letter and spirit of the relevant bodies of law (that is, human rights law, international humanitarian law, refugee law)'.<sup>9</sup> This consists of legal, diplomatic, human development, and humanitarian support.<sup>10</sup> Upon their displacement, the United Nations created the Conciliation Commission on

<sup>1</sup> Internal Displacement Monitoring Centre (IDMC), Syria: 'A Full-Scale Displacement and Humanitarian Crisis with No Solutions in Sight' (2013) <<http://www.internal-displacement.org/middle-east-and-north-africa/syria/2012/a-full-scale-displacement-and-humanitarian-crisis-with-no-solutions-in-sight>> accessed 15 Dec 2013.

<sup>2</sup> UNHCR, 'Syria Regional Refugee Response: Regional Overview' (2013) <<http://data.unhcr.org/syrianrefugees/regional.php>> accessed 15 Dec 2013.

<sup>3</sup> UNRWA, 'Syria Crisis Situation Update: Issue 62' (29 Oct 2013) <<http://www.unrwa.org/newsroom/emergency-reports/syria-crisis-response-update-issue-no-62-0>> accessed 31 Oct 2013.

<sup>4</sup> Michael Dumper, 'The Palestinians' in G Loescher, J Milner, E Newman, G Troeller (eds), *Protracted Refugee Situations: Political, Human Rights and Security Implications* (1st edn, United Nations University Press, 2010) 189.

<sup>5</sup> UNHCR Executive Committee of the High Commissioner's Programme, 'Protracted Refugee Situations', UN doc EC/54/SC/CRP.14, 10 June 2004.

<sup>6</sup> *ibid.*

<sup>7</sup> IDMC, above n 1, 191. The Palestinian situation, in part, is: '... derived from a transformation of the country of origin (Palestine) into a state based upon ethnicity (Israel)'; see Ruth Lapidot, 'Do Palestinian Refugees Have a Right to Return to Israel?' (Israel Ministry of Foreign Affairs, 15 Jan 2001) <<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Do+Palestinian+Refugees+Have+a+Right+to+Return+to.htm>> accessed 10 Mar 2012.

<sup>8</sup> See, eg, Jaber Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (Development Research Center on Migration, Globalisation, and Poverty, Apr 2006) <[http://www.migrationdc.org/publications/research\\_reports/JaberEdited.pdf](http://www.migrationdc.org/publications/research_reports/JaberEdited.pdf)> accessed 10 Mar 2012; see 'Lebanon: End illegal discrimination against Palestinians, says Amnesty' *IRIN Humanitarian News and Analysis* (17 Oct 2007) <<http://www.irinnews.org/printreport.aspx?reportid=74831>> accessed 10 Mar 2012 (Palestinians are considered foreigners living temporarily in Lebanon).

<sup>9</sup> Inter-Agency Standing Committee, 'Growing the Sheltering Tree: Protecting Rights through Humanitarian Action' (International Council of Voluntary Agencies 2002) <<https://icvanetwork.org/doc00000717.html>> accessed 1 May 2013.

<sup>10</sup> UNHCR, 'International Protection' in 'Note Submitted by the High Commissioner to the 45th Session of the EXCOM', UN doc A/AC.96/830, 7 Sept 1994.

Palestine (UNCCP) to provide diplomatic and legal protection to Palestinian refugees, including facilitating durable solutions on their behalf.<sup>11</sup> Due to a lack of political support for its work, the Agency fell into abeyance by 1950 and, since then, has provided little more than an annual report to the UN General Assembly noting that it has ‘nothing new to report.’<sup>12</sup> No agency has been established to fill the protection gap left by the UNCCP’s suspension. Instead, the UN General Assembly (UNGA) has incrementally expanded the mandate of the United Nations Relief Works Agency (UNRWA), established one year after the UNCCP, to bridge this gap.<sup>13</sup>

The General Assembly intended UNRWA to sustain Palestinian life in its five areas of operation by providing aid and relief. UNRWA was meant to complement the diplomatic and legal work of the UNCCP and, together, to provide the full range of international protection needed by Palestinian refugees.<sup>14</sup> By fulfilling a humanitarian and human development function, UNRWA has arguably provided material and humanitarian protection to Palestinian refugees since its inception.<sup>15</sup> Moreover, in response to emergencies, armed conflict, and humanitarian crises, UNGA has authorized UNRWA to provide incremental legal and diplomatic protection to Palestinian refugees in lieu of the UNCCP.<sup>16</sup> Although significant, this authority has been insufficient to close the protection gap endured by Palestinian refugees. Not only does it function on an ad hoc basis but, even at its most robust, UNRWA lacks the authority to search for durable solutions on their behalf.

As demonstrated by crises in Kuwait in 1991, Libya in 1996, and most recently in Iraq in 2003, this protection gap has left Palestinian refugees particularly vulnerable during secondary forced displacement in the Middle East. The United Nations High Commissioner for Refugees (UNHCR), which possesses a robust protection mandate, has supplemented UNRWA’s efforts during these incidents since the early nineties.<sup>17</sup> Although long-standing policy holds that ‘UNRWA protects Palestinians in its areas of operation, while UNHCR protects them while they are outside of those areas,’<sup>18</sup> the conditions wrought by forced displacement in the Middle East has necessitated a more fluid policy in order to ensure adequate protection to all Palestinian refugees. Together, UNHCR and UNRWA have developed a *de facto* policy that captures that fluidity and

<sup>11</sup> UNGA res 194, UN doc A/RES/194 (III), 11 Dec 1948 (the resolution instructed the UNCCP to ‘facilitate the repatriation, resettlement, and economic and social rehabilitation of the refugees’); Dumper above n 4, 194 (the UNCCP’s stated purpose is ‘to act as a mediator between Israel, the Arab states and the Palestinians, and to provide protection and facilitate durable solutions for persons displaced as a result of the 1947–48 conflict in Palestine’).

<sup>12</sup> See, eg, ‘Report of the United Nations Conciliation Commission for Palestine’, UN doc A/66/296, 12 Aug 2011 (‘The sixty-fifth report of the United Nations Conciliation Commission for Palestine, covering the period from 1 September 2010 to 31 August 2011 ... The Commission notes its report of 5 August 2010 (A/65/225, annex) and observes that it has nothing new to report since that submission’).

<sup>13</sup> See, eg, Lance Bartholomeusz, ‘The Mandate of UNRWA at Sixty’ (2010) 28 RSQ 452, 474.

<sup>14</sup> Bartholomeusz, *ibid*; Mark Brailsford, ‘Incorporating Protection into UNRWA Operations’, conference paper, ‘Relief and Works to Human Development: UNRWA and Palestinian Refugees After 60 Years’ (8 and 9 Oct 2010), <[http://www.aub.edu.lb/ifi/public\\_policy/pal\\_camps/pc\\_events/Documents/20101008ifi\\_unrwa60\\_conference/conference\\_papers/day1/ifi\\_unrwa\\_conf\\_day1panel2\\_paper1\\_brailsford.pdf](http://www.aub.edu.lb/ifi/public_policy/pal_camps/pc_events/Documents/20101008ifi_unrwa60_conference/conference_papers/day1/ifi_unrwa_conf_day1panel2_paper1_brailsford.pdf)>.

<sup>15</sup> Brailsford, *ibid*.

<sup>16</sup> *ibid*.

<sup>17</sup> Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (1st edn, OUP USA, 1998) 307.

<sup>18</sup> Interview with Karyn AbuZayd (by telephone), Deputy Commissioner-General and Commissioner-General 2000–2010, UNRWA (20 Feb 2012).

helps to bridge the protection gap endured by Palestinian refugees during humanitarian emergencies. As national unrest produces a steady exodus of refugees from Syria today, the adequacy of these *de facto* policies has been tested once again. Unlike in the cases before it, these policies have proven inadequate in response to the Syrian crisis.

Internal armed conflict in Syria, characterized by mass killings, aerial bombardment, and use of heavy military artillery, has forced Syrians and Palestinian refugees alike to flee to neighbouring countries. Unlike their Syrian counterparts, however, Palestinian refugees have not been welcomed into all neighbouring countries since the start of the Syrian conflict in March 2011 and November 2013.<sup>19</sup> If permitted entry, they have not enjoyed the temporary protection regime available to Syrian refugees. Instead, Jordan and Egypt have excluded, detained, and refouled Palestinian refugees to Syria. Egypt has prevented UNHCR from registering and providing humanitarian aid to Palestinian refugees who have been admitted entry. While Palestinian refugees have faced less significant hurdles entering and remaining in Lebanon, the aid they receive there is inferior to that of their Syrian counterparts. Palestinians and Syrian refugees only enjoy equal treatment in Turkey and, presumably, as internally displaced persons within Syria. Despite their best efforts, UNRWA and UNHCR have been unable to close this protection gap.

To assess the adequacy of the legal regime available to Palestinian refugees, as well as to suggest how the UN refugee agencies and the international community should better respond to secondary forced displacement of Palestinian refugees in the Middle East, this article is divided into four parts. Part 2 examines the extent of the protection gap endured by Palestinian refugees, as well as the respective mandates delineating UNHCR and UNRWA responsibility for them. This historical examination reveals that inter-agency collaboration on behalf of Palestinian refugees is legally justified. Part 3 explores four cases of Palestinian refugee secondary forced displacement in Kuwait, Iraq, and Libya, and, internally, within Lebanon. The article pays particular attention to UNHCR and UNRWA collaboration developed to manage these crises, and argues that this collaboration constitutes a *de facto* policy between the two agencies that supplants the more rigid policies established by their respective mandates. Parts 4 and 5 turn their attention to Syria and examine the protection gaps suffered by Palestinian refugees during their ongoing forced displacement to neighbouring countries. In particular, these sections highlight the insufficiency of, and regression from, the established *de facto* policies that UNRWA and UNHCR had developed to date. In the final Part, the article makes recommendations to the two refugee agencies, as well as to the international community, on how to further close the protection gap afflicting Palestinian refugees during secondary forced displacement.

## 2. INTERNATIONAL PROTECTION, PALESTINIAN REFUGEES, AND ENDURING PROTECTION GAPS

Unlike citizens and aliens, refugees lack any governmental protection. This leaves them particularly vulnerable to abuse and heightens their need for international protection.<sup>20</sup> The Inter-Agency Standing Committee (IASC), comprised of a broad range of

<sup>19</sup> The Syrian civil war is ongoing and continues to produce a flow of refugees. The research herein traces this flow through Nov 2013. The author suggests that the findings remain salient as they reflect initial and developing conditions not withstanding changing circumstances and conditions on the ground.

<sup>20</sup> UNHCR, 'International Protection', above n 10 ('Left unprotected by their own Government, refugees must seek the protection that every human being requires from the authorities of a country of refuge and from the international community. It is this vital need for international protection that most clearly distinguishes refugees from other aliens').

UN and non-UN humanitarian partners, broadly defines protection for refugees as ‘all [the] activities aimed at obtaining the full respect for the rights of the individuals in accordance with the letter and spirit of the relevant bodies of law.’<sup>21</sup> UNRWA similarly defines protection broadly as what the agency does to ‘safeguard and advance the rights of Palestine refugees.’<sup>22</sup> During armed conflict, emergency situations, and humanitarian crises, the relevant scope of international protection is externally focused.<sup>23</sup> It thus refers to an agency’s capacity to intervene, monitor, and advocate on behalf of refugees with external entities, like states, other agencies, and non-governmental bodies. It also refers to the search for durable solutions on behalf of refugee populations.<sup>24</sup> To explore the extent of the protection gap endured by Palestinian refugees during secondary forced displacement, this section examines the establishment and function of the UNCCP, UNRWA and UNHCR.

### 2.1 A regime of their own: Palestinian refugees under UNRWA and UNCCP

The UN General Assembly established UNRWA as a subsidiary organ of the international organization pursuant to UNGA Resolution 302(IV) (8 December 1949) to provide relief and works programmes to Palestine refugees.<sup>25</sup> Its mandate is limited to five areas of operation: Jordan, Lebanon, Syria, and the Occupied Palestinian Territory, namely, the West Bank and Gaza.<sup>26</sup> Since it commenced its operations in 1950, UNRWA’s mandate, derived from General Assembly resolutions and requests from other organs, including the UN General Assembly Secretary General, has evolved and expanded in response to events in the Middle East.<sup>27</sup> While UNRWA today indeed provides international protection to Palestinian refugees, that protection remains geographically truncated<sup>28</sup> and insufficient.<sup>29</sup>

<sup>21</sup> Inter-Agency Standing Committee, above n 9.

<sup>22</sup> UNRWA, ‘UNRWA Medium Term Strategy 2010–2015’ <<http://www.unrwa.org/userfiles/201003317746.pdf>> accessed 1 May 2013; see also Nicholas Morris, ‘What Protection Means to UNRWA in Concept and Practice’, consultancy report, as discussed in Brailsford, above n 14.

<sup>23</sup> UNHCR, ‘International Protection’, above n 10, para 17 (Protection during armed conflict includes: ‘... humanitarian diplomacy at both the national and local level, closer coordination with the political organs of the United Nations as well as regional organizations, closer working relationships with the military both in the context of peace-keeping or peacemaking operations, logistical support for humanitarian assistance, and the physical protection of refugees and displaced persons, and intensified cooperation with the International Committee of the Red Cross and with human rights monitoring teams. In conflict situations the 1949 Geneva Protocol relative to the Protection of Civilian Persons in Time of War and the Additional Protocols of 1977 assume particular importance among the legal tools available. Where the Office is involved in protection and assistance activities on behalf of people in their own countries, refugee law does not apply. National law and international human rights and humanitarian law are the basic legal tools of protection’).

<sup>24</sup> UNHCR, *ibid.*

<sup>25</sup> UNGA res 302, UN doc A/RES/302 (IV), 8 Dec 1949.

<sup>26</sup> UNRWA & UNHCR, ‘The United Nations and Palestinian Refugees’ (UNRWA Jan 2007) <<http://www.unrwa.org/userfiles/2010011791015.pdf>> accessed 10 Mar 2012.

<sup>27</sup> See, eg, Bartholomeusz, above n 13.

<sup>28</sup> *ibid.* 459 (the Six-Day War catalyzed one of the mandate’s most significant expansions. Israel’s occupation of the West Bank, including East Jerusalem, the Gaza Strip, the Golan Heights, and the Sinai Peninsula in 1967, resulted in the displacement of over 300,000 persons, including 120,000 registered Palestine refugees. In response, UNRWA provided humanitarian assistance to all persons in the area who in need of emergency assistance regardless of their registration with UNRWA. In July 1967, UNGA endorsed this activity and restated UNRWA’s mandate to include assistance to the ‘1967 displaced’. UNRWA has responded in similar manner to other emergencies in subsequent years and, by 2008, UNGA had expanded UNRWA’s mandate to assist persons displaced by the ‘1967 and subsequent hostilities’).

<sup>29</sup> Bartholomeusz, *ibid.* 471 (It does not have a mandate to search for durable solutions. It did, however, have a mandate to engage in activities that promoted the integration of Palestinian refugees into their host countries although that was suspended in 1960).



The responsibility of international protection for Palestinian refugees is not borne by UNRWA alone but also by the host governments, as well as the international community.<sup>30</sup> Still, as the international agency responsible for them, UNRWA is expected to monitor, report, and intervene on behalf of Palestinian refugees to improve their well-being. In general, this includes persuading concerned authorities to behave in a certain way; mobilizing stakeholders to exert influence; and engaging in public advocacy on behalf of Palestinian refugees.<sup>31</sup> UNRWA does this, albeit to a different degree in each of its areas of operation, depending on the conditions particular to each host state.<sup>32</sup> Moreover, due to UNRWA's role as a humanitarian and human development agency, it has arguably provided protection to Palestinians in the form of assistance since its inception.<sup>33</sup>

The claim is not that UNRWA does not provide international protection at all but, rather, that its provisions are insufficient to close a protection gap. Identifying the precise scope of this protection gap requires thorough scrutiny of UNRWA's operations in each of its five areas of operation. While that inquiry is beyond the scope of this article, the search for a just and durable solution is an absolute gap afflicting the Palestinian refugees for which an individualized inquiry is not required.

This right is 'the key to enjoyment of the national protection and the realization of other rights.'<sup>34</sup> There is no disagreement that UNRWA does not have a mandate to search for such a solution, including rehabilitation, resettlement, and integration, on behalf of Palestinian refugees. The Agency explains that such a solution for the Palestinian refugee problem is the responsibility of the parties to the conflict and its role is to 'address the humanitarian and human development needs of Palestine refugees in the interim.'<sup>35</sup> The mandate to search for a durable solution was given to the UNCCP.

The General Assembly empowered the UNCCP to reconcile Israel and the Palestinians and to facilitate the return, reparation, rehabilitation, compensation, or resettlement of Palestinian refugees.<sup>36</sup> Within two years of its establishment, the UNCCP reported to the General Assembly that conditions in Palestine 'have made it impossible for the Commission to carry out its mandate.'<sup>37</sup> The General Assembly extended the UNCCP's mandate annually without result until it was finally declared obsolete in 1966.<sup>38</sup> Since the UNCCP became defunct, the legal regime covering Palestinian refugees no longer includes the provision of durable solutions at all.

Leila Hilal, former Consultant at the Commissioner-General's Office in its Jordan headquarters, explains that unless UNGA provides a mandate that UNRWA be responsible for achieving durable solutions for Palestinian refugees, UNRWA cannot expand

<sup>30</sup> Brailsford, above n 14, 15 ('... Article I common to the Geneva Conventions, also enjoins State Parties to "respect and ensure respect" for the provisions of international humanitarian law').

<sup>31</sup> See, eg, Brailsford, *ibid*; see also Bartholomeusz, above n 13.

<sup>32</sup> Brailsford, *ibid* 15–18 (emergency response during armed conflict in Gaza, and forced displacement in the West Bank, the right to work for Palestinians in Lebanon, increased access to hospital care for 1967 displaced ex-Gazans in Jordan, collaboration with community-based women's organizations in Syria to respond to gender based violence).

<sup>33</sup> Brailsford, *ibid*.

<sup>34</sup> *ibid* 17.

<sup>35</sup> *ibid* 5.

<sup>36</sup> UNGA res 194, above n 11; Brenda Goddard, 'UNHCR and the International Protection of Palestinian Refugees' (2009) 28 RSQ 475, 480.

<sup>37</sup> Goddard, *ibid*.

<sup>38</sup> Dumper, above n 4, 194.

its mandate to do so.<sup>39</sup> The most that UNRWA has been able to do in this regard is to ‘highlight the urgent need for a solution and to help ensure that in its elaboration, the rights, views, and interests of the refugees are heard and safeguarded’.<sup>40</sup> The lack of a more robust international protection mandate for Palestinians leaves them invariably at risk during armed conflict, humanitarian emergencies, and political crises.

## 2.2 UNHCR and UNRWA: distinct legal mandates, shared responsibilities

In contrast, UNHCR has a robust protection mandate that it considers to be the cornerstone of its work.<sup>41</sup> Established in 1951, UNCHR’s mandate has grown to include internally displaced persons, returnees, and stateless people. The international protection that it provides includes protecting against *refoulement*, building and maintaining quality asylum systems, conducting refugee status determination, upholding the prohibition of arbitrary detention, ensuring safe residence, expanding educational opportunities, and preventing and responding to sexual and gender-based violence.<sup>42</sup> Like the UNCCP, UNHCR also has the capacity to achieve durable solutions, namely ‘[v]oluntary repatriation to and reintegration in their homeland in safety and dignity; integration in their countries of asylum; and resettlement in third countries’.<sup>43</sup> Theoretically, UNHCR could provide international protection to all Palestinian refugees. This is not the case, however, because the respective mandates of UNRWA and UNHCR rigidly demarcate the responsibility owed to Palestinian refugees.

### 2.2.1 Distinct mandates: article 1(D) of the 1951 Refugee Convention and paragraph 7(c) of the UNHCR Statute

The UNCCP and UNRWA had been in existence for three and two years, respectively, at the time of UNHCR’s establishment. The drafters of the 1951 Refugee Convention and the UNHCR Statute were therefore well aware of the condition of Palestinian refugees and explicitly deliberated whether or not to include them within the scope of the new refugee legal regime.<sup>44</sup> The definition of refugee and the scope of the beneficiaries of the new legal regime, more broadly, was the subject of extensive debate amongst the plenipotentiaries.<sup>45</sup> They discussed Palestinian refugees in this context.

The Arab states lobbied to maintain Palestinians under a distinct scheme, namely the UNCCP and UNRWA, which they believed would confer greater political relevance and superior protection to them than could the newly established refugee agency.<sup>46</sup> The thrust of these concerns, shared by nearly all drafters, was to ensure that

<sup>39</sup> Interview with Leila Hilal (by telephone), Former Legal Adviser, UNRWA (31 Mar 2012).

<sup>40</sup> Brailsford, above n 14, 18.

<sup>41</sup> UNGA res 428, 14 Dec 1950 (‘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 ...’); see also ‘The UN & Palestinian Refugees’, above n 26.

<sup>42</sup> UNHCR ‘International Protection’, above n 10.

<sup>43</sup> UNGA res 428, above n 41.

<sup>44</sup> Takkenberg, above n 17, 56.

<sup>45</sup> *ibid* (The state plenipotentiaries intended that the new regime would cover only those persons who fled their countries as a result of the Second World War. Others saw it more narrowly applied as well, so that it would be limited to refugees from Europe. These concerns were thoroughly debated and ultimately captured in article 1B of the 1951 Refugee Convention).

<sup>46</sup> Goddard, above n 36.

Palestinian refugees were not subsumed into the new legal regime where they would not enjoy heightened attention.<sup>47</sup> Ultimately, the drafters incorporated these concerns into both the 1951 Refugee Convention, as Article 1(D), and the UNHCR Statute, as paragraph 7(c).<sup>48</sup>

Examination of Article 1(D) of the Refugee Convention helps to shed light on both the intent of its drafters and the present-day understanding of the status of Palestinian refugees who seek asylum in states that have ratified the Convention.<sup>49</sup> Paragraph 7(c) of the UNHCR Statute, which defines UNHCR's mandate and its beneficiaries, is central to understanding the relationship between the refugee agency and UNRWA. It states that the competence of the High Commissioner shall not extend to a person '[w]ho continues to receive from other organs or agencies of the United Nations protection or assistance.'<sup>50</sup> On its face, this paragraph appears like an exclusion clause and, together with its counterpart in the Refugee Convention, has created considerable debate about the status of Palestinian refugees beyond UNRWA's areas of operation.<sup>51</sup> Specifically, it raises questions about whether and/or when Palestinian refugees come within the scope of UNHCR's mandate and whether and/or when they are eligible for asylum under the Refugee Convention.

According to Takkenberg, the *travaux préparatoires* of paragraph 7(c) reflects that, 'among the drafters of the UNHCR Statute and the 1951 Refugee Convention there was almost general consensus that the Palestine refugees were genuine refugees in need of assistance and protection.'<sup>52</sup> Moreover, this drafting history reveals that the intention was not to exclude Palestine refugees from the general legal regime for the protection of refugees. The intention was to exclude them temporarily in an effort to prioritize achieving a resolution to their condition.<sup>53</sup>

The UNCHR's 2009 Revised Note on the Applicability of Article 1(D) affirms this understanding. The Note acknowledges that, while the first paragraph of Article 1(D) is an exclusion clause, its second paragraph:

contains an inclusion clause ensuring the *ipso facto* entitlement to the protection of the 1951 Convention of those refugees who, without having their position

<sup>47</sup> Takkenberg, above n 17, 62 (the representative from Lebanon explained, 'In all other cases, persons had become refugees as a result of action taken contrary to the principles of the United Nations and the obligation of the Organization was a moral one only. The existence of the Palestinian refugees, on the other hand, was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility').

<sup>48</sup> *ibid* 56.

<sup>49</sup> See, eg, Susan M Akram and T Rempel, 'Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees' (Spring 2004) 22 *BUIJ* 1, 2–162; Goddard, above n 36; BADIL Resource Center for Palestinian Refugee and Residency Rights, *Survey of Palestinian Refugees and Internally Displaced Persons, 2008–2009* (2009); Michael Kagan, 'The (Relative) Decline of Palestinian Exceptionalism and its Consequences for Refugee Studies in the Middle East' (2009) 22 *JORS*, 417–38.

<sup>50</sup> UNGA res 428 (V), above n 41.

<sup>51</sup> See, eg, Akram and Rempel, above n 49 (various scholars, practitioners, and advocates have disagreed about the precise meaning of Article 1(D) and have suggested that UNHCR's mandate should extend to Palestinian refugees within UNRWA's areas of operation, to all Palestinians beyond UNRWA's areas of operation; and/or to Palestinian refugees once eligible for UNRWA benefits who are now beyond its areas of operation).

<sup>52</sup> Takkenberg, above n 17, 65.

<sup>53</sup> *ibid* 66–67 ('As the French representative put it, the proposed text provided for "deferred inclusion" rather than exclusion of these refugees'). See also Goddard, above n 36.



definitively settled in accordance with the relevant UN General Assembly resolutions, have ceased to receive protection and assistance from UNRWA for any reason.<sup>54</sup>

The purpose of both paragraph 7(c) and Article 1(D) was to avoid overlapping legal regimes between the two agencies while not compromising the continuity of protection and assistance to Palestinian refugees.

### 2.2.2 Shared responsibilities: UNHCR and UNRWA collaboration during crisis

Secondary forced displacement in the Middle East places the continuity of protection and assistance for Palestinian refugees at acute risk. In those cases, the stark responsibilities delineated by the agencies' mandates are complicated by the flow of Palestinian refugees, with different statuses, into and out of UNRWA areas of operation. Within less than two decades, the two agencies discovered that strict adherence to their respective mandates threatened such continuity and exposed Palestinian refugees to heightened vulnerability.<sup>55</sup>

In 1954, the High Commissioner for Refugees clarified that the material welfare of the Palestine Refugees is the 'exclusive responsibility' of UNRWA, whereas the protection interests of those refugees as concerns compensation and repatriation is the concern of the UNCCP.<sup>56</sup> Thus, he continued, UNHCR's mandate does not extend to them.<sup>57</sup> The refugee flows resulting from the 1967 Six-Day War prompted UNHCR to shift its policy. In the face of considerable forced migration flows, UNHCR declared, 'Palestinians *outside* UNRWA's area of operations, not failing under any other exclusion or cessation clauses, were *prima facie* to be considered as fulfilling the inclusion provisions of the Statute (para. 6 B) and were therefore *of concern to UNHCR*.'<sup>58</sup>

The events of the 1991 Gulf War further shaped the delineation between UNRWA and UNCHR mandates and their shared responsibilities to Palestinian refugees. In response to the conditions faced by Palestinians leaving Kuwait in the aftermath of the first Gulf War, the then UNRWA Commissioner-General affirmed that the agency had a responsibility towards Palestinians enduring discrimination, abuse, and harassment, even beyond its areas of operation.<sup>59</sup> The Commissioner-General continued that, notwithstanding UNRWA's truncated geographical jurisdiction, the agency should pursue a pragmatic course:

I consider that the responsibility of UNRWA extends to Palestinians in all parts of the Middle East [including Kuwait]. If ambivalence is allowed to persist in this respect, this can only delay ad hoc UN protection and humanitarian activities.<sup>60</sup>

<sup>54</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) <[www.unhcr.org/refworld/docid/4add77d42.html](http://www.unhcr.org/refworld/docid/4add77d42.html)> accessed 10 Mar, 2012.

<sup>55</sup> UNDP, 'Reducing Disaster Risk: A Challenge for Development' (2004) as cited by Brailsford, above n 14, 5 (UNDP defines vulnerability as 'A human condition or process resulting from physical, social, economic, and environmental factors, which determine the likelihood and scale of damage from the impact of a given [threat]').

<sup>56</sup> Press Release No 4-22/54 (29 Jan 1954) on file with Lex Takkenberg, as quoted in Takkenberg, above n 17, 305 ('The mandate of the High Commissioner does not extend to them').

<sup>57</sup> Takkenberg, *ibid* 305.

<sup>58</sup> *ibid* 306.

<sup>59</sup> *ibid* 300.

<sup>60</sup> Former Commissioner-General, I Turkmen, 'Address to the Donors' Meeting' (5-6 June 1991), quoted in Schiff, 1995, 268, as quoted in Takkenberg, *ibid* 300.

As a result, UNRWA sent a mission to collaborate with UNHCR to assess the condition of Palestinian refugees in Kuwait.<sup>61</sup> As a result of this policy the agencies cooperated again in 1995/96 to deal with the Palestinian refugees stranded at the Libyan and Egyptian border, and again during the exodus of Palestinians fleeing Iraq in the aftermath of the 2003 invasion by the United States. Those cases help trace the development of a *de facto* policy of cooperation between the two agencies. They are examined in greater detail in the following section.

### 3. SECONDARY FORCED DISPLACEMENT IN THE MIDDLE EAST

As has been the case in Kuwait, Libya, and Iraq, Palestinian refugees endure greater vulnerability because of their symbolic value to the Palestine Question and its resolution. Accordingly, states, agencies, and national polities often treat them as politicized collective bodies at the expense of the humanitarian treatment their condition requires. Libya's former head of state, Muammar Qaddafi, poignantly captured this dual character of Palestinian refugees during his address as he forcibly displaced approximately 30,000 refugees to the Libyan-Egyptian border. Then, he said:

And as I care about the Palestinian cause, and in order to achieve the best interest of Palestinians, I will expel the thirty thousand Palestinians who currently live in my land, and try to secure their return to Gaza and Jericho. If Israel would not let them in, while Egypt does not allow them to pass through its territories, then I shall set a great camp for them on the Egyptian-Libyan borders.

Qaddafi added that:

all of what I will be doing is for their best interest. No matter how they suffer, and even if they remain in the camp for years to come, this would still be for their national interest. And the whole world would come to the conclusion that the settlement is a big lie, and that Palestinians are still refugees. I hereby call on all Arab states hosting Palestinian refugees to act likewise.<sup>62</sup>

Indeed, registration with UNRWA or with UNHCR does not signify an end to their forced displacement. Instead, like other vulnerable refugees, Palestinian refugees can experience 'overlapping refugeedom' or multiple experiences of displacement.<sup>63</sup> During these instances, UNHCR and UNRWA have stepped in to protect and aid Palestinian refugees in ways that have challenged and shaped their respective mandates. In particular, they have demonstrated their legal and operational capacity to extend overlapping legal regimes and the practical expedience of doing so. These experiences also help define the measures necessary to protect Palestinian refugees forcibly displaced in the

<sup>61</sup> Takkenberg, *ibid* 300.

<sup>62</sup> BADIL Staff, 'The Palestinian Crisis in Libya 1994–1996 (Interview with Professor Bassem Sirhan)' (BADIL Resource Center: Al Majdal, 2010) <<http://www.badil.org/en/al-majdal/item/1571-art-02>> accessed 5 Feb 2012.

<sup>63</sup> Elena Fiddian-Qasmieh, 'Invisible Refugees: Protecting Sahrawis and Palestinians Displaced by the 2011 Libyan Uprising' (University of Oxford Refugee Studies Centre Research Paper 225, 2011) 10; (Antonio Guterres, the UN High Commissioner for Refugees, has argued that Somali, Eritrean, and Ivorian asylum seekers formerly based in Libya who have sought safety in Europe 'were refugees twice').

Middle East. The section below examines those *de facto* policies developed in forced secondary displacement from Kuwait, Libya, and Iraq, and within Lebanon.

### 3.1 Kuwait

Following the First Gulf War in 1991, Kuwait expelled nearly 400,000 Palestinians in retaliation for its leadership's support of Saddam Hussein's occupation.<sup>64</sup> Palestinians came to Kuwait in two waves of migration. First, men came seeking economic opportunities in the late forties and fifties, followed by their families during the sixties.<sup>65</sup> Initially, Kuwait welcomed Palestinians as it lacked a robust work force. Kuwait tightened its immigration restrictions and reversed these trends in 1969 when the number of Palestinian refugees had grown significantly. This, coupled with other political events in the region, led to increasing tensions in the eighties 'when economic, social, and political factors combined to make the future of Palestinians in Kuwait increasingly uncertain in the face of rising public costs and unemployment among the young'.<sup>66</sup> The end of the Iran-Iraq War, coupled with Iraq's invasion of Kuwait, came on the heels of this changing landscape.

Officially, the Kuwaiti government did not expel Palestinians but 'invited' them to leave. With the exception of 32,000 people, namely, those who had been granted citizenship, been given personal exception, or who could not return to their host countries, like Palestinians from Gaza, all other Palestinians were forcibly expelled. Most Palestinians in Kuwait either had Jordanian passports, travel documents from Syria and Lebanon, or residency in other host countries. UNHCR and UNRWA worked together to facilitate their return to their countries of asylum.<sup>67</sup> Notwithstanding its geographical mandate, UNRWA sent a special mission to Kuwait between July and September 1992.<sup>68</sup> Together with UNHCR, the agencies completed a detailed survey of the Palestinians remaining in the country.<sup>69</sup>

While most host countries accepted the return of Palestinians, Egypt refused their re-entry. This population of approximately 2,000 people ended up in Iraq where they were integrated with the rest of the Palestinian population without differentiation.<sup>70</sup> Additionally, UNHCR stepped in to actively improve the protection of Palestinians in Kuwait. This included securing their release from detention, issuance or extension of residence documents, or permission to remain in the country while UNHCR and UNRWA explored the possibilities of their resettlement.<sup>71</sup>

As should be expected, UNHCR played a significant role in the resettlement and protection of Palestinians in Kuwait, since those Palestinians fall squarely within UNHCR's mandate. Significantly, however, although Kuwait is not within UNRWA's areas of operation, UNRWA assisted UNHCR in facilitating the resettlement of

<sup>64</sup> Rozenn Hommery Al-Qudat and Yann Le Troquer, 'From Kuwait to Jordan: The Palestinians' Third Exodus' (1999) 28 JPS 37–51.

<sup>65</sup> *ibid* 67.

<sup>66</sup> *ibid* 68.

<sup>67</sup> Goddard, above n 36, 501.

<sup>68</sup> UN doc A/48.13, 7, as discussed in Takkenberg, above n 17, 300.

<sup>69</sup> Takkenberg, *ibid*.

<sup>70</sup> Interview with Kahin Ismail (by Skype), responsible for Palestinian portfolio, MENA Bureau of UNHCR (1 Apr 2012).

<sup>71</sup> Goddard, above n 36, 501.

Palestinians, thus marking a unique collaboration not dictated by the strict geographical divides of their respective mandates.

### 3.2 Libya

Unlike in the case of Kuwait, host countries were less receptive to accepting Palestinian refugees expelled from Libya in 1995. In protest at the Palestinian Liberation Organization's entry into a peace agreement with Israel, Libya's former leader announced that all Palestinians would be forced to leave Libya. The newly established Palestinian Authority submitted a memo to the League of Arab States, requesting that the Palestinians not pay the price for Libya's official position on the peace accords with Israel, and called on Libya to respect the Casablanca Protocol.<sup>72</sup> Qaddafi's relentless position for nearly two years reaffirmed the non-existence of Palestinian national protection, even after the establishment of an interim government, as well as the ineffectiveness of the regional instrument intended to protect Palestinian refugees. Libya's treatment of Palestinians as political objects rather than refugees reflects their acute vulnerability in the Middle East. Sirhan, who taught at Libya's Western Mountain University, explains, 'Libya is not a host country for Palestinians (that is, Palestinians are not refugees there), as is the case with Lebanon, Syria, and Jordan; it is rather one which imports skilled labor.'<sup>73</sup> Indeed, Libya treated its Palestinian refugees as a migrant labour population.<sup>74</sup>

UNHCR and UNRWA set new precedents in their coordinated response to the crisis in Libya. While UNHCR provided assistance and monitoring, they issued a joint statement on forced displacement of Palestinians, marking the first joint statement from the two agencies.<sup>75</sup> UNRWA also issued its own press release, despite the fact that the Salloum border clearly falls outside its areas of operation.<sup>76</sup> The agencies emphasized the humanitarian condition of this population and, in response, several countries imposed restrictions to limit Palestinian re-entry.<sup>77</sup> Egypt restricted entry and passage, Israel restricted entry into Gaza, and Lebanon passed a new law that imposed bureaucratic hurdles to Palestinian re-entry. The Lebanese policy amounted to a nullification of these Palestinians' residence and travel rights. In effect, 900 Palestinians languished at the Salloum border for nine months.<sup>78</sup> Six hundred Palestinians returned to Syria and thirteen returned to Jordan.<sup>79</sup>

In addition to lobbying neighbouring countries to allow Palestinians holding valid documentation to enter their former-host states, UNHCR and UNRWA urged Libya to allow them to return.<sup>80</sup> Later, Palestinians who returned to Libya registered with UNHCR as asylum seekers.<sup>81</sup>

<sup>72</sup> Fiddian-Qasbiyeh, above n 63, 10.

<sup>73</sup> BADIL Staff, above n 62.

<sup>74</sup> Fiddian-Qasbiyeh, above n 63, 7; Goddard, above n 36, 501–02.

<sup>75</sup> Goddard, above n 36, 502.

<sup>76</sup> BADIL Staff, above n 62.

<sup>77</sup> *ibid.*

<sup>78</sup> Goddard, above n 36, 502.

<sup>79</sup> BADIL Staff, above n 62.

<sup>80</sup> Ismail interview, above n 70.

<sup>81</sup> BADIL Staff, above n 62.

### 3.3 Iraq

Whereas the governments expelled Palestinian refugees from Kuwait and Libya, Iraqi nationals initially displaced them by force from Iraq following the US invasion. After the fall of Baghdad, in April 2003, the security of Palestinian refugees steadily deteriorated.<sup>82</sup> Militant groups targeted Palestinians, evicted them from their homes, and subjected them to torture, and often death.<sup>83</sup> Iraqi communities resented Palestinian refugees because of the real and imagined privileges they enjoyed under Saddam Hussein's rule, as well as their perceived support for the Sunni insurgency.<sup>84</sup> Attacks significantly increased after the bombing of a Shi'a shrine and mosque in Sammarra in February 2006.<sup>85</sup> Rather than protect them, subsequent Iraqi governments made conditions more onerous for Palestinians. In some cases, the Ministry itself arbitrarily arrested, beat, tortured and forcibly disappeared Palestinian refugees.<sup>86</sup>

The attacks caused an exodus of Palestinian refugees from Iraq to neighbouring countries. Before the 2003 invasion, approximately 34,000 Palestinian refugees lived in Iraq.<sup>87</sup> UNHCR reports that, by 2010, only half that number remained in the country.<sup>88</sup> A little less than 6,000 of said refugees ended up in four refugee camps: Al Hol in northern Syria; Al Tanf on the Syrian side of the Iraqi-Syrian border; Walid on the Iraqi side of the Iraqi-Syrian border; and Ruweished on the Iraqi side of the Iraqi-Jordanian border.<sup>89</sup>

In March 2006, Jordan closed its border with Iraq to limit the entry of Palestinian refugees indefinitely.<sup>90</sup> As a result, approximately 500 Palestinian refugees remained stranded in Ruweished camp, 350 kilometres east of Amman. Jordan eased its policy in 2003 and allowed women with Jordanian passports entry without their husbands and children. In 2005, King Abdallah allowed their families entry by Royal Decree.<sup>91</sup> Approximately 200 Palestinian refugees lacked any documentation and were not eligible for entry into Jordan. UNHCR ultimately resettled them to Brazil and Chile.<sup>92</sup>

Syria permitted Palestinian refugees entry after considerable lobbying. It granted entry to those stuck on the Iraqi-Jordanian border into Al Hol in its northern territory.<sup>93</sup> The Syrian regime initially built Al Hol in 1991 when it expected to receive millions of Iraqis fleeing Iraq.<sup>94</sup> The camp fell within UNHCR's jurisdiction and UNRWA

<sup>82</sup> Human Rights Watch (HRW), 'Nowhere to Flee: The Perilous Situation of Palestinians in Iraq' (Sept 2006).

<sup>83</sup> *ibid.*

<sup>84</sup> Sheila M Dabu, 'Jordanian-Iraqi Border Closed Indefinitely' *World News Connection* (22 Mar 2006) (real benefits included free housing, state stipends, and government jobs, while other Iraqis were coping with UN sanctions).

<sup>85</sup> HRW, 'Nowhere to Flee', above n 82.

<sup>86</sup> *ibid.*

<sup>87</sup> Khaled Yacoub-Oweis, 'Plight of Iraq's Palestinian Refugees Worsens - UN' *Reuters* (14 May 2007).

<sup>88</sup> Ismail interview, above n 70.

<sup>89</sup> Interview with Elizabeth Campbell, Former Senior Advocate, Refugees International (Washington DC, 21 Feb 2012); see also KUNA, 'Iraq's Kurdistan ready to Receive Palestinian Refugees' (16 Apr 2009) (Iraqi Kurdistan region accepted Palestinian Iraqis in 2009). See also Elizabeth Roche, 'After Iraq, Palestinian Refugees Find Peace Amid Indian Squalor', *Agence France Press* (20 June 2007) (100 Palestinian-Iraqis ended up in India since May 2007).

<sup>90</sup> Dabu, above n 84. (Nasser Judeh, Jordanian Government spokesman, explained that Jordan 'is not a country with open borders. You need to go through proper procedures').

<sup>91</sup> Interview with Adam Shapiro (by Skype), human rights advocate and filmmaker (20 Feb 2012).

<sup>92</sup> Ismail interview, above n 70.

<sup>93</sup> Roberta Cohen, 'Iraq's Displaced: Where to Turn?' (2008) 24 *AUILR* 301, 308.

<sup>94</sup> Shapiro interview, above n 91.



coordinated with it to provide social services, psychosocial support, and other forms of humanitarian relief.<sup>95</sup> UNRWA would have preferred to integrate the Palestinian refugees at Al Hol within its existing scheme in Syria, but the camp and its residents remained within UNHCR's jurisdiction.<sup>96</sup> As the Syrian Uprising began, in 2011, which would later become a civil war, the Syrian Ministry of Foreign Affairs approved the transfer of the remaining Al Hol residents to UNRWA camps in Damascus, but it is not clear that this ever happened as the situation quickly became a crisis.<sup>97</sup> Palestinians fleeing Iraq were not registered under UNRWA but fled to Syria, an UNRWA area of operation. Strict adherence to the geographical mandates that demarcate UNRWA and UNHCR's responsibility would have brought these refugees under UNRWA control. Instead, their status in Iraq, as being outside UNRWA's areas of operation, was a controlling factor. Thus, Palestinians from Iraq taking refuge within Al Hol became persons of concern to UNHCR. UNHCR's mandate also extended to Palestinians who went to Jordan. In those instances, UNRWA remained an implementing partner.<sup>98</sup>

UNHCR explored durable solutions, mainly resettlement options, on behalf of those refugees in the camps, as well as for those in Damascus. Together, UNRWA and UNHCR provided assistance to all refugees. Notably, UNRWA took the lead in urban areas, where it had developed considerable experience in Syria.<sup>99</sup> A 2006 visit by Antonio Guterres, the UN High Commissioner for Refugees, to the Syria camps buttressed UNHCR's advocacy on behalf of Palestinian refugees. In political standoffs, for example, Guterres's support for resettlement worked to resolve the issue in favour of resettlement.<sup>100</sup>

Those denied entry into Syria remained stuck in Al Tanf, in no-man's land between Syria and Iraq on the Syrian side of the border. UN officials described horrendous conditions in the desert stretch, including children suffering from lice, elderly suffering from diabetes and high blood pressure, contaminated water, and skin afflictions.<sup>101</sup> The population 'lived in a ditch alongside the road for three years and UNHCR did an impressive job on behalf of this population highlighting why they needed protection.'<sup>102</sup> UNCHR reports that Al Tanf closed in 2009 and the majority of Palestinians have been resettled, while a small minority moved to Al Hol.<sup>103</sup> By March 2012, about 260 Palestinian refugees remained in Al Hol and were in the pipeline for resettlement.<sup>104</sup>

When Syria sealed its border to Palestinian refugees, 1,000 Palestinians remained stranded in Walid on the Iraqi side of the Syrian-Iraqi border.<sup>105</sup> The Walid camp was in a border area that the US military considered a liability to its military advantage.<sup>106</sup>

<sup>95</sup> *ibid.*

<sup>96</sup> Interview with Roger Hearn (by telephone), Former Director, UNRWA Affairs Syria from October 2009-December 2011 (21 Feb 2012).

<sup>97</sup> *ibid.*

<sup>98</sup> AbuZayd interview, above n 18.

<sup>99</sup> Hearn interview, above n 96.

<sup>100</sup> Shapiro interview, above n 91.

<sup>101</sup> Miret El-Naggar, 'Palestinians Stranded in Desert' *McClatchy News Service* (20 Dec 2007).

<sup>102</sup> Campbell interview, above n 89.

<sup>103</sup> Ismail interview, above n 70.

<sup>104</sup> *ibid.*

<sup>105</sup> Yacoub-Oweis, above n 87.

<sup>106</sup> Shapiro interview, above n 91.

The military therefore agreed to provide security for anyone from the US Department of Homeland Security (DHS) to conduct interviews in the camp.<sup>107</sup> Due to intense lobbying by civil society partners of UNHCR,<sup>108</sup> the Department of State began to conduct its own lobbying within the US government. Ultimately, DHS conducted interviews in the camp and agreed to take 1,053 people from Walid camp for resettlement in the US, marking the first time that the US has given asylum to a group of Palestinians.<sup>109</sup>

Civil society partners led UNHCR advocacy on behalf of Palestinian refugees.<sup>110</sup> Between 2007 and 2008, independent human rights activists and filmmakers documented the plight of stranded Palestinian refugees. They met directly with Government officials in the US, Chile, Brazil, Greece, and Yemen, among others, to screen their film and urge the Governments to resettle the refugees within their borders.<sup>111</sup> Similarly, a senior advocate with a US NGO showed the thirteen-minute film throughout Washington and Geneva, and placed the issue on the agenda of a resettlement group in Geneva, as well as with other traditional refugee organizations in the US who normally did not address issues related to Palestinian refugees.<sup>112</sup> The heightened awareness and the stark images caught by the film evoked a strong emotional response that manifested in strong policy. Iceland, for example, used its entire quota for asylum cases in 2007, to offer twenty-seven Palestinian refugees asylum.<sup>113</sup> The lack of a regional solution, together with the miserable humanitarian conditions to which the refugee population was subject, as well as their small numbers relative to the larger Iraqi population eligible for resettlement, made resettlement an available durable solution for the Palestinian refugee population.

In addition to establishing new precedents for solutions available to Palestinian refugees, their exodus from Iraq also prompted a more collaborative relationship between UNRWA and UNHCR. Ismail Kahin, of the MENA Bureau of UNHCR responsible for the Palestinian portfolio, explains:

I think the situation of the ex-Iraq Palestinians is an important landmark because of the engagement on the issue of Palestinian refugees. There was a huge caseload because of those who were targeted and fled the country. Their arrival in Syria and Jordan prompted more cooperation between the two agencies. There was a heightened contact and coordination on these specific issues. Coordination spans back to Libya but events in Iraq increased contacts and coordination. They were stuck in these camps and it was very visible as a vulnerable population.<sup>114</sup>

Since 2007, the two agencies have met annually at the highest levels. Additionally, in 2010, the agencies established a joint expert working group to coordinate on issues related to overlapping legal regimes in the region.<sup>115</sup>

<sup>107</sup> *ibid.*

<sup>108</sup> Campbell interview, above n 89 (A group of NGOs organized by Refugees International that visited the camps and then joined Refugees International in its lobbying efforts in Washington and Geneva).

<sup>109</sup> Shapiro interview, above n 91.

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> Campbell interview, above n 89.

<sup>113</sup> *ibid.*

<sup>114</sup> Ismail interview, above n 70.

<sup>115</sup> *ibid.*

### 3.4 Internal displacement in Lebanon

While Palestinian refugees dealt with forced displacement beyond state borders, in Kuwait, Libya, and Iraq, in 2006 and later in 2007, they also endured forced displacement within Lebanon's borders. Those persons constituted internally displaced persons (IDPs).<sup>116</sup> The primary distinction between a refugee and an IDP is that the latter does not cross a state border but instead remains internally displaced. Protection for IDPs is contingent upon the pressure placed upon a state and the willingness of international organizations to intervene on behalf of vulnerable communities.<sup>117</sup>

Lebanon is a good case study in which to examine internal displacement because, like Syria, it is governed by UNRWA's mandate and Palestinian refugees therein have endured several waves of internal displacement. The 33-Day War on Lebanon, in August 2006, caused the displacement of more than 25 per cent of the country's population, or one million people.<sup>118</sup> Sixteen thousand of them were Palestinian refugees.<sup>119</sup>

Within four days of the ceasefire ending the conflict between Israel and Lebanon, 90 per cent of the displaced populations had returned to their homes of habitual residence. By November 2010, no IDPs remained within Lebanon.<sup>120</sup> Dominique Tohme, a Legal Adviser to UNHCR in Lebanon, explains that the Agency assisted all:

[T]hose who were displaced from their habitual residence, regardless of any other consideration. That included the Lebanese but also the Palestinian and non-Palestinian refugees. We mainly targeted those who were in collective shelters such as schools, but we also provided reintegration/rehabilitation assistance during the return process.<sup>121</sup>

UNRWA also assisted all displaced persons without distinction.<sup>122</sup> Roger Hearn, former Director of UNRWA Affairs, Syria, adds that there were some movements among Palestinian refugees to Syria and Jordan and UNRWA was responsible for them.<sup>123</sup>

<sup>116</sup> UN OCHA, 'Guiding Principles on Internal Displacement' (Brookings Institute Sept 2004) <<http://www.brookings.edu/fp/projects/idp/resources/GPEnglish.pdf>> accessed 20 Mar 2012 (according to the working definition in the Guiding Principles on Internal Displacement, IDPs are 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural disasters, and who have not crossed any internationally recognized State border').

<sup>117</sup> Elizabeth Ferris, Erin Mooney and Chareen Stark, 'From National Responsibility to Response: Part I: General Conclusions on IDP Protection' (*Brookings Institute*, LSE Project on Internal Displacement's Study, 21 Feb 2012) <<http://www.brookings.edu/research/opinions/2012/02/21-idp-responsibility-ferris>> accessed 20 Mar 2012.

<sup>118</sup> Internal Displacement Monitoring Centre (IDMC), 'Lebanon: No New Displacement But Causes of Past Conflicts Unresolved' (30 Dec 2010) (Lebanon has witnessed four episodes of internal displacement before that: the war of the camps, in the mid-1980s, in which Amal forces besieged Beirut-based refugee camps; the Israeli invasion of southern Lebanon; the destruction of Tel el Zaatar refugee camp, in 1976, due to clashes between Christian and PLO forces; and the massacre at Sabra and Shatila camp in 1982).

<sup>119</sup> BADIL survey, above n 49.

<sup>120</sup> IDMC, above n 118, 5.

<sup>121</sup> Interview with Dominique Tohme (by email), Legal Adviser, UNHCR-Lebanon (27 Mar 2012).

<sup>122</sup> See UNGA res 61/114 (14 Dec 2006), para 6 ('Endorses, meanwhile, the efforts of the Commissioner-General to continue to provide humanitarian assistance, as far as practicable, on an emergency basis, and as a temporary measure, to persons in the area who are internally displaced and in serious need of continued assistance as a result of recent incursions in the Occupied Palestinian Territory and hostilities in Lebanon').

<sup>123</sup> Hearn interview, above n 96.

In contrast, since 2007, and the destruction of Naher el-Bared refugee camp in Tripoli, which caused the displacement of 31,000 Palestinian refugees, UNHCR has played no part in the protection of IDPs. The main distinction is that, whereas the 33-Day War displaced both Palestinian refugees and non-refugees, in the Naher el-Bared conflict only Palestinian refugees were displaced, thereby not necessitating UNHCR protection. Additionally, while an Israeli offensive caused the displacement in 2006, in 2007, the Lebanese government bore responsibility for the forced displacement. As of September 2010, only 20 per cent of those displaced Palestinians had returned to their former place of habitual residence.<sup>124</sup>

The Lebanese Government established a High Relief Commission to coordinate return and compensation on behalf of Palestinian refugees displaced from Naher el-Bared.<sup>125</sup> It worked jointly with the Palestinian Liberation Organization (PLO) and UNRWA to reconstruct the camp. The Government also created a Lebanese-Palestinian Dialogue Committee (LPDC) to deal with these matters, including the return of the refugees to their camps.<sup>126</sup> UNRWA received enough funds to rebuild 36 per cent of the homes destroyed. Administrative, juridical and political hurdles have obstructed reconstruction. State and non-state partners aimed to resettle all Palestinian refugees in the camp by 2011.<sup>127</sup> By October 2011, while more than 300 families had returned and three of its six schools had been reconstructed, comprehensive resettlement was far from complete.<sup>128</sup> In the meantime, UNRWA has been the main, if not sole, provider of humanitarian needs to the displaced Palestinians.<sup>129</sup>

Whereas 90 per cent of displaced persons returned their homes within four days of the ceasefire in Lebanon, five years after the destruction of Naher el-Bared, Palestinian refugees still remain internally displaced. In part this is due to Lebanon's lack of an internal displacement policy,<sup>130</sup> but also it may be attributed to the lack of necessary political pressure and funding to complete the project. According to the Brookings Institute Project on Internal Displacement Study, in which the researchers surveyed fifteen of the twenty countries with the highest number of IDPs, political will constitutes the main factor in determining a response to internal displacement.<sup>131</sup> Another significant finding adds:

international actors are valuable resources for efforts aiming to improve government response to IDPs. This includes pressure being placed by the Representative of the UN Secretary-General mandated to study internal displacement. It also includes drawing the sustained attention of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons.<sup>132</sup>

<sup>124</sup> IDMC, above n 118.

<sup>125</sup> *ibid.* 8.

<sup>126</sup> *ibid.*

<sup>127</sup> UNRWA Lebanon Field Office, 'Naher el-Bared Refugee Camp: UNRWA Relief, Recovery, and Reconstruction Framework 2008–2011' (May 2008), 14 <<http://www.unrwa.org/userfiles/201001193045.pdf>> accessed 12 Mar 2012.

<sup>128</sup> *ibid.*

<sup>129</sup> *ibid.*

<sup>130</sup> *ibid.*

<sup>131</sup> Ferris, Mooney, and Stark, above n 117, 2 ('Internal displacement due to conflict derives from political issues, and all aspects of a government's response to it therefore are affected by political considerations, including, for example, acknowledgment of displacement, registration and collection of data on IDPs, ensuring the participation of IDPs in decision-making, assistance and protection offered to different (temporal) caseloads of IDPs, support for durable solutions, which durable solutions are supported, and the facilitation of efforts by international organizations to provide protection and assistance to IDPs').

<sup>132</sup> *ibid.* 3.

Thus one may conclude that the international scope of the 33-Day War, coupled with the cooperation of UNHCR, whose mandate is global and its influential reach considerable, accounts for the differential levels of protection enjoyed by internally displaced Palestinian refugees in 2006 and then 2007.

Since the beginning of the Syrian crisis in March 2011, Palestinian refugees have again been forcibly displaced both internally and to neighbouring countries. This exodus is the most recent episode of Palestinian refugee secondary forced displacement in the Middle East and offers new lessons on inter-agency collaboration between UNHCR and UNRWA.

#### 4. PALESTINIAN REFUGEES IN SYRIA

##### 4.1 Palestinians in Syria

As a result of the 1948 Arab-Israeli War, approximately 90,000 Palestinians from the Galilee region of present-day Israel fled to Syria for refuge.<sup>133</sup> By the start of the uprising, their population had grown to nearly 500,000 and constituted between 2.8 to 3 per cent of Syria's population and 10.5 per cent of the Palestinian refugees falling under UNRWA's mandate.<sup>134</sup>

The majority of Palestinians were concentrated in the greater Damascus area due to favourable economic opportunities and access to services. The other 25 per cent of the Palestinian population lived in Latakia, Homs, Aleppo, and Der'a.<sup>135</sup> There are nine official and three unofficial refugee camps in Syria that have been home to approximately 30 per cent of the refugee population.<sup>136</sup>

##### 4.2 Relationship of Palestinian refugees and UNRWA to the Syrian regime

Syria has taken great pride in not only its protection of Palestinian refugees but also of the Palestinian cause itself. Accordingly, it has treated its refugee population favourably relative to its Arab neighbors.<sup>137</sup> Together with Jordan, Syria affords the greatest amount of civil, economic, social, and cultural rights to their Palestinian refugee population.<sup>138</sup> In 1956, Syria adopted Law 260 and granted Palestinians nearly the same rights as Syrian nationals, with the exception of the right to vote or participate in elections for the Syrian National Council or the Presidency.<sup>139</sup> In October 1963, it adopted Law 1311 and granted Palestinian refugees travel documents. Notably, Palestinians do not need a re-entry permit to return to Syria, unlike in Egypt, for example. Moreover, like their Syrian counterparts, Palestinian refugees can change or obtain new travel documents from any Syrian representative office abroad.<sup>140</sup>

Additionally, the Syrian government established a department within the Syrian Social Affairs and Labour Ministry to administer the affairs of Palestinian refugees.

<sup>133</sup> UNRWA, 'Where We Work: Syria' (2013) <<http://www.unrwa.org/where-we-work/syria>> accessed 12 Mar 2012.

<sup>134</sup> Hearn interview, above n 96.

<sup>135</sup> *ibid*; Nabil Mahmoud as-Sahly, 'Profiles: Palestinian Refugees in Syria' *Al-Majdal* BADIL (1999).

<sup>136</sup> UNRWA, above n 133 (These camps include Dar'a, Ein el Tal, Hama, Homs, Jaramana, Khan Dunoun, Khan Eshieh, Latakia, Neirab, Qabr Essit, Sbeineh, and Yarmouk).

<sup>137</sup> As-Sahly, above n 135.

<sup>138</sup> Akram and Rempel, above n 49.

<sup>139</sup> As-Sahly, above n 135 (note that restrictions on land and home ownership do exist).

<sup>140</sup> Hearn interview, above n 96.



Today that body is known as the Syrian General Authority for Palestine Arab Refugees (GAPAR). GAPAR has served as an interlocutor with UNRWA and has officially managed the refugee camps. Despite its lack of resources, it has served as the focal point for the Government, the refugees, and UNRWA.<sup>141</sup> According to Roger Hearn, UNRWA's former Director of Affairs in Syria, it was seen as an inextricable part of the regime.<sup>142</sup> This integration reflects both the positive integration of Palestinian refugees into Syria as well as the regime's desire to co-opt the Palestinian political bodies within its borders to mitigate the risk they could pose to national stability.

Syria has refused to enter into negotiations with Israel until it withdraws from Arab and Palestinian lands. Accordingly, Syria has rejected the peace settlements achieved by Egypt and Jordan and supports separatist Palestinian forces outside the mainstream of Palestinian political groups.<sup>143</sup> This staunch position also informs Syria's policy towards, and relationship with, UNRWA.<sup>144</sup>

The Syrian regime views UNRWA as necessary but also as a threat and monitors its work closely.<sup>145</sup> Like in Jordan and Lebanon, where UNRWA has been operating since 1948, in Syria, UNRWA has come under government surveillance, influence, and, in many ways, control.<sup>146</sup> As the Arab uprisings unfolded, this relationship became tense. Hearn explains that the relationship between the Syrian regime and UNRWA went from 'sterling to horrible' once he instructed his staff not to attend a pro-government rally.<sup>147</sup> The tension made Hearn's long-term position in Syria untenable. During his tenure, however, he decided that, as a matter of policy, it was in the Palestinians' best interest to make them less visible during the Syrian uprising.<sup>148</sup>

### 4.3 Palestinian refugees in light of the Syrian crisis

Although Hearn decided to keep Palestinians below the radar for their security, he took the opposite approach when regime forces attacked the Palestinian refugee camp in Latakia. In August 2011, five months into the conflict, Bashar Al-Assad's forces attacked the port city of Latakia, home to 10,000 Palestinians. The attack with gunships, tanks, and armoured vehicles forced more than 5,000 Palestinians to flee from the camp.<sup>149</sup>

Hearn explains that despite confirmation of this event, GAPAR and the Syrian Ministry of Foreign Affairs denied the attack.<sup>150</sup> This prompted him to bring the issue to international attention by sharing the news story with BBC, CNN, and Aljazeera, among other global news agencies. The public outcry over the attacks caused the regime tremendous embarrassment and reduced their willingness to approach the camps at all.<sup>151</sup>

<sup>141</sup> *ibid.*

<sup>142</sup> *ibid.*

<sup>143</sup> Nayef Jarrad, 'Profiles: Palestinian Refugees in Syria' *Al-Majdal* BADIL (1999).

<sup>144</sup> *ibid.*

<sup>145</sup> Hearn interview, above n 96 (he explains that all of UNRWA's operations were open to Government consumption and were monitored closely).

<sup>146</sup> Hilal interview, above n 39.

<sup>147</sup> Hearn interview, above n 96.

<sup>148</sup> *ibid.*

<sup>149</sup> Press Association, 'Syria Assault on Latakia Drives 5,000 Palestinians from Refugee Camp' *The Guardian* (15 Aug 2011) <<http://www.guardian.co.uk/world/2011/aug/15/syria-palestinians-latakia-assault>> accessed 27 Mar 2012.

<sup>150</sup> Hearn interview, above n 96.

<sup>151</sup> *ibid.*

Tensions between Palestinian refugees and the regime had arisen at least two months before the attack on Latakia. In May 2011, Palestinians organized a global march of return onto the borders of Israel and the Occupied Palestinian Territory in order to affirm their right to return.<sup>152</sup> Israeli forces killed some of the Palestinian and Arab participants, including twenty-two persons in the Israeli occupied Golan Heights.<sup>153</sup> Palestinian refugees in Syria, who looked upon the protest with suspicion, attributed responsibility for the deaths to the Popular Front for the Liberation of Palestine-General Command (PFLP-GC), who took part in organizing the march.<sup>154</sup>

The PFLP-GC is one of ten Palestinian political organizations that exist in Syria.<sup>155</sup> It is seen as being close to, if not a branch of, Syria's security service and secret police.<sup>156</sup> Many Palestinian refugees believed that the Syrian government had facilitated the protest upon the Golan Heights, which it has not made accessible to protestors since its occupation in 1967, in order to divert attention away from its own internal unrest.<sup>157</sup> The 50,000 Palestinians who mourned the fallen took their procession to the PFLP-GC headquarters where they threw stones at the building before setting it on fire.<sup>158</sup> The PFLP-GC guards shot directly at the crowd and killed twelve of the protestors.<sup>159</sup>

The attack on the PFLP-GC office arguably signalled that the Palestinian refugee population did not want to be drawn into the Syrian national conflict and did not want to be used as a 'bargaining chip in an internal Syrian argument'.<sup>160</sup> An independent Syrian analyst specializing in Palestinian affairs explains that this is why the protestors burned down the PFLP-GC office but left the Hamas office untouched, 'Hamas has remained independent while the PFLP has openly sided with the Syrian government'.<sup>161</sup>

In late February 2011, Hamas abandoned its neutrality and left Syria for Qatar and Egypt. The group's political leader, Khaled Meshaal, who had taken refuge in Syria since 1999, moved to Doha and his deputy, Moussa Abu Marzouk, is located in Cairo. The move signalled an end to Syrian patronage and a disavowal of the Assad regime.<sup>162</sup> Ismail Haniyeh, the head of the Hamas government in Gaza, declared his support for the opposition forces in Syria declaring them,

<sup>152</sup> 'Palestinians Killed in "Nakba" Clashes' *Al Jazeera* (15 May 2011) <<http://www.aljazeera.com/news/middleeast/2011/05/2011515649440342.html>> accessed 20 May 2011.

<sup>153</sup> Hearn interview, above n 96.

<sup>154</sup> Phil Sands, 'Up to 12 Killed as Palestinian Refugees Are Drawn into Syria Revolt' *The National* (8 June 2011) <<http://www.thenational.ae/news/world/middle-east/up-to-12-killed-as-palestinian-refugees-are-drawn-into-syria-revolt#page1>> accessed 1 May 2012.

<sup>155</sup> Danish Immigration Service, 'Report on Fact-Finding Mission to Syria and Lebanon, Conditions for Kurds and Stateless Palestinians in Syria etc.' (17–27 Sept 2001) <<http://www.refworld.org/pdfid/3df0f7c80.pdf>> accessed 1 May 2012 (as of 2000, the following ten political parties existed in Syria: Popular Front for the Liberation of Palestine (PFLP), Democratic Front for the Liberation of Palestine (DFLP), Palestinian Revolutionary Communist Party (PRCP), Popular Front for the Liberation of Palestine – General Command (PFLP-GC), Palestinian Liberation Front (PLF), Palestinian Popular Struggle Front (PPSF), Fatah al-intifada, Saika, Palestinian Islamic Jihad (PIJ), and Hamas).

<sup>156</sup> Sands, above n 154.

<sup>157</sup> *ibid.*

<sup>158</sup> *ibid.*

<sup>159</sup> *ibid.*

<sup>160</sup> *ibid.*

<sup>161</sup> *ibid.*

<sup>162</sup> William Tucker, 'Hamas Leaves Syria' (*In Homeland Security*, 1 Mar 2012) <<http://inhomelandsecurity.com/hamas-leaves-syria/>> accessed on 1 May 2012.

'heroic people ... striving for freedom, democracy, and reform.'<sup>163</sup> The move was an affront to the regime, which provided Hamas with refuge and aid after their expulsion from Jordan.<sup>164</sup>

Still, the Palestinians, as well as those who speak on their behalf, have insisted on maintaining their neutrality in the conflict. Filippo Grandi, then Commissioner General of UNRWA, publicly appealed to Palestinian refugees in Syria to remain neutral and called upon all parties to respect their neutrality.<sup>165</sup> The official Palestinian leadership, together with all the Palestinian political factions in Syria, agreed to remain neutral to the Syrian conflict.<sup>166</sup> However, in early July, the PFLP-GC Secretary-General, Ahmed Jibreel, in contravention of his party's political decisions, threw his support behind the Syrian regime in the conflict thereby undermining Palestinian neutrality.<sup>167</sup> He has allegedly recruited hundreds of Palestinian gunmen to defend Palestinian refugee camps against rebel fighters.

Moreover, in Dera'a, Homs, Hama, and Latakia, the Syrian opposition resented the Palestinian refugees for not joining the revolution. Despite their restraint and their insistence on neutrality, Palestinian refugees have helped support the protestors through the distribution of medical supplies and the provision of food.<sup>168</sup> To complicate matters, Free Syrian Army forces have also taken refuge in Yarmouk refugee camp.<sup>169</sup> These confrontations, divergent loyalties, and unexpected circumstances have exposed Palestinian refugees to the brunt of Syria's gruesome civil war, forcing them to flee to neighbouring countries.

##### 5. SECONDARY FORCED DISPLACEMENT FROM SYRIA

Palestinian refugees have fled to Jordan from Syria since March 2011, when fighting began six kilometres from the Jordanian border in Dera'a. Many of the first refugees who fled from Dera'a had extended family in Jordan. As the crisis escalated and spread across Syria, Palestinians from other cities started to flee to Jordan as well.<sup>170</sup> As of 29 October 2013, 9,657 Palestinian refugees from Syria have taken refuge in Jordan.<sup>171</sup>

The protracted and ongoing exodus of Palestinian refugees to Lebanon began in mid-July 2012 after a string of mortar attacks upon the Yarmouk refugee camp killed twenty people.<sup>172</sup> By September 2012, 3,000 Palestinian refugees had arrived in Lebanon,<sup>173</sup> an additional 2,000 arrived in October 2012.<sup>174</sup> The numbers of Palestinian refugees fleeing Syria increased exponentially after December 2012, when a Syrian jet bombed

<sup>163</sup> 'Hamas Political Leaders Leave Syria for Egypt and Qatar' *BBC News Middle East* (28 Feb 2012) <<http://www.bbc.co.uk/news/world-middle-east-17192278>> accessed on 1 May 2012.

<sup>164</sup> *ibid.*

<sup>165</sup> 'UNRWA Chief Advises Palestinians in Syria to Remain Neutral' *Kuwait News Agency* (3 Sept 2012) <<http://www.kuna.net.kw/ArticleDetails.aspx?id=2226160&language=en>> accessed on 1 May 2012; DPA, 'UN: Palestinians' Neutrality in Syria Conflict Must Be Respected' *Haaretz* (11 Mar 2012) <<http://www.haaretz.com/print-edition/news/un-palestinians-neutrality-in-syria-conflict-must-be-respected-1.417732>> accessed on 1 May 2012.

<sup>166</sup> 'PFLP-GC Protests Leader's Position on Syria' *Ma'an News Agency* (8 July 2012).

<sup>167</sup> *ibid.*

<sup>168</sup> *ibid.*

<sup>169</sup> Lauren Williams, 'Palestinian Camp Attack in Syria Sparks Fears of Factional Tensions' *The Daily Star* (4 Aug 2012) (PA, Hamas, Islamic Jihad were all calling for neutrality, meanwhile FSA fighters had taken refuge in the Yarmouk).

<sup>170</sup> Christopher Phillips, 'The Impact of Syrian Refugees on Turkey and Jordan' *The World Today* (Oct 2012).

<sup>171</sup> 'Syria Crisis Update 62', above n 3; UNRWA, 'Syria Crisis Situation Update: Issue 39' (UNRWA 23 Mar 2013) <<http://www.unrwa.org/etemplate.php?id=1686>> accessed on 1 Apr 2013.

<sup>172</sup> 'PFLP-GC Protests', above n 166.

<sup>173</sup> Mohammed Zaatari, 'Palestinian Refugees from Syria Reside in an UNRWA School in Ain al-Hilweh' *The Daily Star* (18 Sept 2012).

<sup>174</sup> Jonathan Broadberry, 'Palestinians Escaping Syria Find Little Relief in Lebanon' *Open Democracy* (7 Oct 2012).

a mosque and a school inside the Yarmouk refugee camp.<sup>175</sup> By late October 2013, their numbers had reached 49,000.<sup>176</sup>

The Syrian crisis has also caused the forced displacement of Palestinian refugees within Syria. As of October 2013, approximately 250,000 have become internally displaced persons (IDP) and are under UNRWA's protection in Syria.<sup>177</sup> Six thousand Palestinian refugees are in Egypt<sup>178</sup> and an unspecified number have fled to Turkey.<sup>179</sup> In November 2013, UNRWA announced that its US \$36 million deficit would limit its ability to provide humanitarian services and pay 30,000 employees for the month of December 2013.<sup>180</sup>

### 5.1 Jordan

Since the conflict began, nearly 525,231 Syrians have fled to Jordan and are registered with UNHCR.<sup>181</sup> As of 29 October 2013, 9,657 Palestinian refugees have registered with UNRWA.<sup>182</sup> Upon discovering seventeen Palestinian refugees among a wave of Syrian refugees in April 2012, Jordan considered developing a buffer zone to offer them shelter without permitting them to enter the country.<sup>183</sup> The Government commented that Palestinian entry into Jordan sets a 'dangerous precedent'<sup>184</sup> as it opens the possibility of mass migration of Palestinian refugees from Syria.<sup>185</sup> Jordan prefers not to absorb any more Palestinians, who currently constitute 70 per cent of its population.<sup>186</sup>

While Jordan has not created a buffer zone with Syria to offer Palestinian refugees shelter, it has detained Palestinians who have entered Jordan through unofficial crossings without the possibility for release, except to Syria.<sup>187</sup> Jordanian officials have detained these refugees in Cyber City, a walled complex of technology companies outside Ramtha.<sup>188</sup> Jordan administratively detains these refugees and precludes their access to judicial or administrative review.

<sup>175</sup> Martin Chulov, 'Palestinians flee to Lebanon after jet bombs Syria's largest refugee camp' *The Guardian* (18 Dec 2012) <<http://www.guardian.co.uk/world/2012/dec/18/syria-palestinian-refugees-flee-yarmouk>> accessed on 12 Mar 2013.

<sup>176</sup> 'Syria Crisis Update 62', above n 3; Thanassis Cambanis, 'Syria's Refugees Overwhelming Relief Efforts and Host Countries, U.N. Officials Says' *New York Times* (4 Apr 2013).

<sup>177</sup> UNRWA, 'Syria Crisis Situation Update: Issue 43' (UNRWA, 20 Apr 2013) <<http://www.unrwa.org/etemplate.php?id=1721>> accessed on 1 May 2013.

<sup>178</sup> 'Syria Crisis Update 62', above n 3.

<sup>179</sup> ReliefWeb, 'Regional Analysis Syria' (28 Mar 2013) <<http://reliefweb.int/sites/reliefweb.int/files/resources/Regional%20Analysis%20Syria%20-%20Part%20II%20Host%20Countries.pdf>> accessed on 1 May 2013.

<sup>180</sup> AFP, 'UN Palestinian Agency to Stop Paying Wages' *France 24* (19 Nov 2013) <[http://www.france24.com/en/20131119-un-palestinian-agency-stop-paying-wages/?ns\\_campaign=editorial&ns\\_fee=0&ns\\_linkname=20131119\\_un\\_palestinian\\_agency\\_stop\\_paying\\_wages&ns\\_mchannel=RSS&ns\\_source=RSS\\_public](http://www.france24.com/en/20131119-un-palestinian-agency-stop-paying-wages/?ns_campaign=editorial&ns_fee=0&ns_linkname=20131119_un_palestinian_agency_stop_paying_wages&ns_mchannel=RSS&ns_source=RSS_public)> accessed on 1 May 2013.

<sup>181</sup> UNHCR, 'Syria Regional Refugee Response: Jordan' (2013) <<http://data.unhcr.org/syrianrefugees/country.php?id=107>> accessed 1 May 2013.

<sup>182</sup> 'Syria Crisis Update 62', above n 3.

<sup>183</sup> 'Jordan to Establish Buffer Zone for Palestinian Refugees from Syria' *Kuwait News Agency* (9 Apr 2012) <<http://www.kuna.net/kw/ArticleDetails.aspx?id=2232555&language=en>> accessed 1 May 2013.

<sup>184</sup> *ibid.*

<sup>185</sup> 'Jordan Concerned over Growing Palestinian Refugee Influx' *Palestinian News Network* (3 Sept 2012) <<http://english.pnn.ps/index.php/international/2575-jordan-concerned-over-growing-palestinian-refugee-influx>> accessed 20 Feb 2013 ('Jordan prefers to transfer Palestinian refugees out of the country, over concerns that opening camps on Jordanian territories may cause a mass migration of the Palestinians from Syria').

<sup>186</sup> *ibid.*; see also Cohen, above n 93, 307 (the Kingdom evidenced its aversion to Palestinian refugees when it denied entry to the families of Palestinian women with Jordanian passports fleeing Iraq. They only entered Jordan after the King passed a Royal Decree and, in that case, less than 500 persons benefitted from the Decree).

<sup>187</sup> HRW 'Nowhere to Flee', above n 82.

<sup>188</sup> *ibid.*

Palestinians located in Cyber City are not allowed to move beyond 30 metres of the camp and, although it is only 12 kilometres from the city of Ramtha, it is not supported by public transport.<sup>189</sup> UNRWA is able to provide basic goods to the Palestinians detained there.<sup>190</sup>

Jordan has also forcibly returned newly arriving Palestinians from Syria in violation of the customary law prohibition on *refoulement*.<sup>191</sup> This has included forcing refugees to cross the border back into Syria at gunpoint as well as denying families entry with no reason.<sup>192</sup> A member of the Free Syrian Army, whose job is to transport refugees from Syria to Jordan, explained that he began to discourage Palestinian refugees from attempting to make the journey to Jordan in April 2012 when the Government's policy of exclusion and deportation became evident.<sup>193</sup> Word of mouth has diminished the number of Palestinian refugees who even come to the border.<sup>194</sup> In an October 2012 interview, the Jordanian Prime Minister, Abdullah Ensour, publicly announced Jordan's policy of refusing Palestinian refugees from Syria entry into Jordan.<sup>195</sup>

This knowledge, however, has not stopped the most desperate families from attempting to cross the border. In one case, a Palestinian who was born in Iraq, but who has a Jordanian passport from her father because he immigrated to Iraq in the fifties, and whose late husband passed his Iraqi citizenship on to their four children,<sup>196</sup> left Iraq for Yemen in the late nineties as a result of the pressures created by US-imposed sanctions. After eleven years in Yemen, Yemeni authorities refused to renew the family's paperwork and they travelled through Syria to Greek Cyprus in 2009. Greek authorities refused to grant them asylum and attempted to deport the family back to Iraq. After two years of failed attempts to acquire asylum in Cyprus, and fearing conditions in Iraq, the family travelled to Syria in May 2011. The husband died there in February 2012 and, within a few months, Syrian authorities discovered that she and her children had overstayed their transit visa. In June 2012, the family attempted to enter Jordan, but Jordanian officials refused entry to the children, who lacked Jordanian passports. The mother and her four children remained stranded on the Jordanian-Syrian border for four days before Syrian officials permitted her children to enter. Since then, her children have been in Yarmouk, under UNHCR's mandate, and she has been in Jordan, under UNRWA's mandate. She is hopeful that her children will be eligible for third-country resettlement, even if she is not eligible to travel with them.<sup>197</sup> Although she sought assistance from UNRWA, the agency was unable to successfully intervene on her behalf.

<sup>189</sup> 'Analysis: Palestinian Refugees from Syria Feel Abandoned' *IRIN Humanitarian News and Analysis* (29 Aug 2012) <<http://www.irinnews.org/Report/96202/Analysis-Palestinian-refugees-from-Syria-feel-abandoned>> accessed 1 May 2013.

<sup>190</sup> 'UNRWA Social Worker a "Life-saver" Says Palestine Refugee from Syria' (27 Aug 2012) <<http://www.unrwa.org/etemplate.php?id=1421>> accessed 1 May 2013.

<sup>191</sup> HRW 'Nowhere to Flee', above n 82; Amnesty International, 'Growing Restrictions, Tough Conditions: The Plight of Those Fleeing Syria to Jordan' (30 Oct 2013) 5.

<sup>192</sup> Amnesty, *ibid.*

<sup>193</sup> Interview by telephone with army member, Free Syria Army (14 Dec 2012), on file with author.

<sup>194</sup> *ibid.*

<sup>195</sup> Bill Frelick and Meera Shah, 'President's Visit Shouldn't Ignore Refugees in Peril' *Salon* (22 Mar 2013) <[http://www.salon.com/2013/03/22/dont\\_ignore\\_syrian\\_children\\_in\\_peril/](http://www.salon.com/2013/03/22/dont_ignore_syrian_children_in_peril/)> accessed 1 May 2013 ('Jordan has made a clear and explicit sovereign decision to not allow the crossing to Jordan by our Palestinian brothers who hold Syrian documents').

<sup>196</sup> Interview by telephone with a Palestinian refugee (9 Dec 2012), on file with author.

<sup>197</sup> *ibid.*



As of March 2013, UNRWA has intervened in ninety-one cases of *refoulement* and successfully stayed forty-one of those deportations to Syria.<sup>198</sup> UNRWA has unconfirmed reports of many more cases.<sup>199</sup> While the principle of *non-refoulement* is squarely within UNHCR's mandate, practical political considerations in Jordan make it difficult for them to actively support UNRWA's advocacy on behalf of Palestinian refugees facing such risk.<sup>200</sup> Indeed, all the United Nations Regional Response Plans to date, intended to coordinate an inter-agency response to the flow of refugees from Syria, have excluded Palestinian refugees from the Jordanian section.<sup>201</sup>

In contrast to Palestinian refugees, Jordan has offered Syrian refugees *de facto* temporary protection, regardless of whether or not they enter Jordan through an official border.<sup>202</sup> Syrian refugees can enter without a visa, have access to the labour market, as well as to legal counselling and services.<sup>203</sup> Syrian refugees who have entered Jordan irregularly have been detained until they establish their identity, pass a security check, and have a Jordanian national identified as their guarantor, or someone responsible for cooperating with Jordanian authorities if any issues arise relating to the person in their care.<sup>204</sup> UNHCR then registers these Syrians in a transit centre. Once registered, they move into the various towns and cities where they can move freely about Jordan.<sup>205</sup> Syrians who are unable to find guarantors are housed in Cyber City until one is located. This is not an ideal situation for Syrian refugees. Many are unable to work legally and are subject to labour exploitation, as well as to national resentment for burdening Jordan's already meagre economy.<sup>206</sup> Still, there is a clear distinction in the treatment of Syrian and Palestinian refugees fleeing Syria. Even when Palestinian refugees from Syria have family in Jordan who are willing to be guarantors, Jordanian authorities prohibit them from leaving the camp to visit or stay with these relatives.<sup>207</sup>

The General Secretary at the Jordanian Ministry of the Interior attributed this disparate treatment to their respective conditions. He explains that, unlike their Syrian counterparts, Palestinian refugees were not facing violence in Syria.<sup>208</sup> Moreover, the General Secretary added, the fact that the state had not deported its Palestinian refugees all together is a 'humanitarian gesture.'<sup>209</sup> Jordan's Minister of the Interior adds that Jordan will not consider Palestinians fleeing Syria as refugees because '... those Palestinians were forced to come to [Jordan] and they are refugees in another country ... [Jordan] will only treat them as guests.'<sup>210</sup>

Although UNRWA and UNHCR have continued to hold high-level meetings to discuss the emergency situation, neither agency has been able to offer meaningful

<sup>198</sup> 'Syria Crisis Update 43', above n 177.

<sup>199</sup> *ibid.*

<sup>200</sup> Interview with Lisa Gilliam, Deputy Director of the Executive Office, UNRWA (Field Office-Jordan, 11 Dec 2013).

<sup>201</sup> United Nations, 'Syria Regional Response Plan (Jan-June 2013)':

<sup>202</sup> *ibid.*

<sup>203</sup> *ibid.*

<sup>204</sup> 'Syria Crisis Update 43', above n 177.

<sup>205</sup> HRW, 'Nowhere to Flee', above n 82.

<sup>206</sup> 'Report on United Nations Conciliation', above n 12.

<sup>207</sup> 'Analysis: Palestine Refugees', above n 189.

<sup>208</sup> HRW, 'Nowhere to Flee', above n 82.

<sup>209</sup> *ibid.*

<sup>210</sup> 'Jordan Concerned', above n 185.

protection to Palestinian refugees to overcome their exclusion, detention, and *refoulement* challenges.<sup>211</sup> This has included appeals from the UN High Commissioner for Refugees, Antonio Guterres, to afford greater protection for Palestinian refugees fleeing Syria.<sup>212</sup> Lisa Gilliam, UNRWA's Deputy Director of its Executive Office, participated in the response to the Palestinian refugee exodus from Iraq. She comments that there is a clear distinction between the treatment of Palestinian refugees who fled Iraq and those currently fleeing Syria:

When I was Deputy Director in Syria, the Palestinian refugee issue was well-integrated into every general meeting of the UN humanitarian response. In Jordan, the extreme sensitivity the Palestinian influx from Syria presents to Jordanian authorities seems to create a level of wariness on the part of sister agencies towards UNRWA.<sup>213</sup>

## 5.2 Lebanon

Although Lebanon's domestic politics makes it similarly averse to absorbing more Palestinian refugees,<sup>214</sup> it has, until August 2013, kept its borders open to those fleeing Syria.<sup>215</sup> As of November 2013, Lebanon has provided refuge to nearly one million Syrian refugees and 49,000 Palestinian refugees, placing significant strain on the country, which is already host to 400,000 Palestinian refugees who fled their homes in 1948.<sup>216</sup> On August 6, 2013, Lebanon sealed its border to Palestinian refugees and, as of 15 November 2013, this policy has not changed.<sup>217</sup> The Government insists that the border is open but they have placed arbitrary restrictions on Palestinian movement.<sup>218</sup> As of November 2013, approximately 150 Palestinians enter Lebanon each day, a significant drop from the 1,000 refugees who entered daily before August 2013.<sup>219</sup> The reduced numbers do not indicate a drop of refugee flow in absolute numbers. The flow between Lebanon and Syria predating the new border policy was also much higher because Palestinian refugees could travel back and forth without the risk of being denied entry.<sup>220</sup>

In reported cases, Palestinian refugees have also been forced to pay bribes or provide sexual favours to Lebanese and Syrian personnel patrolling the border.<sup>221</sup> Until March 2013, UNRWA did not have the capacity to staff the border and monitor the flow of Palestinian refugees and depended on UNHCR staff to provide them with numbers

<sup>211</sup> Gilliam interview, above n 200.

<sup>212</sup> Statement of Antonio Guterres, United Nations Commissioner for Refugees, at the hearing on 'Syria's Humanitarian Crisis', United States Senate Foreign Relations Subcommittee on Near Eastern and South and Central Asian Affairs (19 Mar 2013).

<sup>213</sup> Gilliam interview, above n 200.

<sup>214</sup> Hilal Khashan, *Palestinian Resettlement in Lebanon: Behind the Debate*, *Inter-University Consortium for Arab Studies* (Montreal Studies on the Contemporary Arab World 1994).

<sup>215</sup> Cambanis, above n 176.

<sup>216</sup> 'Syria Crisis Update 62', above n 3.

<sup>217</sup> HRW, 'Lebanon: Palestinians Fleeing Syria Denied Entry' (8 Aug 2013) <<http://www.hrw.org/news/2013/08/07/lebanon-palestinians-fleeing-syria-denied-entry>> accessed 31 Oct 2013.

<sup>218</sup> Interview with Emily Krehm (by Skype), Protection and Coordination Officer, UNRWA-Lebanon (Field Office, 1 Nov 2013).

<sup>219</sup> *ibid.*

<sup>220</sup> *ibid.*

<sup>221</sup> *ibid.*

and statistics instead.<sup>222</sup> Since March 2013, UNRWA has added two members of staff to monitor and patrol the border.<sup>223</sup>

Like Jordan, Lebanon treats Syrian and Palestinian refugees differently. Syrian refugees can cross the Lebanese border with their ID cards, obtain a six-month visa free of charge and renew it every six-months for up to one year.<sup>224</sup> In contrast, Palestinian refugees must obtain an exit permit from the Ministry of Interior in Syria, must purchase a two-week transit visa for LBP 25,000 (US \$17),<sup>225</sup> and renew it every month for LBP 50,000 (US \$33).<sup>226</sup> Obtaining a visa in Lebanon is necessary to register births, to drive, and to obtain the special permits necessary for entrance into five Palestinian refugee camps.<sup>227</sup> Therefore, while refugees can evade the cost-prohibitive visas, they face significant risks for being in irregular status.<sup>228</sup> In February 2013, Lebanon's General Security issued a circular waiving these fees for Palestinian refugees who wanted to leave within one year, in part, to facilitate their departure from Lebanon.<sup>229</sup> UNRWA considers this among its protection achievements.<sup>230</sup> Both Syrian and Palestinian refugees must obtain a visa that costs US \$200 per person after one year.<sup>231</sup>

Even after Palestinian refugees have crossed into Lebanon, their conditions remain squalid. The majority of these refugees live in existing Palestinian refugee camps and half of those live with relatives.<sup>232</sup> A January 2013 survey of the nearly 30,000 Syrian Palestinians in Lebanon found that 73 per cent of families did not have enough food to feed the entire family, only 10 per cent of working age Palestinian refugees have work. Fifty-nine per cent of families are living in one room, while almost 54 per cent do not have running water.<sup>233</sup> Palestinian children have enrolled in UNRWA schools where their major challenge is the language barrier; the curriculum in Syria is in Arabic whereas in Lebanon it is not.<sup>234</sup>

Since the beginning of the Syria Crisis up to January 2013, UNHCR grew its Lebanon-based staff by seven times to handle the population of 325,000 Syrian refugees.<sup>235</sup> In contrast, UNRWA-Lebanon began to expand its capacity in November 2012. By January 2013, it had only created six new positions to provide for the additional 36,000 Palestinian refugees from Syria.<sup>236</sup> Since January 2013, it has accelerated

<sup>222</sup> Interview with Catherine Richards, Field Protection Officer, UNRWA-Lebanon (Field Office, 2 Jan 2013).

<sup>223</sup> *ibid.*

<sup>224</sup> 'Syria Crisis Update 43', above n 177.

<sup>225</sup> Broadberry, above n 174.

<sup>226</sup> 'Analysis: Palestine Refugees', above n 189.

<sup>227</sup> Ein El Helweh, Nahr Bared, Rashidieh, Roushmalli, al Bas.

<sup>228</sup> Krehm interview, above 218.

<sup>229</sup> 'Syria Regional Response Plan', above n 201.

<sup>230</sup> *ibid.*

<sup>231</sup> Richards Interview, above n 222.

<sup>232</sup> 'Syria Crisis Update 43', above n 177.

<sup>233</sup> 'Report Highlights Poor Conditions of Palestinian Refugees from Syria' *The Daily Star* (29 Mar 2013) <<http://www.dailystar.com.lb/News/Local-News/2013/Mar-29/211848-report-highlights-poor-conditions-of-palestinian-refugees-from-syria.ashx#axzz2PjsAaH1m>> accessed 1 May 2013.

<sup>234</sup> Richards interview, above n 222.

<sup>235</sup> Interview with Dominique Tohme, Legal Adviser, UNHCR -Lebanon (Field Office, 4 Jan 2013).

<sup>236</sup> 'Syria Crisis Update 62', above n 3 (Emergency Response Assistant, clerk, and three social workers to support the humanitarian response, and an Emergency Coordination Officer).

its expansion project and created new educational opportunities, hired extra teachers, extra counsellors, extended hospital hours, and hired more nurses and doctors.<sup>237</sup>

UNRWA was aware that Lebanese officials would only tolerate a limited number of Palestinian refugees, this impacted its behaviour at the beginning of the crisis.<sup>238</sup> It then made its presence to receive refugees known, but did not proactively go out to find incoming refugees.<sup>239</sup> The agency was also concerned not to inflate expectations of its ability to provide services, which remain limited due to budgetary constraints.<sup>240</sup> Since October 2012, when Palestinian refugees began arriving in Lebanon from Syria in significantly higher numbers it has changed its approach.<sup>241</sup>

UNRWA has endured a budgetary shortfall since the start of the conflict.<sup>242</sup> Initially, this was partly attributed to the fact that donors were largely unaware of the distinction between UNRWA and UNHCR, and ‘when they think of the Syrian crisis they will tend to support the UNHCR, not necessarily UNRWA.’<sup>243</sup> Consequently, much of the initial NGO funding for refugees was only available to refugees registered with UNHCR.<sup>244</sup> Although UNRWA and UNHCR attend inter-agency meetings, they were not able to effectively coordinate their efforts from the start of the conflict.<sup>245</sup> Since this is a refugee crisis, coordination is led by UNHCR in the humanitarian sector meetings.<sup>246</sup> When it speaks on behalf of refugees, it does not do so on behalf of Palestinian refugees, but asks UNRWA to do so.<sup>247</sup>

For the first time since the start of the conflict, UNHCR included about 20,000 Palestinian refugees in the Lebanese section of the fourth Syria Regional Response Plan (January – July 2013).<sup>248</sup> The report states that ‘in view of the limited ability of the Lebanon-based Palestinian community to absorb, support and host additional refugees, it appears crucial that this group should also receive attention in the coming months.’<sup>249</sup> The UNHCR report acknowledged that the burden on both Palestinian communities and UNRWA services is heavy, especially with additional Palestinian refugees arriving monthly. UNHCR, in collaboration with other UN agencies including UNRWA, will provide services to refugees, including Palestinian refugees from Syria. The report notes the following areas of assistance from UNRWA: legal and social counselling for people in detention,<sup>250</sup> distribution of food vouchers,<sup>251</sup> baby kits, various sanitation

<sup>237</sup> Richards interview, above n 222.

<sup>238</sup> ‘Palestine Refugees Feel Abandoned’, above n 189.

<sup>239</sup> Richards interview, above n 222.

<sup>240</sup> *ibid.*

<sup>241</sup> *ibid.*

<sup>242</sup> Broadberry, above n 174 (UNRWA requested US \$54 million to implement a regional response and by October 2012, it had only received US \$6.83 million. Moreover, UNRWA has developed an US \$8.26 million plan to cater for 10,000 displaced Palestinians and, as of October 2012, none of this additional money has been pledged).

<sup>243</sup> *ibid.*

<sup>244</sup> Richards interview, above n 222.

<sup>245</sup> *ibid.*

<sup>246</sup> *ibid.*

<sup>247</sup> *ibid.*

<sup>248</sup> ‘Syria Regional Response Plan’, above n 201 (this is the fourth inter-agency plan drafted since March 2012; the first three reports excluded Palestinian refugees all together).

<sup>249</sup> *ibid.*

<sup>250</sup> *ibid.* 60.

<sup>251</sup> *ibid.* 63.

services, and water supply,<sup>252</sup> amongst other services. Since then, UNRWA has been able to integrate itself into the fifth Regional Response Plan 5 as well.<sup>253</sup> This is beneficial to the refugees because a unified United Nations approach pleases donors and forces the two agencies to improve their coordination.<sup>254</sup>

### 5.3 Egypt

Palestinian refugees face considerable challenges finding refuge in Egypt. As of 29 October 2013, Egypt had offered refuge to approximately 300,000 Syrian refugees, more than 122,000 of whom are registered with UNHCR.<sup>255</sup> Originally, Egypt permitted Syrian refugees entry without a visa and considered them eligible for a renewable three-month residency.<sup>256</sup> In July 2013, when the military overthrew President Mohamed Morsi, Egypt changed this policy and imposed a mandatory visa for Syrian refugees.<sup>257</sup> As of late October 2013, there are 6,000 Palestinian refugees in Egypt.<sup>258</sup> They should fall under UNCHR's mandate since they are outside of UNRWA's areas of operations and in Egypt, which is a signatory to the 1951 Refugee Convention. However, the North African country has prohibited UNHCR from registering them in contravention of paragraph 7(c) of the Statute or Article 1(D) of the Convention as regards Palestinian refugees.<sup>259</sup>

The Egyptian government claims that Palestinians are ineligible for UNHCR's protection in Egypt.<sup>260</sup> This analysis contradicts UNHCR's clear policy on the matter as outlined in its Statute as well as its 2009 Revised Note on Article 1(D). A senior protection officer at UNHCR stated that even though the Egyptian government has 'pledged to treat Syrians with Palestinian travel documents the same as other Syrian refugees', this is not what happens in practice.<sup>261</sup> The same officer also noted that the Egyptian Foreign Ministry has actually asked UNHCR not to register Palestinians fleeing Syria as they fall under UNRWA's mandate.<sup>262</sup> Hundreds of Palestinians have sought to register with UNHCR but, in compliance with the government's request, the agency has refused to do so, leaving the Palestinian refugee population from Syria without access to basic international protection.<sup>263</sup>

Egypt also creates additional hurdles for Palestinian refugees before they are granted entry. It mandates that Palestinian refugees must arrive directly from Damascus into

<sup>252</sup> *ibid.*

<sup>253</sup> Krehm interview, above n 218.

<sup>254</sup> *ibid.*

<sup>255</sup> UNHCR, 'UNHCR Highlights Dangers Facing Syrians in Transit, Urges Countries to Keep Borders Open' (18 Oct 2013) <<http://www.unhcr.org/526114299.html>> accessed 31 Oct 2012; MR, 'Egypt's Syrian Refugees: Cast Adrift' *The Economist* (5 Oct 2013) <<http://www.economist.com/blogs/pomegranate/2013/10/egypts-syrian-refugees>> accessed 31 Oct 2013.

<sup>256</sup> 'Syria Crisis Update 43', above n 177.

<sup>257</sup> 'Life is Bleak for Syrian Refugees in Jordan' *DW* (1 Nov 2013) <<http://www.dw.de/life-is-bleak-for-syrian-refugees-in-jordan/a-17198704>> accessed 4 Nov 2013.

<sup>258</sup> 'Syria Crisis Update 62', above n 3.

<sup>259</sup> 'Egypt Creates Exception for Palestinian Refugees Fleeing Syria' *Palestinian News Network* (28 Mar 2013) <<http://english.pnn.ps/index.php/international/4331-egypt-creates-exception-for-palestinian-refugees-fleeing-syria>> 1 May 2013.

<sup>260</sup> *ibid.*

<sup>261</sup> *ibid.*

<sup>262</sup> Miriam Berger, 'Fleeing Syria, Palestinians Find Haven and Hardships in Egypt' *Egypt Independent* (18 Mar 2013) <<http://www.egyptindependent.com/news/fleeing-syria-palestinians-find-haven-and-hardships-egypt>> 1 May 2013.

<sup>263</sup> *ibid.*



Egypt's Cairo airport.<sup>264</sup> This is a difficult threshold to overcome given the routine closure of Damascus airport.<sup>265</sup> Alternatively, Palestinian refugees have attempted to enter through Lebanese and Turkish airports.<sup>266</sup> Those refugees are either detained at Cairo airport and coerced to return to Syria or are forced to shuttle between Egyptian, Lebanese, and Turkish airports.<sup>267</sup> Presumably, UNRWA personnel have been so taxed within its areas of operations during the Syrian crisis that it has been unable to meaningfully intervene on behalf of these Palestinian refugees.

Since July 2013, the situation has become much more precarious for all refugees.<sup>268</sup> Egypt has made refugees scapegoats in its turbulent political climate and made it a policy to arrest and deport refugees to other countries, including back to Syria.<sup>269</sup> Several humanitarian agencies have reported that Egypt has detained 1,500 refugees, including 250 children and more than 400 Palestinian refugees for not having up-to-date permits or for attempting to leave Egypt illegally.<sup>270</sup> In some cases, detained Syrian refugees can legally leave Egypt to seek shelter elsewhere; Palestinians are never able to do so unless they return to Syria.<sup>271</sup>

Syrian and Palestinian refugees alike have attempted to flee Egypt by boat.<sup>272</sup> In one instance, on 17 September 2013, the Egyptian navy opened fire on a boat headed towards Italy carrying 150 Syrian and Palestinian refugees. The navy killed two of the refugees, injured two others, and detained the survivors.<sup>273</sup> In another instance, in early October 2013, a boat carrying 150 refugees sank off the coast of Egypt killing twelve refugees and leaving several others missing; Egypt detained the survivors.<sup>274</sup>

In November 2013, Egyptian authorities denied that it forced any refugees to leave but insist that they will continue to detain the refugees indefinitely until they leave the country.<sup>275</sup> Egypt also announced that it would lift the mandatory visa for Syrians to enter Egypt.<sup>276</sup> As of 4 November 2013, 300 refugees, including 211 Palestinians, remain in Egyptian custody.<sup>277</sup> On 22 November 2013, fifty-two Palestinian and Syrian refugees began a hunger strike to protest at their detention and demand that they be permitted to seek refuge elsewhere.<sup>278</sup> One Palestinian refugee involved in the hunger

<sup>264</sup> 'Egypt Creates Exceptions', above n 259.

<sup>265</sup> *ibid.*

<sup>266</sup> *ibid.*

<sup>267</sup> *ibid.*

<sup>268</sup> Amnesty 'Growing Restrictions', above n 191.

<sup>269</sup> *ibid.*

<sup>270</sup> HRW, 'Egypt: Syria Refugees Detained, Coerced to Return' *Human Rights Watch News* (11 Nov 2013) <<http://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return>> accessed 15 Nov 2013; Amnesty, 'Growing Restrictions', above n 191, 26.

<sup>271</sup> Maggie Fick and Abdel Rahman Youssef, 'Surviving "Death Boat", Syria Palestinians Locked Up in Egypt' *Reuters* (19 Nov 2013).

<sup>272</sup> Amnesty, 'Growing Restrictions', above n 191, 26.

<sup>273</sup> *ibid.*

<sup>274</sup> UNHCR, 'Dangers Facing Syrians in Transit', above n 255.

<sup>275</sup> HRW, 'Egypt', above n 270.

<sup>276</sup> AFP, 'Egypt Claims No Syrian Refugees Forced to Leave' *Ahram Online* (13 Nov 2013) <<http://english.ahram.org/NewsContent/1/64/86377/Egypt/Politics/-Egypt-claims-no-Syrian-refugees-forced-to-leave.aspx>> accessed 15 Nov 2013.

<sup>277</sup> *ibid.*

<sup>278</sup> 'Syrian, Palestinian Refugees Held in Egypt Begin Hunger Strike' *Reuters* (22 Nov 2013) <<http://www.reuters.com/article/2013/11/22/us-egypt-palestinians-idUSBRE9AL0MT20131122>> accessed 23 Nov 2013.

strike explained, 'We will not eat until we die or until we are allowed to go to any country that will accept us.'<sup>279</sup> Egypt has made no policy shifts to allow Palestinians to register with UNHCR once in the country or to reduce the hurdles impeding their entry.

#### 5.4 Turkey

Syrian refugees began to trickle into Turkey from mid-March 2011 as they fled from bombardment in Idlib, Hama, Homs, and Latakia.<sup>280</sup> Many Palestinian refugees fled Syria to Turkey in August 2011 when the Al Raml refugee camp in Latakia was bombed.<sup>281</sup> According to UNHCR, there are approximately 506,551 Syrian refugees in the country, as of 31 October 2013.<sup>282</sup> A little less than half of those reside in state-run refugees camps.<sup>283</sup> As a result of the growing number of refugees in cities and towns, in March 2013, Turkey decided to register the 70,000 urban refugees as well, whose numbers now reach 306,257.<sup>284</sup> There is limited information on the number and location of Palestinian refugees in Turkey.<sup>285</sup>

Turkey has ratified the 1951 Convention, but limits its compliance with the Convention to persons who have become refugees as a result of events occurring in Europe.<sup>286</sup> As per its policy, Turkey has not extended refugee status, and therefore the possibility of asylum, integration, or resettlement for the Syrian refugees within its borders. It has, however, afforded the refugee populations protection under a temporary protection regime, in conformity with international standards, since October 2011.<sup>287</sup> Temporary protection is a legal norm created to deal with mass influxes of refugees escaping armed conflict or other forms of generalized violence.<sup>288</sup> Along with *non-refoulement* and asylum, it is among the three forms of protection a state can offer to refugees.<sup>289</sup> It provides protection that is temporary in nature from the host state to specific groups or individuals. It is granted with the understanding that it is an interim solution until the end of conflict, at which point the individuals or groups will return to their homes or will be offered a more permanent solution elsewhere. Finally, under temporary protection the persons or groups benefit from fewer rights relative to Convention refugees.<sup>290</sup>

Accordingly, Turkey has admitted persons fleeing Syria without regard for proper documentation. Passports have sufficed to afford the refugees a three-month stay,

<sup>279</sup> *ibid.*

<sup>280</sup> Euro-Mediterranean Human Rights Network, 'Syrian Refugees in Turkey: A Status in Limbo', (Oct 2011).

<sup>281</sup> Tariq Hamoud, 'The Impact of the Syrian Revolution on Palestinian Refugees' *JPRS Magazine* (14 Feb 2013) <<http://www.prc.org.uk/portal/index.php/english-media/jprs-magazine/2889-the-impact-of-the-syrian-revolution-on-palestinian-refugees>> accessed 1 May 2013.

<sup>282</sup> UNHCR, 'Syria Regional Refugee Response: Turkey' (2013) <<http://data.unhcr.org/syrianrefugees/country.php?id=224>> accessed 31 Oct 2012; UNHCR, 'UNHCR Welcomes Turkey's New Law on Asylum' (12 Apr 2013) <<http://www.unhcr.org/S167e7d09.html>> accessed 1 May 2013.

<sup>283</sup> *ibid.*

<sup>284</sup> *ibid.*

<sup>285</sup> 'Syria Crisis Update 43', above n 177, 16.

<sup>286</sup> 'Syria Regional Response Plan', above n 201, 7; UNHCR, 'Reservations and Declarations to the 1967 Protocol Relating to the Status of Refugees' (31 Jan 1967) <<http://www.unhcr.org/4dac37d79.html>> accessed 10 Mar 2013

<sup>287</sup> Amnesty 'Growing Restrictions', above n 191, 23.

<sup>288</sup> Akram and Rempel, above n 49.

<sup>289</sup> *ibid.*

<sup>290</sup> *ibid.* 12.

temporary shelter, and aid in Turkey. The temporary protection regime also protects refugees against forcible return to Syria. Palestinian refugees from Syria, as well as stateless persons, also fall under UNHCR's mandate in Turkey and have benefitted from the temporary protection regime without discrimination.<sup>291</sup> Turkey changed this liberal policy in August 2012.

Since then, Turkey has restricted entry for thousands of Syrian refugees who do not have passports or who are not in need of urgent medical care.<sup>292</sup> In March 2013, Turkey deported 600 refugees back to Syria after protests at the Akcakale refugee camp.<sup>293</sup> Turkey has reportedly deported Syrian nationals on a smaller scale since then as well.<sup>294</sup> Although specific information is not known about Palestinian refugees, they have reportedly faced more difficulty entering Turkey than their Syrian counterparts since Turkey imposed more stringent standards.<sup>295</sup>

### 5.5 Internal displacement within Syria

As of late November 2013, approximately 6.5 million Syrians<sup>296</sup> and 235,000 Palestinian refugees were internally displaced within Syria.<sup>297</sup> Syrians appear to be under UNHCR's protection, while Palestinian refugees are under UNRWA's protection, and they are dependent on the respective agencies for humanitarian aid and protection.<sup>298</sup> However, in light of reports of Syrians who have taken shelter in Palestinian refugee camps in Syria, it is not clear if the delineation between the two agencies is as stark as their respective updates would suggest.<sup>299</sup> As of late October 2013, UNRWA is sheltering 8,272 persons and 86 per cent of them are Palestinian refugees.<sup>300</sup> UNRWA is also providing shelter to 3,523 Palestinian refugees in non-UNRWA facilities in Damascus.<sup>301</sup> In the best-case scenario, UNRWA and UNHCR are collaborating to protect persons based on their displaced status and humanitarian need regardless of nationality, as was the case in Lebanon in 2006.

Syrian security forces have sealed off two Palestinian refugee camps, Yarmouk and Sbeineh, where armed opposition groups have allegedly resided.<sup>302</sup> Palestinian refugees are now trapped within the camps and do not have access to emergency relief and the medical services provided by UNRWA.<sup>303</sup>

<sup>291</sup> 'Syria Crisis Update 43', above n 177.

<sup>292</sup> Amnesty 'Growing Restrictions', above n 191, 23.

<sup>293</sup> Amnesty International, 'Turkey Forces Hundreds of Syrian Refugees Back Across Border' (28 Mar 2013).

<sup>294</sup> Amnesty 'Growing Restrictions', above n 191, 24.

<sup>295</sup> *ibid*; Fick and Youssef, above n 271.

<sup>296</sup> USAID, 'Syria' (2013) <<http://www.usaid.gov/crisis/syria>> accessed 1 Dec 2013; UNHCR, '2013 UNHCR Country Operations Profile - Syrian Arab Republic: Working Environment' (2013) <<http://www.unhcr.org/pages/49e486a76.html>> accessed 1 Dec 2013.

<sup>297</sup> 'Syria Crisis Update 62', above n 3.

<sup>298</sup> UNRWA, 'Syria Crisis Situation Update: Issue 41' (4 Apr 2013) <<http://www.unrwa.org/newsroom/emergency-reports/syria-crisis-situation-update-issue-41>> accessed 1 May 2013.

<sup>299</sup> See, eg, Anas Zarzar and Marah Mashji, 'Syria: Armed Opposition Takes Yarmouk Refugee Camp' *Al-Akhbar* (17 Dec 2012) <<http://english.al-akhbar.com/node/14411>> accessed 10 March 2013.

<sup>300</sup> 'Syria Crisis Update 62', above n 3.

<sup>301</sup> *ibid*.

<sup>302</sup> UNRWA, 'Syria Crisis Response Update: Issue 55' (23 July 2013) <<http://www.unrwa.org/newsroom/emergency-reports/syria-crisis-situation-update-issue-55>> accessed 1 May 2013.

<sup>303</sup> UNRWA, 'Syria Crisis Response Update: Issue 56' (29 July 2013) <<http://www.unrwa.org/newsroom/emergency-reports/syria-crisis-situation-update-issue-no-56>> accessed 1 May 2013.

Meanwhile, UNRWA has strongly advocated on behalf of internally displaced Palestinian refugees. In February and March 2013, for example, the agency called on armed groups to respect the neutrality of the residents of Palestinian refugee camps.<sup>304</sup> It has also called on armed groups to cease armed confrontations within residential areas.<sup>305</sup> As a result of the overwhelming conflict, UNRWA has been forced to shift its regular assistance to Palestinian refugees, namely, health and educational services, to emergency relief.<sup>306</sup> This includes cash subsidies as well as food and medical aid distribution.<sup>307</sup> According to Filippo Grandi, UNRWA's Commissioner-General, of the US \$1.5 billion requested by UN-wide humanitarian appeal, US \$90 million is earmarked for Palestinian refugees. By March 2013, half of that amount had been raised.<sup>308</sup>

## 6. OBSERVATIONS AND RECOMMENDATIONS

### 6.1 Observations

The treatment of Palestinian refugees fleeing Syria demonstrates a regression from the *de facto* policy of collaboration established by UNHCR and UNRWA during their secondary forced displacement in the Middle East. Jordan and Egypt have refused to recognize the refugee status of Palestinians fleeing Syria. Both governments assert that Palestinians are only refugees in Syria indicating a static understanding of their refugee status in UNRWA's areas of operation. To the extent that Palestinian refugees have been permitted entry, Jordan and Egypt have done so as a humanitarian gesture rather than in conformity with a legal obligation. Since August 2013, even Lebanon has barred some Palestinian refugees entry into the country. As a result, Palestinians have faced detention, exclusion, and *refoulement* from Jordan and other countries in the Middle East. While UNHCR stepped in to resettle several thousand Palestinians fleeing Iraq in the aftermath of war and stranded at the Jordanian border, the agency has been unable to meaningfully intervene on behalf of Palestinian refugees in this instance.

In Egypt, they lack any form of international protection in contravention of both the UNHCR Statute as well as the 1951 Refugee Convention. While UNCHR and UNRWA collaborated to assist the Palestinian refugees stranded at the Egyptian-Libyan border in 1996, in this instance, UNHCR observes Egypt's directive not to register Palestinians, and UNRWA is not present at all. UNRWA's absence stands in stark contrast to its intervention in Kuwait in 1991 when it transcended its strict geographical mandate to assist forcibly displaced Palestinians.

Palestinian refugees fleeing to Lebanon also endure a protection gap, as indicated by the distinct, and inferior, entry and residence policies applicable to them. Nevertheless, they fare better in Lebanon, where many are still permitted entry and where they benefit from more inter-agency collaboration. In Lebanon, Palestinian refugees are included in

<sup>304</sup> UNRWA, 'UNRWA Condemns Attacks on Palestinian Children in Syria' (27 Feb 2013), <<http://www.unrwa.org/etemplate.php?id=1655>> accessed 1 May 2013; see also UNRWA, 'UNRWA Deplores Brutal Killing of Two Palestine Refugees in Yarmouk' (4 Mar 2013) <<http://www.unrwa.org/etemplate.php?id=1662>> accessed 1 May 2013.

<sup>305</sup> *ibid.*

<sup>306</sup> UN News Centre, 'Palestinian Refugees in Greater Need of Relief as Syria Crisis Escalates, Warns UN Official' UN News Centre (11 Mar 2013) <<http://www.un.org/apps/news/story.asp?NewsID=44342&Cr=palestin&Cr1=syria#UXdfiXCshh0>> accessed 1 Dec 2013.

<sup>307</sup> *ibid.*

<sup>308</sup> *ibid.*

the UN's regional response plan, which coordinates humanitarian assistance to refugees fleeing Syria. Moreover, when UNRWA lacked the capacity to do so itself, UNHCR tried to monitor the flow of Palestinian refugees at the Lebanese border on its behalf. Once admitted entry, however, the refugees are housed separately and are under the strict divide of UNHCR and UNRWA mandates, including their care and assistance programmes. Moreover, in their earliest cluster meetings, UNHCR did not discuss the status of Syrian and Palestinian refugees as a single humanitarian category. Instead, it offered UNRWA a seat at the table to represent the Palestinian refugees. This is in contrast to the treatment of Palestinian refugees who fled Iraq into Syria, also an UNRWA area of operation, where the two agencies collaborated to aid the fleeing population. The only difference seems to be that Palestinians who fled Iraq were not registered with UNRWA as are those Palestinians fleeing Syria today. This reflects a geographic, rather than a needs-based, distinction.

Turkey may be the only site where inter-agency *de facto* policies have been advanced. There, many Palestinians and most Syrians are permitted entry, fall under UNHCR's mandate, and benefit from Turkey's temporary protection regime without distinction. Unlike Lebanon and Jordan, Turkey is not one of UNRWA's areas of operation, which may explain why all refugees fall under UNHCR's mandate. However, Egypt is like Turkey in that it is not an UNRWA area of operation, but it fails to implement such a positive policy. Notably, as the refugee flow from Syria increases, Turkey's policy has become less favourable to Syrians and Palestinians alike.

There is too little information on inter-agency collaboration within Syria to draw any conclusions about the comparative treatment of IDPs. While UNRWA is still able to operate with some staff, it is difficult to know the extent to which other UN agencies are providing assistance and protection for Palestinian refugees who have now been internally displaced.

Whereas ad hoc inter-agency collaboration sufficed to protect Palestinian refugees enduring secondary forced displacement from Kuwait, Libya, and Iraq, it has been inadequate in the case of the Syrian war. On its face, the major difference between this event and those that preceded it is the magnitude of the crisis as well as the status of Palestinian refugees as registrants, or not, of UNRWA. In Kuwait and Libya, only Palestinians endured forced displacement. The reduced scope of humanitarian need in those instances presumably made resources within UNHCR and UNRWA more available, thereby heightening the potential for inter-agency collaboration. However, even in Iraq, where Iraqis and Palestinians fled in mass numbers and where the scope of the refugee crisis heavily burdened neighbouring countries and international donors, inter-agency collaboration was greater, and the protection gap afflicting Palestinian refugees was much smaller than it is in the case of the Syrian war. As mentioned, the key distinction in these two cases is the status of Palestinian refugees; in Syria they are registered with UNRWA, in Iraq they are not.

Although Palestinians fled from Iraq into UNRWA's areas of operation, they remained under UNHCR's mandate and were assisted by UNRWA. In contrast, Palestinians fleeing Syria into UNRWA's areas of operation and beyond, during the course of the Syrian civil war, have remained strictly within UNRWA's mandate, with the exception of Turkey. This approach has proven detrimental to Palestinian refugees who have fled to Jordan, Egypt, and Lebanon. Whereas, Middle Eastern states and UN

agencies have treated Palestinians not registered with UNRWA like humanitarian refugees, they have treated Palestinian refugees registered with UNRWA like stateless persons. There is incongruence between UNRWA status, which is geographically bound and restrictive, and the vulnerability faced by Palestinian refugees in a quickly changing Middle East. Presumably, UNHCR would have assisted Palestinian refugees from Syria had they lacked their UNRWA status. Such an outcome does not conform to the intent and spirit of the UNCHR Statute and the Refugee Convention, which justifies inter-agency collaboration. Moreover, historical practice illustrates the feasibility and efficacy of such collaboration.

## 6.2 Recommendations

Closing the protection gap afflicting Palestinian refugees during secondary forced displacement in the Middle East necessitates greater and ongoing inter-agency collaboration during periods of calm and crisis alike. The Inter-Agency Standing Committee Transformative Agenda, led by the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), sets the frame and spirit for greater coordination and should serve as the guide for protecting Palestinians from Syria.<sup>309</sup> The Transformative Agenda emerged in the aftermath of significant humanitarian crises in 2010. UN humanitarian agencies agreed that to better respond to such emergencies, they must create a more empowered leadership, greater accountability to stakeholders, and improved coordination among the agencies.<sup>310</sup> Beyond addressing the immediate crisis and future cases of secondary forced displacement, a long-term solution requires a more radical approach that is international in scope rather than focused on the nation-state.

### *6.2.1 Expand the scope of paragraph 7 (c) and article 1(D) in order to provide protection to Palestinian refugees inside and outside UNRWA's areas of operation*

At a minimum, UNHCR should both clarify and expand its mandate as concerns Palestinian refugees. Presently, UNHCR's mandate extends to Palestinians beyond UNRWA's areas of operation. While Turkey has adhered to this policy, Egypt has not, thus indicating UNHCR's failure to establish an explicit understanding with parties of the 1951 Convention in regard to the scope of Article 1(D). Such an understanding should be achieved with the handful of Arab parties to the Refugee Convention as a matter of priority. UNHCR should also revisit the limitations imposed upon its responsibilities to Palestinian refugees derived from paragraph 7(c) of its Statute. These limitations are not as geographically severe as a cursory review of the text may suggest. Re-evaluation of its mandate's scope should prompt UNHCR to coordinate, more proactively, with UNRWA to increase protection and assistance for Palestinian refugees.

Both Article 1(D) and paragraph 7(c) aimed to avoid overlapping regimes, but certainly not to restrict protection for Palestinian refugees; historical experience demonstrates this as well. It is therefore in-line with the drafters' intent and spirit, of the UNHCR Statute as well as the Refugee Convention, to extend UNHCR's protection

<sup>309</sup> UN Inter-Agency Standing Committee, 'IASC Principals Transformative Agenda' (UN Inter-Agency Standing Committee 2012) <<http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-template-default&bd=87>> accessed 1Dec 2013.

<sup>310</sup> *ibid.*



to Palestinian refugees when needed. As a strictly textual matter, Article 1(D) is meant to avoid overlapping legal regimes between UNRWA and UNHCR.<sup>311</sup> However, other interpretations suggest that since the scope of protection available to Palestinian refugees diminished significantly when the UNCCP ceased to function, the UNHCR Statute could be extended to UNRWA's areas of operation as well. This is particularly true in emergencies and when UNRWA alone is unable to address all the needs of the refugees.<sup>312</sup> While the proper interpretation is certainly worth clarifying, doing so is beyond the scope of this paper. Suffice it to say that the delineation between their mandates aimed to avoid redundancy in services and function, not to reduce protection, coordination, and cooperation available to Palestinian refugees. UNHCR and UNRWA should therefore collaborate to protect Palestinian refugees at all times, including during periods of calm, in ways that close the protection gap afflicting Palestinian refugees and that avoid replicating their efforts. Whether such ongoing and close collaboration is a *de facto* or a *de jure* arrangement is not of pressing concern. Such collaboration should shape how the two agencies run meetings, fund-raise, monitor border crossings, and engage in emergency response, an area where UNHCR has greater experience.

### 6.2.2 Jointly-led cluster meetings

In each country, the agencies should collaborate to speak in one voice at cluster meetings so that they represent the interests of all refugees, rather than set Palestinian refugees apart. Jointly-led cluster meetings reflect one aspect of the IASC's Transformative Agenda. Even without the presence of UN OCHA, the humanitarian aid cluster meetings should empower UNHCR, or whichever agency is leading the meetings, to discuss the condition and needs of Palestinian refugees as indistinguishable from other refugees, while relying on the lead agency as appropriate. This does not diminish the role of UNRWA. Instead, it emphasizes the indistinguishable humanitarian needs of Palestinian refugees from other refugees during armed conflict or a similar crisis. UNRWA will still be expected to play a leading role in registering those refugees, and determining and meeting their needs.

UNHCR already coordinates the efforts of over sixty international and national agencies, as reflected by UNHCR's Syria Regional Response Plan (RRP).<sup>313</sup> The RRP5 explains that:

[t]he ability of humanitarian agencies to respond effectively and in a timely manner, regardless of the many challenges on the ground, will depend on their close coordination, particularly in view of the disparate nature of the displacement in host countries.

Despite its emphasis on 'close coordination', the Plan excluded Palestinian refugees in the initial four versions. They appear in the Lebanon chapter of the RRP5 but remain excluded from the other countries where they have taken shelter; Turkey, Jordan, Iraq, and Egypt.<sup>314</sup>

<sup>311</sup> See Goddard, above n 36.

<sup>312</sup> See Akram and Rempel, above n 49.

<sup>313</sup> 'Syria Regional Response Plan', above n 201.

<sup>314</sup> *ibid* 4 ('Moreover, the Lebanon chapter of the response now includes activities targeting Palestinians from Syria who have also been forced to flee the country where they had been settled for generations').

Presumably, this exclusion does not impact on Palestinian refugees seeking asylum in Turkey, where its temporary protection regime has been extended without discrimination. However, it does impact them in Jordan and Egypt, where they have been set apart and disadvantaged. UNHCR has expressed its desire to register Palestinians in Egypt<sup>315</sup> and has expressed concerns over their treatment elsewhere in the Middle East.<sup>316</sup> Overcoming these conditions is a political matter aimed at the governments of Jordan and Egypt. Their resistance to treating Palestinians as humanitarian refugees reflects an anxiety that taking responsibility for Palestinian refugees is never a temporary commitment. Instead, their status as a prolonged refugee situation, coupled with their lack of access to durable solutions suspends Palestinian refugees in a tenuous limbo. Including Palestinian refugees in joint-cluster meetings, RRP, and in coordinated humanitarian efforts more generally necessitates a political strategy aimed at addressing these concerns among host countries. Responsibility for doing so should not be borne by UNHCR and UNRWA alone, instead, it should be shared by other national and international humanitarian agencies, as well as other states.

Middle Eastern countries have provided asylum to Palestinian refugees for over six decades.<sup>317</sup> In 2003, they absorbed refugees from Iraq as a result of the war. More recently, Middle Eastern countries have absorbed refugees fleeing from various countries undergoing transformational change in the course of the Arab uprisings. The Syrian civil war is yet another crisis that has necessitated the goodwill of these host states. Alleviating this pressure and these anxieties should be borne by an international community and not just states within the Mid East region. Other nation-states should be part of a broader solution aimed at burden-sharing, giving them greater authority to persuade the governments of Jordan and Egypt, for example, to treat Palestinian refugees without distinction.<sup>318</sup> Doing so is the panacea to establishing greater coordination in all other areas.

### 6.2.3 *Joint advocacy fund-raising campaigns*

UNHCR and UNRWA should conduct joint advocacy campaigns. Donors may be more eager to provide for new refugees as opposed to Palestinian refugees, whose financial sponsors may suffer from donor fatigue. This was certainly true in the case of fund-raising efforts early in the Syrian conflict when donors who gave to UNHCR did not realize that they were not supporting all refugees fleeing Syria. Donor fatigue remains a challenge in November 2013, thirty-two months into the conflict, as indicated by UNRWA's end-of-year shortfall.<sup>319</sup> In regards to the Syrian crisis, UNRWA

<sup>315</sup> 'Syria Regional Response Plan', above n 201; Dumper, above n 4.

<sup>316</sup> Guterres, above n 212.

<sup>317</sup> See Akram and Rempel, above n 49.

<sup>318</sup> *ibid* 137–38 (Akram and Rempel make a bold proposal in their article aimed at providing durable solutions to Palestinian refugees. They propose five-year renewable, formalized temporary protection status for Palestinian refugees that would be internationally harmonized. An internationally harmonized approach would distribute responsibility for Palestinian refugees beyond the Arab region and would accommodate the legal and political interests of the states involved. It is based on the assumption that Palestinians be recognized as *prima facie* refugees entitled to the benefits of the Refugee Convention thereby obligating host states to provide them with temporary protection. It proposes a new burden-sharing approach that would mitigate the possibility of *refoulement*, exclusion, and discriminatory treatment currently endured by Palestinian refugees).

<sup>319</sup> UNRWA, 'Funding Against 2013 Syria Regional Crisis Response' (17 Oct2013) <[http://www.unrwa.org/sites/default/files/u43/unrwa\\_info\\_graphic20oct\\_0.png](http://www.unrwa.org/sites/default/files/u43/unrwa_info_graphic20oct_0.png)> accessed 1 Nov 2013 (UNRWA indicates that by mid-October 2013, it suffered from a 36% budget shortfall).

suffers from a 36 per cent budget shortfall.<sup>320</sup> Agency-wide, it cannot pay its employees their December 2013 wages.<sup>321</sup> Although UNHCR faces similar budget challenges, they have not impeded the delivery of aid to Syrian refugees.<sup>322</sup> To alleviate this acute vulnerability facing Palestinian refugees, UNHCR and UNRWA should develop joint advocacy campaigns during humanitarian emergencies.

While both agencies have reason to continue their independent fund-raising efforts for ongoing programmes, the unique nature of a crisis justifies the joint campaign. The funds collected should be placed into a common budget that is indiscriminately divided on a needs-basis. While it should be discouraged, UNHCR and UNRWA can permit state and individual donors to earmark their contribution. Joint campaigns may raise challenges for two reasons: i) distributing funds on a needs-basis will force UNRWA to increase its provisions to refugees to match UNHCR, thereby stretching UNRWA's budgetary needs even further, and ii) this may create a stark contrast in the aid provided to long-standing UNRWA beneficiaries in its areas of concern.

While the first challenge may appear troubling, in fact, the joint campaign aims to create parity between UNHCR and UNRWA refugee beneficiaries during emergencies. Improving cash and aid provisions to Palestinian refugees is among the goals of better coordination. The budgetary constraints currently endured may be alleviated as a result of the joint campaign. UNHCR's extensive networks and experience in emergency preparedness and response makes it more adept at raising such exceptional funds. This should impose a minimal burden on UNHCR as the Palestinian refugee population, approximately 68,000, only constitutes about 0.3 per cent of the Syrian refugee population, approximately 2.2 million. As to the second challenge, this should not be a deterrent given the exceptional nature of refugee needs during a crisis. Long-standing refugees do not suffer from the acute lack of basic goods, health care, education, and shelter afflicting refugees enduring secondary forced displacement. On the contrary, the flow of Palestinian refugees from Syria has burdened the long-standing Palestinian refugee populations in Lebanon, and to a lesser extent, in Jordan. Greater aid for Palestinian refugees from Syria has the potential to ease the burden on the existing Palestinian refugee population rather than increase disparity and tension between them.

#### 6.2.4 *Joint responsibility to monitor border crossings and to protect against refoulement*

Relative to UNHCR, UNRWA bears little influence upon host states. While UNHCR is global in scale, UNRWA is limited to five areas of operation within the Middle East. In those areas in which it operates, UNRWA's long-term presence subsumes it within the country's government apparatus (for example, the GAPAR in Syria) or makes it dependent on the good will of the state to continue to operate independently (for example, Lebanon and Jordan). Its leverage to compel a host state to accept *more* Palestinian refugees is therefore quite diminished. In regard to non-host states like Iraq, Turkey, and

<sup>320</sup> *ibid.*

<sup>321</sup> ANSAMED, 'Mideast: UNRWA Can't Pay December Wages' (20 Nov 2013) <[http://www.ansamed.info/ansamed/en/news/sections/politics/2013/11/20/Mideast-UNRWA-can-pay-December-wages\\_9653678.html](http://www.ansamed.info/ansamed/en/news/sections/politics/2013/11/20/Mideast-UNRWA-can-pay-December-wages_9653678.html)> accessed 1 Dec 2013.

<sup>322</sup> UNHCR, 'Syria Regional Response Plan – RRP: 2013 Income as of 5 December 2013' (5 Dec 2013) <<https://data.unhcr.org/syrianrefugees/download.php?id=3716>> accessed 10 Dec 2013 (by early Dec, UNHCR experienced a 34% budgetary shortfall).

Egypt, UNRWA's influence is also limited, relative to UNHCR, because it is considered to represent Palestinian refugees in particular areas of operation. Worse, perhaps, is the practical fact that UNRWA personnel may not be readily available at borders well beyond their areas of operation. This factor necessitates cooperation and coordination with UNHCR in order to overcome challenges of exclusion and *refoulement*.

While UNHCR monitored the flow of all refugees on the Syrian-Lebanon border when UNRWA lacked the capacity to do so, it only kept count of Palestinian refugees attempting to cross the border, not intervening on their behalf when necessary. Neither agency has been able to monitor or meaningfully intervene on their behalf in Turkey, Jordan, or Egypt. Joint monitoring projects should operate without distinction. This is a very difficult hurdle to overcome in light of state aversion to Palestinian refugees in general. Still, together the agencies can assist Palestinian refugees where possible by lobbying these states or, at the very least, to provide Palestinian refugees with options and resources to seek asylum elsewhere. The agencies should create a hierarchy of urgent cases to ensure that asylum seekers in exceptional need (for example, medical emergencies, victims of sexual abuse, or persons with a credible fear of persecution) are permitted entry.

Once permitted entry, UNRWA and UNHCR should continue to collaborate to investigate cases where Palestinian refugees are at risk of *refoulement*. On its own, UNRWA can lobby host states to stay the *refoulement* of Palestinian refugees to Syria. Collaboration with UNHCR would increase its leverage for reasons mentioned above. Moreover, in cases where a refugee is at risk of *refoulement* and possesses a credible fear of persecution in Syria, the two agencies should collaborate to resettle the refugee. UNRWA lacks the mandate to resettle Palestinian refugees and there is no expectation that they take a lead in this process. However, for the sake of productive collaboration it should accompany UNCHR to determine whether the refugee's fear is indeed credible and to assist, however appropriate, in the resettlement process. On its face, UNRWA does not have the authority to assist in resettlement cases but, as demonstrated by the resettlement of Palestinian refugees from Kuwait in 1991, doing so is practically expedient and beneficial.

### 6.2.5 Resettlement

UNHCR has initiated a Resettlement/Humanitarian Admission Programme and seventeen countries have agreed to participate in the programme so far.<sup>323</sup> The refugee agency aims to resettle 30,000 refugees by the end of 2014, or 0.4 per cent of the total number of displaced persons.<sup>324</sup> UNRWA lacks the mandate to achieve durable solutions on behalf of Palestinian refugees. This includes integration, repatriation, and resettlement. Therefore, as UNHCR expands its Resettlement/Humanitarian Admission Programme on behalf of Syrian refugees, the protection gap between the two refugee populations will expand significantly. In the case that Palestinian refugees from Syria become eligible for resettlement, as did the Palestinians from Iraq, the agencies will be forced to contend with the fact that long-standing Palestinian refugees in the Middle

<sup>323</sup> Megan Bradley, 'Is Resettlement a Solution for Syria's Refugee Crisis?' (Brooking Institute Up Front, 13 Nov 2013) <<http://www.brookings.edu/blogs/up-front/posts/2013/11/13-syria-refugee-crisis-bradley>> accessed 15 Nov 2013 (86,000 of the 15.4 million refugees were resettled in 2012).

<sup>324</sup> *ibid.*

East remain ineligible for similar relief. Resolving this issue requires a thorough examination of the legal frameworks in each of the host state as well as states beyond the Mideast region. Doing so is beyond the scope of this paper. Instead, some of the issues and likely challenges associated with resettlement will be highlighted.

Resettlement will only benefit a handful of Syrian refugees. For 2013, UNHCR sought to resettle 10,000 Syrians in need of humanitarian assistance and 2,000 in acute need.<sup>325</sup> Germany's humanitarian admission programme aims to admit 5,000 refugees, making it the largest relocation programme to date. It will offer refugees a permit for two years that can be extended if the situation in Syria does not improve.<sup>326</sup> The United States has committed to admit 2,000 refugees and has already received 6,000 asylum applications.<sup>327</sup> By July 2013, it had only admitted 33 Syrians for asylum.<sup>328</sup> The greatest number of refugees that UNHCR can resettle is very small relative to the number of refugees that it cannot resettle. Therefore, as it continues to develop this programme, UNHCR should consider innovative programmes to enhance the living conditions of the majority of refugees in their host states. This includes building medical and educational infrastructure to serve the refugee population as well as developing economic opportunities for them. This should be on behalf of Syrian and Palestinian refugees without distinction.

Palestinian refugees are never eligible for resettlement and this creates a conflict for a broad resettlement programme. In the case of Iraq, resettlement became available to Palestinians as a result of their non-UNRWA status as well as the international advocacy conducted on their behalf. In this case, nearly all the Palestinian refugees fleeing Syria have UNRWA status placing them outside the scope of UNHCR's Statute. Even the 6,000 refugees in Egypt who clearly fall within the scope of UNHCR's Statute, have been denied the agency's protection for political reasons. Recent rumours suggesting that Sweden planned to resettle 200 Palestinians detained in Egypt caused tremendous joy and disappointment among that population.<sup>329</sup> Addressing the needs of the Palestinian refugee population who are not eligible for resettlement is critical. Investing in local development programmes to benefit the refugee population without distinction provides one such possibility.

Beyond investing locally to benefit Syrian and Palestinian refugees alike, UNHCR and UNRWA should collaborate to resettle exceptional cases. As mentioned above, this includes Palestinian refugees at risk of *refoulement* who face a credible fear of persecution in Syria. This should also include Palestinian refugees in acute humanitarian need. These provisions are inadequate to deal with the systemic unavailability of durable solutions to Palestinian refugees. Addressing this issue requires a more thorough examination aimed at long-term solutions. The intervention here is intended to address how to

<sup>325</sup> UNCHR, 'Press Release: First Group of Syrian Refugees Flies to Germany for Temporary Relocation' (11 Sept 2013) <<http://www.unhcr.org/523076919.html>> accessed 15 Nov 2013.

<sup>326</sup> *ibid.*

<sup>327</sup> Anna Lekas Miller, 'Syria: From Refugees to Asylum Seekers' *Truthout* (19 Oct 2013) <<http://truth-out.org/news/item/19471-syria-from-refugees-to-asylum-seekers>> accessed 15 Nov 2013.

<sup>328</sup> *ibid.*

<sup>329</sup> Fick and Youssef, above n 271 (Palestinian refugees seek to travel by boat from Egypt's shores towards Europe, despite the high and fatal risks involved. A mother of twins who attempted to flee, and who Egyptian authorities have since detained, explained 'We were running away from death ... we said to ourselves, 'we might die anyway', but at least we had some hope for something when we got on the boat').



enhance inter-agency collaboration, especially during secondary forced displacement and emergencies more generally.<sup>330</sup>

6.2.6 *Institutionalized and/or consistent inter-agency collaboration improves preparation for secondary forced displacement*

In addition to facilitating more meaningful cooperation during secondary forced displacement, institutionalized and/or consistent inter-agency collaboration will enable UNHCR and UNRWA to better prepare for the secondary forced displacement of Palestinian refugees. The protection gaps afflicting Palestinians fleeing Syria during its civil war could have been anticipated before the August 2011 attack on Latakia or since then. The agencies, together and/or separately, should have begun discussions with neighbouring states, other UN agencies, and humanitarian organizations about the possible flow of, and responsibility for, Palestinian refugees well before the July 2012 attacks on Yarmouk, when refugees began to flee Syria in greater numbers. This would have been preferable to the wait-and-see approach that seems to operate in Egypt and Jordan. Consistent collaboration and better preparedness can foster rich civil society partnerships that could significantly enhance care and assistance to Palestinian refugees. Similar relationships helped generate global attention for stranded Palestinian refugees who attempted to flee Iraq following the US attacks. This advocacy, and the attention it garnered, ultimately prompted UNHCR to find durable solutions on their behalf.

Establishing new ongoing collaborative models could include reinterpreting Article 1(D) and paragraph 7(c) as permitting overlapping legal regimes between UNHCR and UNRWA. Or, with a more pragmatic approach, the two agencies could strengthen their *de facto* policies and make them known to one another, to UNRWA host states, and to Arab state parties to the Refugee Convention. At a minimum, new strides should be made in institutionalizing UNHCR and UNRWA shared responsibilities for Palestinian refugees during moments of calm and crisis alike among host states. Failure to do so will continue to expose Palestinian refugees to acute vulnerability during armed conflict, humanitarian crisis, and emergencies in the Middle East and to discriminatory treatment and inferior protection relative to their displaced counterparts.

In this spirit, UNRWA needs to join the Inter-Agency Standing Committee and more actively participate with its humanitarian colleagues in discussions and policies pertaining to the international humanitarian architecture. UNRWA should be much more proactive at advancing its agenda and needs with its UN partners, the ICRC, and others. It needs to build partnerships with international NGOs and expand its reach to become a greater part of the humanitarian system. In particular, UNRWA should forge a closely alliance with UN OCHA who should incorporate Palestinian refugees in all of its reporting and advocacy.

## 7. CONCLUSION

Even if Palestinian refugees were not exposed to the risk of secondary and tertiary forced displacement, the existing legal regime does not adequately protect them. Since the balance of responsibilities between UNHCR and UNRWA does not afford

<sup>330</sup> Akram and Rempel, above n 49.



Palestinian refugees durable solutions, they remain in limbo, suspended between their objectification in a prolonged conflict and their vulnerability as refugees. This is true in times of calm and is exacerbated during incidents of secondary forced displacement in the Middle East.

While UNHCR and UNRWA collaboration has sufficed to bridge this gap in such incidents since the early nineties, these *de facto* policies have proven insufficient in the course of the Syrian civil war. The magnitude of the crisis has relentlessly stretched the two agencies' financial and personnel resources to their limit, thereby limiting the potential for inter-agency collaboration. Additionally, the designation of Palestinians fleeing Syria as UNRWA registrants has limited the reach of UNCHR's protection at borders, within UNRWA's areas of operation, as well as within states that are party to the Refugee Convention.

Adequately closing this gap requires the two agencies to continue the fluid operational and geographic collaboration established during previous incidents of secondary forced displacement, regardless of the status of the displaced Palestinian refugees. The drafting history of the Refugee Convention and UNCHR's Statute, together with agency practice, makes clear that the intention was not to delimit protection to Palestinians but to avoid overlapping legal regimes and redundant services. The protection gap afflicting Palestinian refugee populations fleeing Syria should shatter the suspicion of such redundancy. Beyond the horizon of pressing crises, now and into the future, the agencies should also consider viable options for closing the protection gap by making durable solutions available to Palestinian refugees. Achieving this requires political will that rests in the hands of states and not the UN agencies they empower. Until then, all these efforts will remain ad hoc, insufficient, yet absolutely necessary.