A Critical Analysis of

the Biased Review of UNRWA's Neutrality

Position Paper



بديل
المركز الفلسطيني
لمصادر حقوق المواطنة واللاجئين

BADIL
Resource Center
for Palestinian Residency and Refugee Rights

August 2024

BADIL's Position Paper: A Critical Analysis of the Biased Review of UNRWA's Neutrality, August 2024

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BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to defend and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

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1. Introduction

This position paper produced by BADIL Resource Center for Palestinian Residency and Refugee Rights constitutes a review and analysis of the Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality (hereinafter 'UNRWA Review'). It identifies and addresses the serious strategic risks imposed on UNRWA, its mandate, and its sustainability arising from the approach and recommendations of the Review. The UNRWA Review was published after an Independent Review Group was appointed by the United Nations (UN) Secretary-General, in consultation with the UNRWA Commissioner-General, on 5 February 2024, to assess whether UNRWA is "doing everything within its power to ensure neutrality and respond to allegations of serious neutrality breaches when they are made, taking into account the […] context in which it has to work, especially in Gaza."[1] It was initiated following the unfounded Israeli accusations that 12 UNRWA staff members out of over 13,000 in Gaza, and 32,000 throughout all of UNRWA's areas of operation, participated in the 7 October 2023 operations.

Despite continuously commending UNRWA for its uniquely robust neutrality and transparency frameworks, the Review states that there are deficiencies in UNRWA's ability to ensure full neutrality and makes recommendations extending beyond the Review's mandate that are irrelevant to the question of neutrality and are politically motivated, such as those around the restructuring and outsourcing of UNRWA's mandate to other organizations, states, and donors.

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1 Independent Review Group on UNRWA, led by Catherine Colonna, 'Final Report for the United Nations Secretary-General: Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality' (20 April 2024) [hereinafter UNRWA Review], 2 <https://www.un.org/unispal/document/report-independent-review-group-on-unrwa-22april2024/#:~:text=The%20Review%20revealed%20that%20UNRWA,similar%20UN%20or%20NGO%20entities>

The Review Group's methodology and approach are not impartial but rather align with the Israeli regime's colonial narrative and its ongoing campaign to demonize, delegitimize and dismantle UNRWA. The analysis and review of UNRWA's neutrality completely ignores the context within which UNRWA currently and historically operates. The Review adopted the prevalent discourse that inappropriately and inaccurately describes the 7 October operations as "terror attacks" and specifically mentions that Hamas is "designated as a terrorist organization by major donors such as the United States and the European Union (EU)."[2] These are political and politically-charged statements in and of themselves for several reasons. First, there is no internationally recognized definition of "terrorism" and the United States and EU certainly do not have the legal authority to impose and enforce the adoption of their definitions. Second, there has been no official and independent investigation of the events that took place on 7 October 2023. Israel has and continues to obstruct any such investigation that would clarify its and Hamas' actions on, before or after that day. Furthermore, if there were violations committed on 7 October, a competent professional and independent body, not the Review Group, would prescribe the legal qualification of such violations to determine whether or not they constitute international breaches and/or crimes. Such condemnations and charges illustrate partiality in the Review that affects its approach and reveals the political bias behind the recommendations therein.

While judging and labeling Palestinian resistance according to the criteria of Israel and its colonial allies on terrorism, the Review uses watered-down and decontextualized phrases and words, such as "the security situation,"[3] "the ongoing conflict,"[4] and "incidents of violence,"[5] to downplay Israel's ongoing genocide and crimes in the Gaza Strip. Per the date of the Review's publication (20 April 2024), as part of its ongoing genocide, Israel has killed 178 UNRWA staff,

2 ibid 3.

3 ibid 13.

4 ibid 28.

5 ibid 23.

launched nearly 350 attacks affecting UNRWA premises in Gaza and those within them, and killed 34,012 Palestinians.[6] The Review Group completely ignores the context in which UNRWA is operating, fails to address how this context impacts UNRWA's neutrality and what needs to be done to rectify breaches of neutrality resulting from external sources that are not Hamas. In particular, the Review has completely dismissed the long-standing Israeli-led dismantling campaign against UNRWA that works hand-in-hand with Israel's military objectives to carry out its genocide and ensure that "UNRWA will not be part of the day after."[7] In the midst of its genocide, Israel has created and sustained a hostile environment around UNRWA, obstructing its operations, and constituting a form of interference to destroy the existence of UNRWA and its independence as a UN-mandated humanitarian agency.

Even though UNRWA "possesses a more developed approach to neutrality than other similar UN or NGO entities," the Review proposes 50 recommendations within "eight critical areas requiring immediate improvement."[8] Furthermore, the proposed measures are formulated in an unclear, vague manner that leaves them open to dangerous interpretations that can be made by states and donors complicit in the crimes of Israel's colonial-apartheid regime, threatening not only UNRWA's neutrality but its work and very existence.

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6 OCHA, 'Hostilities in the Gaza Strip and Israel | Flash Update #155' (*OCHA*, 19 April 2024) [hereinafter OCHA, Flash Update #155] <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-155>.

7 As stated by Israeli Minister of Foreign Affairs, Israel Kantz, quoted in Jacob Magid, 'Israel wants UNRWA out of Gaza after staffers fired for involvement in Oct. 7 onslaught' (*Times of Israel*, 27 January 2024) <https://www.timesofisrael.com/israel-to-seek-to-end-unrwa-gaza-activities-after-staffers-fired-for-oct-7-involvement/>; see also BADIL, *Forced Displacement and Transfer as an Act of Genocide in the Gaza Strip* (Working Paper No. 31, BADIL 2024) <https://www.badil.org/cached_uploads/view/2024/06/10/forced-displacement-as-an-act-of-genocide-in-the-gaza-strip-v6-1718021197.pdf>

8 UNRWA Review (n 1), 4-5.

2. The Most Prominent Strategic Risks Presented in the UNRWA Review

2.1 Establishing the Scope of the Concept of Neutrality Based on Israel's Definition of Terrorism and Extending the Review Group's Mandate

The Review extends the scope of neutrality beyond the principle of neutrality that has been established in international law.[9] The concept of neutrality in the report is based on the concept of terrorism as defined by Israel and its colonial allies: the European Union, most of its member states and the United States. Recall that the Review came about as a result of unfounded allegations put forth by Israel against UNRWA staff. Despite the Palestinian people's right to armed struggle in pursuit of their inalienable right to self-determination, it is clear that the analysis of neutrality in the Review is based within the framework of a colonial definition of terrorism that equates it with engagement in political or armed activity.[10] Throughout the Review, UNRWA is placed under guilt and suspicion, even though the Review itself acknowledges that "UNRWA has established a significant number of mechanisms and procedures to ensure compliance with the humanitarian principles, with emphasis on the principle of neutrality, and that it possesses a more developed approach to neutrality than other similar UN or NGO entities."[11] The Review has not adequately addressed UNRWA's response to the Israeli allegations of terrorism,[12] and was instead satisfied with

9 United Nations, 'Staff Regulations and Staff Rules, including provisional Staff Rules, of the United Nations' (1 January 2023) ST/SGB/2023/1 <https://documents.un.org/doc/undoc/gen/n22/769/22/pdf/n2276922.pdf>

10 For more information, see BADIL, 'The Palestinian People Have a Right to Armed Struggle by Virtue of their Inalienable Right to Self-Determination' (December 2023) <https://badil.org/cached_uploads/view/2023/12/15/resistance-paper-1702636476.pdf>

11 UNRWA Review (n 1), 4-5.

12 UNRWA, 'UNRWA: Claims Versus Facts' (*UNRWA*, May 2024) [hereinafter UNRWA, Claims vs Facts] <https://www.unrwa.org/unrwa-claims-versus-facts-february-2024>

and utilized Israel's claims while deprioritizing those of the Agency itself. The Review even emphasizes that the majority of UNRWA staff are local staff and that this is a risk to neutrality, despite this not being explicitly seen as an obstacle to neutrality in international law. This specific claim is discussed in detail in Section 2.3.

Throughout the Review, the Review Group has clearly aligned its understanding of neutrality with the definitions of terrorism enforced by Western colonial states. While the UN Security Council does have resolutions on terrorism[13] as well as guidance on the key elements of acts of terrorism,[14] these resolutions and all those subsequent to them do not actually include a definition on terrorism. Thus, there is no internationally recognized definition of terrorism.

The US Patriot Act of 2001 set out a definition of terrorism that targeted specific groups and even whole countries, and that attempted to justify its numerous sanctions, invasions, and attacks upon various regions in the years to come.[15] The EU uses its own definition of terrorism to apply "restrictive measures" or sanctions on other states.[16] Canada,[17] Australia,[18] and the United Kingdom (UK)[19] each have their own acts and definitions

13 UNSC Resolution 1373 (2001) (28 September 2001) S/RES/1373 (2001) <https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf>

14 UNSC Resolution 1566 (2004) (8 October 2004) S/RES/1566 (2004) <http://unscr.com/en/resolutions/doc/1566>

15 US Department of Justice, 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001' (26 October 2001) PUBLIC LAW 107–56 <https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.pdf>

16 European Commission, 'Sanctions (restrictive measures)' (*European Commission*, 18 August 2022) <https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures_en>

17 Government of Canada, 'Anti-terrorism Act' (18 December 2001) S.C. 2001, c. 41 <https://laws-lois.justice.gc.ca/eng/acts/a-11.7/page-1.html>

18 Australian Government, 'Criminal Code Act 1995' (15 March 1995) <https://www.legislation.gov.au/C2004A04868/latest/versions>

19 UK Government, 'Terrorism Act 2006' (30 March 2006) 2006 c. 11 <https://www.legislation.gov.uk/ukpga/2006/11/contents>

on terrorism and their own parameters around what the response to terrorism should be. In addition, some states, like for example, the UK, are targeting students from marginalized backgrounds who may be suspected of potential terrorism in the future.[20] It is clear from the language used and the suspicion raised against UNRWA throughout the Review that the Review Group has adopted these definitions of terrorism from powerful Western states who have used these definitions to attack and destabilize entire regions and peoples, rather than remain impartial in its analysis and follow the UN-established guidelines around both neutrality and terrorism.

UNRWA utilizes robust checking mechanisms in accordance with its international obligations. It necessarily executes those measures in a way that aligns with its mandate and the aim of the mandate: to provide humanitarian assistance and protection for Palestine refugees. UNRWA has its own processes and mechanisms regardless of donors to ensure respect and adherence to UN as well as international regulations on use of funds. This includes a wide range of checking systems from biannual checks of staff names, suppliers, registered Palestine refugees, and micro-finance recipients against UN Security Council Resolution 1267 lists.[21] UNRWA is not required nor does it vet against individual states' national lists, as per UN policy. It additionally checks suppliers against UN Suspect Vendor reports and abides by strict internal reporting mechanisms.

The Review notes that Hamas and the Islamic Jihad have not been included in this list by the UN Security Council, implying that these checks against the UN Security Council's list are insufficient and compromise the Agency's neutrality. The Review is not tasked with commenting on the Security Council sanctions lists nor does it have the authority to update them. Yet, the Review's unnecessary and irrelevant

20 Amnesty International, 'The Prevent duty and its chilling effect on human rights' (*Amnesty International*, 22 May 2024) <https://www.amnesty.org.uk/prevent>

21 See UNSC, 'United Nations Security Council Consolidated List' (UNSC, 25 April 2024). <https://main.un.org/securitycouncil/en/content/un-sc-consolidated-list>

mention that the aforementioned political parties are not included in the lists implies that said parties should be listed. This places unreasonable expectations upon UNRWA to go beyond its legal obligations and encourages the adoption of Israel's and its allies' definition of terrorism and who they have identified as terrorists.

Furthermore, the mandate of the Review Group is to examine the neutrality of UNRWA as an agency in the very politicized environment and context within which it is working. The Review is not mandated to vet the employees nor to classify and provide labels to the Palestinian political parties and the resistance movement. UNRWA has been working in an area where there is a national liberation movement fighting against colonial state, and the context of this anti-colonial struggle has been established and clarified by multiple UN resolutions that are easily available to the Review Group.[22]

Therefore, it is unreasonable to condition UNRWA's neutrality on the non-affiliation of every employee. UNRWA's neutrality can and should be examined by surveying its neutrality measures, adherence to humanitarian principles and standards, and impartiality of employees who have representative status and who are authorized to represent UNRWA, the majority of whom are international employees; this does not include every employee. Although the impartiality of UNRWA high ranked staff is required in every statement or conduct, impartiality of other employees who officially do not have representative jobs is required while they are conducting their work. UNRWA is not an observer and should not become a watchdog of each employee's

22 See, for example, 35/35. Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights (14 November 1980) UNGA Res 35/35 A/RES/35/35 <https://www.un.org/unispal/document/auto-insert-187436/>; 38/17. Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights (22 November 1983) UNGA Res 38/17 A/RES/38/17 <https://documents.un.org/doc/resolution/gen/nr0/444/09/img/nr044409.pdf>.

political affiliation. As such, it is untrue to say that UNRWA, (as any other agency or organization anywhere in the world), loses its neutrality if some of its employees have political affiliations. Moreover, if some employees were involved in an armed group or even in a terrorist act or body without UNRWA's knowledge, this would not degrade the neutrality of UNRWA. The issue of most importance for the Review Group is therefore the neutrality of the agency, not the non-affiliation of every employee, including those who do not have representative positions.

2.2 Creating an International Supervisory Body and the Adaptation of UNRWA's Internal Structure

The Review consistently emphasizes, in multiple sections, the necessity of having a states' body outside of UNRWA, separate from the UN system, with supervisory and executive powers. It ignores that UNRWA's organizational structure is already robust and professional, and includes executive bodies and responsibilities even if the names or titles of the relevant bodies do not include the term 'executive.'[23] It recommends that UNRWA "explore the possibility of third-party monitoring for sensitive projects,"[24] encouraging the creation of an outside body with the Review failing to define what is meant by "sensitive projects."[25]

Similarly, the Review recommends the creation of "an Advisory Commission Working Group on neutrality and integrity issues, and inviting host countries and Israel to present their concerns."[26] Donors and host countries as key constituencies are represented in UNRWA's existing Advisory Commission, so the Review's recommendation that a new Advisory Commission Working Group for the purpose

23 UNRWA, 'Who we are: Organizational Structure' (*UNRWA*, 2 June 2024) <https://www.unrwa.org/who-we-are/organizational-structure>

24 UNRWA Review (n 1), 17.

25 ibid.

26 ibid 8.

of discussing neutrality and integrity issues means that donors, host countries, and - as per its suggestion - Israel would have a direct say in 'resolving' neutrality and integrity issues. This once again puts additional pressure on UNRWA and makes the Agency vulnerable to the whims of international actors that can influence UNRWA's role based on their purported definition of neutrality. The specific danger of the Review's recommendation to include Israel in these discussions is addressed in Section 2.4.

The Review claims that "UNRWA has not sufficiently modernized its management structure, organization or internal communications to account for [its] organizational set-up, or to adapt to current management practices within or outside the UN."[27] The Review provided an unbalanced focus on this issue, implicitly asserting that UNRWA is an archaic and unprofessional organization. This claim completely disregards the fact that UNRWA frequently conducts reviews and evaluations of its work and operational and organizational structure.[28] UNRWA has had recent independent reviews of its structure which have, for example, stated that "UNRWA's organizational architecture is consistent with its mandate and strategic plan."[29] Furthermore, UNRWA has to prove the effectiveness of its structure every time its mandate is reviewed and approved by the international community. The Review's implication aligns itself with the Israeli regime's campaign to delegitimize UNRWA, regardless of the fact that UNRWA already has a detailed and professional organizational structure in place.

The Review falsely accuses UNRWA of lacking a proper executive body that can manage these alleged structural issues. Then, the Review

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27 ibid.

28 UNRWA, 'DIOS and Evaluation' (*UNRWA*, 27 June 2023) <https://www.unrwa.org/resources/dios-and-evaluation>

29 See, for example, MOPAN, 'MOPAN Assessments: United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) - 2017-18 Performance Assessment' (June 2019) <https://www.mopanonline.org/assessments/unrwa2017-18/UNRWA%20Report.pdf>

makes recommendations that pave the way for the transferring of the Agency's executive responsibilities to an outside or international body. The strategic danger with these recommendations lies in the fact that this international body will - by nature - be a political body influenced by the most powerful states, which are also states that are allies of and complicit with Israel's ongoing genocide. This body has the potential to become an alternative body to the United Nations General Assembly (UNGA) and will increase the potential for political and policy interference in the work of UNRWA, hence reducing its neutrality, not enhancing it. It is likely that these interventions will include security references and standards that serve Israel's colonial-apartheid regime, as has been demonstrated in the memorandums of understanding between UNRWA and the United States,[30] the EU,[31] and others.

2.3 The "Internationalization" of UNRWA and its Staff

The Review repeatedly expresses concern over the fact that the majority of UNRWA staff are Palestinian and that there are not as many international positions available, stating that this "can create a culture resistant to modernization and reform across levels and roles,"[32] and recommends "the internationalization of UNRWA's senior managerial area staff positions."[33] The Review additionally recommends that UNRWA should "strengthen internal oversight capacity, especially DIOS [Department of Internal Oversight Services] and the Ethics Office," through "the secondment of staff from OIOS [UN Office of

30 BADIL, *USA-UNRWA Framework Agreement: Assistance or Securitization?* (Working Paper No. 29, BADIL 2022) [hereinafter BADIL, USA-UNRWA Framework Agreement] <https://www.badil.org/cached_uploads/view/2022/02/21/wp-29-unrwa-eng-1645448404.pdf>

31 BADIL, 'European Union Conditional Funding: Its Illegality and Political Implications' (Position Paper, April 2020) <https://www.badil.org/cached_uploads/view/2021/04/20/europeanunionconditionalfunding-positionpaper-april2020-1618905422.pdf>

32 UNRWA Review (n 1), 11.

33 ibid 17.

Internal Oversight Services] or UN agencies to DIOS and the Ethics Office."[34]

The Review's recommendation for the "internationalization" of UNRWA's staff implicitly degrades Palestinian staff members and encourages the enlargement of the gap between the beneficiaries' (Palestinian refugees') priorities and the services provider. The Review disregards the fact that UNRWA's staff being primarily composed of Palestinian refugees is actually a strength, as it plays a large and significant role in the Agency's effectiveness given its integration into the communities it works with. Instead, the Review blatantly suggests that the fact that the majority of UNRWA staff are Palestinian jeopardizes the neutrality of the Agency and that they are not committed to the UNRWA code of conduct and practice and to humanitarian work principles. At the same time, the Review failed to acknowledge that the majority of these staff members are also refugees, and therefore are entitled to protection. This dangerous suggestion shows that the Review Group is implying that Palestinians are incapable of adhering to the humanitarian principles of neutrality and to the international and organizational obligations that they agree to be bound by upon joining UNRWA. BADIL reminds the Review Group that, when discussing counterterrorism and its measures, the UN has repeatedly affirmed "that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group."[35] Similarly, the UN has emphasized that "we must never sacrifice our values," and states and actors must "comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law."[36]

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34 ibid 16.

35 60/288. The United Nations Global Counter-Terrorism Strategy (20 September 2006) UNGA Res 60/288 A/RES/60/288, 2 <https://www.refworld.org/legal/resolution/unga/2006/en/69545>

36 UNGA, 'Uniting against terrorism: recommendations for a global counter-terrorism strategy' (27 April 2006) Report of the Secretary-General A/60/825, para 112 <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Terr%20A60%20825.pdf>

As will be emphasized throughout this paper, the Review Group has failed to align its approach with these international principles, and its discriminatory implication exposes that the Review Group's recommendations have been influenced by the racist claims of Israel and its colonial allies: that all Palestinians are criminals incapable of maintaining a neutral position when working within a UN Agency. Thus, the Review places all Palestinian staff under immediate suspicion just by virtue of them being Palestinian. This same accusation is consistently posed by Israel when responding to the UN taking a decision to address Israel's violations, when responding to a state taking a position in favor of Palestine (such as the recognition of the State of Palestine), and when responding to a human rights organization or expert issuing a report or statement in support of Palestinian rights against Israel's crimes. Israel will always promote these racist and false claims in order to avoid accountability, and the Review's implicit accusation explained prior serves the Israeli colonial-apartheid regime's racist lies and allegations.

2.4 Granting Israel the Legal and Political Power to Directly Intervene in UNRWA's Work

As previously mentioned, the Review recommends the creation of "an Advisory Commission Working Group on neutrality and integrity issues, and inviting host countries and Israel to present their concerns."[37] The Review's recommendation to create a platform that intentionally includes Israel shows no consideration for the current context in which UNRWA and Palestinian refugees find themselves in - a context that has been engineered and maintained by Israel's colonial-apartheid regime. This context includes Israel's: ongoing demonization and defunding campaign against UNRWA; killing of 178 UNRWA staff and likely even more of their family members;[38] bill to criminalize UNRWA and oust the Agency from Jerusalem; active ongoing denial of Palestinians'

37 UNRWA Review (n 1), 8.

38 As of the date of the Review's publication (20 April 2024), see OCHA, Flash Update #155 (n 6).

right of return; and creation and sustainment of the Palestinian refugee crisis which is the reason for UNRWA's existence.

This narrative of dialogue between the colonizer and the colonized encourages the notion that Israel and the Palestinian people are on equal footing, propagating the fallacy of a balanced approach. Rather than recognizing the root causes of Palestinian refugeehood and holding Israel accountable for its crimes against UNRWA and the Palestinian people as a whole, this Review recommends that the perpetrator of the ongoing Nakba be given a space to "present its concerns"[39] and continue to benefit from the impunity that the international community allows to persist. This recommendation of the Review Group empowers Israel to administer and manage the Agency which was established to address the forcible displacement of Palestinian refugees and the protection gap they face which was made by Israel and its allies themselves.

The Review also suggests that all of these meetings occur in an international space, for example that UNRWA's Advisory Commission meets at the "politically significant" venues of the UN's headquarters in New York or Geneva as opposed to the refugee host countries.[40] Holding the meetings in these international spaces would allow for Israel's participation in these meetings. Currently, Israel would not be able to participate in meetings taking place in Lebanon and Syria, but if they were to take place in New York or Geneva, this would pave the way for Israel to regulate its participation.

These recommendations reflect how the Group and its Review have been influenced by the allegations and misinformation of Israel and its allies, resulting in these recommendations aligning with and supporting Israel's goal to dismantle UNRWA.

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39 UNRWA Review (n 1), 8.

40 ibid 7.

2.5 Transferring UNRWA's Mandate Under the Guise of Partnership

UNRWA partnering with UN agencies and international institutions is not new, and is in fact found in UNRWA's mandate and its practices throughout history.[41] UNGA Resolution 302(IV) "urges the United Nations International Children's Emergency Fund, the International Refugee Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and other appropriate agencies and private groups and organizations, in consultation with the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to furnish assistance within the framework of the programme."[42] The UN Secretariat has clarified the meaning of UNRWA's collaboration, coordination, and partnership with other organizations, for example explaining that UNRWA provides education "with professional and technical assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO)"[43] and healthcare "with professional and technical assistance from the World Health Organization (WHO)."[44]

However, the UNRWA Review introduces a new concept of partnership that is very different from the Agency's standard practice as directed by the UNGA. The Review outlines that UNRWA "shows a high degree of vertical integration, i.e. a direct delivery and implementation of

41 UNRWA, 'UNRWA letter to UNHCR describing the UNRWA mandate and services (22 September 2021)' (*UNRWA*, 6 October 2021) <https://www.unrwa.org/resources/about-unrwa/UNRWA_letter_to_UNHCR>

42 302(IV). Assistance to Palestine Refugees (8 December 1949) UNGA Res 302(IV) A/RES/302 (IV) <https://www.unrwa.org/content/general-assembly-resolution-30>

43 UN Secretary-General, Organization of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (17 February 2000) ST/SGB/2000/6, art 2.1(b) <https://documents.un.org/doc/undoc/gen/n00/304/25/pdf/n0030425.pdf>

44 ibid art 2.1(c).

the services it oversees, as opposed to outsourcing to implementing partners or suppliers," and "covers a vast range of activities, from refugee protection and curriculum development, to garbage collection in camps and communities," making the claim that UNRWA's direct implementation of its mandated responsibilities impacts its neutrality.[45] It recommends a form of partnership that entails sharing UNRWA's mandate and re-distributing its tasks to UN and international bodies that do not have an explicit mandate from the UNGA. The Review has thus once again gone beyond its scope by recommending that UNRWA's mandate be parceled out to other agencies without the explicit mandate issued by the UNGA. The Review further encourages international decision-making by recommending that the Inter-Agency Standing Committee (IASC) Emergency Directors Group (EDG), comprising representatives from about 20 IASC member organizations, "should be asked to develop a collective operational coordination plan for Gaza."[46] It also recommends that UNRWA "drive an internal cultural shift that redefines its relationship to the rest of the humanitarian community and its role within the coordination architecture."[47]

The Review does not explain explicitly how UNRWA's direct delivery and implementation of its wide-ranging (and mandated) services would have an impact on its neutrality. Instead, the Review overlooks that, in the Palestinian refugee context, UNRWA constitutes a public-like services provider that has been authorized by the international community via the UN. Any public-like services provider anywhere in the world is expected to oversee direct delivery and implementation of tasks ranging from garbage collection to providing basic health care services to running the processes and delivery of essential education. Thus, the Review provides no foundation, justification, nor evidence as to why it views UNRWA's fulfillment of its mandate as jeopardizing UNRWA's neutrality. Moreover, the Review has not shown how "outsourcing [the

45 UNRWA Review (n 1), 10.

46 ibid 34.

47 ibid.

wide range of services] to implementing partners or suppliers"[48] would actually enhance the Agency's neutrality. Indeed, this outsourcing suggestion poses risks in terms of neutrality and other humanitarian principles as it weakens UNRWA's control over distribution and provision of relief and services as well as its monitoring capacity.

Partnerships with other agencies which are based on sharing and transferring mandated tasks differs from partnerships based on collaboration and coordination. The pattern of partnership presented in the Review paves the way for the transferring of UNRWA's mandate to non-mandated international bodies and its eventual replacement. The Review consistently cites UNRWA's lack of funding and capacity as the main reason why partnerships should be encouraged. However, the Review fails to recognize that the budget and funding issues UNRWA faces are mainly caused by the ongoing defunding, demonizing and dismantling campaign perpetrated by Israel with the support of its allies, and the international conditional funding strategies that have emerged as a result.

UNRWA has the capacity and the clear mandate to carry out its work, however, the absence of a compulsory funding mechanism obstructs the adequate fulfillment of its mandate. As emphasized by UNRWA's Commissioner-General, Philippe Lazzarini, "UNRWA's funding model is incompatible with its mandate to provide public-like services. [...] The mandate must be matched by adequate, predictable and flexible funding from Member States."[49] BADIL's recommends is that a compulsory funding mechanism is necessary to cover UNRWA's essential and core programs augmanted with voluntary contributions in response to UNRWA's emergency appeals. Both types of contributions must go through a special UN Fund to avoid mutual direct relations

48 ibid 10.

49 UNRWA, 'Statement by UNRWA Commissioner-General Philippe Lazzarini at the opening of the UNRWA Pledging Conference' (*UNRWA*, 12 July 2024) <https://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-philippe-lazzarini-unrwa-pledging-Conference>

between UNRWA and states. This special UN Fund would thus relieve and exempt UNRWA from political pressure and impact brought about by states' influence. In any case, the existing voluntary funding mechanism within UNRWA's mandate is a UN structural issue, which makes the Agency vulnerable to the political context and the whims of states.[50] Furthermore, it is an issue that is under the sole discretion of the UNGA, not of coordinating committees active in humanitarian aid activities.

2.6 Promoting the Securitization of UNRWA

The UNRWA Review recommends that UNRWA go beyond its already robust screening and vetting mechanisms and "identify and implement additional ways to screen UNRWA staff at an early stage of the recruitment process."[51] Further, it suggests that UNRWA implements "regular sharing of digital staff lists with host countries and Israel, with all required information[...] to undertake additional screening," "establish a continuous vetting process," "strengthen UNRWA's capacities to detect public expressions of staff views on social media that are not in accordance with staff regulations," and "strengthen the disciplinary processes across the agency."[52]

These proposed screening and vetting conditions risk/aim at imposing both administrative and legal burdens that obstruct the Agency's

50 For more information, see BADIL, 'Bulletin No. 27: Understanding the political underpinnings of UNRWA's Chronic Funding Crisis' (June 2018) Bulletin No. 27 <https://www.badil.org/phocadownloadpap/Badil_docs/bulletins-and-briefs/bulletin-no27-unrwa-financial-crisis.pdf>; BADIL, 'Q & A on the Israeli-led Campaign against UNRWA' (BADIL, 17 May 2024) <https://www.badil.org/press-releases/14992.html>; BADIL, 'BADIL Calls on the UN Secretary-General to Ensure UNRWA's Full International Protection' (BADIL, 10 May 2024) <https://www.badil.org/press-releases/14936.html>; BADIL, 'What are the components of Israel's campaign against UNRWA?' (BADIL, 14 May 2024) <https://www.badil.org/cached_uploads/view/2024/05/14/components-1715677958.pdf>

51 UNRWA Review (n 1), 24.

52 ibid.

ability to effectively carry out its mandate. As a result of increasingly demanding and bureaucratic regulations, UNRWA's humanitarian operations are suffering from increased operating costs and delayed operational responses that undermine humanitarian work and partnerships. This situation creates and exacerbates a climate of tension and mistrust with local partners, which is detrimental to humanitarian work,[53] and such requirements undermine the relationship between the donor, the implementing actors, and the beneficiaries. In the context of the ongoing pervasive colonization of Palestine, where powerful donor states, such as the US, UK, EU and its member states, have a clear track record of siding with Israel, the climate is exponentially impacted. The existing vetting of partners and beneficiaries – which means gathering and communicating personal information about the latter to Israel and its allies - is perceived as "invasive and accusatory" by local communities, hence compromising their relationship with UNRWA,[54] hindering the Agency's acceptance, and its access to people in need.[55] The imposition of additional unwarranted vetting and screening requirements effectively jeopardizes the work of the Agency as a humanitarian body and transforms it into a security proxy.[56]

Furthermore, the Review recommends that, in order to address critical breaches to the neutrality of UNRWA's installations and the inviolability of its premises, "closer dialogue between UNRWA, the Israeli Defence Forces and the Palestinian Authority should remedy

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

54 For more information, see BADIL, 'Trump's so-called Vision/Deal of the Century: A Move to End the Palestinian Refugee Issue through Serious Breaches of International Law' (May 2020) <https://www.badil.org/press-releases/620.html>

55 Sara Pantuliano, Kate Mackintosh, and Samir Elhawary, 'Counter-terrorism and Humanitarian Action: Tensions, Impact, and Ways Forward' (2011) Humanitarian Policy Group 43 <https://cdn.odi.org/media/documents/7347.pdf>

56 See, for example, for example, BADIL, *USA-UNRWA Framework Agreement* (n 30).

some of the information gaps and attend to the shared responsibilities."[57] This completely negates the context wherein Israel has continuously bombed, attacked, and invaded UNRWA premises and has vowed to continue to do so. It also negates the fact that Hamas is the local authority in the Gaza Strip, not Israel, nor the Palestinian Authority. Hamas was elected by the Palestinian people during the 2006 Palestinian legislative election,[58] but was criminalized by Israel and its allies through their policies and practices. The Palestinian Authority was not elected by the Palestinian people and is Ramallah-based, yet it has been chosen by Israel and its allies as the 'legitimate' authority to deal with. The Review Group has full access to this information and should be aware that since Hamas is the local authority in the Gaza Strip, UNRWA is reasonably expected to interact with it, so its recommendation to promote closer dialogue between the Israeli forces and the Palestinian Authority, and demand that UNRWA ignore Hamas or challenge its authority, demonstrates either ignorance of the situation or the political motivation of the Review Group that is aligned with that of Israel and its allies.

It furthers the securitization process of UNRWA which has been ongoing since donor states began to impose special memorandums and contracts upon UNRWA in order to condition their financial contributions towards the agency.[59] By implicitly recognizing the West's proscription of Hamas as a "terrorist organization" and by discouraging interactions with it, the Review's recommendations can be both detrimental to the quality of the humanitarian intervention and can also deviate from the principle of impartiality and neutrality, especially given that many humanitarian actors observe that engagement with the de facto authority in Gaza is

57 UNRWA Review (n 1), 26.

58 The 2006 Palestinian Legislative Council election results show a victory for Hamas, contesting under the list name of Change and Reform, see Central Elections Commission - Palestine, '2006 PLC Election Results' (*Central Elections Commission - Palestine*, 14 April 2019) <https://www.elections.ps/tabid/237/language/en-US/Default.aspx>

59 See, for example, BADIL, *USA-UNRWA Framework Agreement* (n 30).

not only necessary to operate, but is also evidence of their neutrality and impartiality.

As mentioned previously, the Review Group has no authority nor are they mandated to discuss the UNSC Sanctions Lists or argue to add more groups to it or declare specific groups as terrorist groups, and these points that were made throughout the Review exceed the mandate that the Review Group was given. This demonstrates, again, that the Review has allowed its criteria in evaluating UNRWA's neutrality to be influenced by Israel's and its allies' criteria which designates Hamas as a "terrorist organization", and the Palestinians in the Gaza Strip as sympathizers, at the very least - if not supporters or members.

2.7 Demanding that UNRWA interfere in and de-Palestinianize the Education Curricula

The Review's recommendations related to the curricula and educational materials used in UNRWA schools and its recommendations to revise them due to certain subjects allegedly jeopardizing their neutrality are derived exclusively from Israeli reports and insinuations. This recommendation ignores the fact that UNRWA does not have the mandate to change that curriculum; this is the responsibility of the host country to administer the education of its people, and not the responsibility of a UN Agency mandated to implement humanitarian work and services. Furthermore, the Review fails to mention that UNRWA already did take measures to address the issues claimed to be controversial in textbooks. These measures included designing workshops for teachers on how to avoid teaching controversial issues, training teachers to address any problematic content in the classroom using guidance documents developed by UNRWA headquarters, and referring systematically to UN positions on issues such as the occupation, borders, the wall, and others.[60] The Review instead states that UNRWA "has received sustained criticisms, mainly from Israel and NGOs over the alleged presence of

60 UNRWA, Claims vs Facts (n 12).

hate speech, incitement to violence and antisemitism in Palestinian Authority textbooks and educational supplements."[61] It failed to include in the main body of the text that 90 percent of the NGO criticisms come from the Israeli government-organized non-governmental organization Impact-SE and instead briefly mentioned this in the footnotes of the Review. The Review fails to mention that Impact-SE functions as part of the Israeli colonial strategy to subvert Palestinian education. Impact-SE's biased studies aim to coerce the international donor community into pressuring the Palestinian Authority, as well as UNRWA, to alter the curriculum taught to Palestinian students. These reports on Palestinian textbooks are rife with racist and colonial narratives and equate content discussing the Palestinian people's collective national identity, heritage, and values with inciting racial hatred and violence.[62] The UNRWA Review states that "these issues [in Palestinian education] constitute a grave violation of neutrality […] recurrent [issues] were the use of historical maps in a non-historical context, e.g. without labeling Israel; naming Jerusalem as the capital of Palestine; naming cities in Israel as Palestinian cities; the use of the word Zionist (e.g. "Zionist occupation" referring to Israel)."[63]

Ultimately, this pressures UNRWA to engage in reducing Palestinian children's awareness of human rights, including Palestinian national rights and political participation, which depoliticizes the situation of ongoing Israeli colonization in Mandatory Palestine. Such measures do not only infringe on UNRWA's mandate requirement to teach the host

61 UNRWA Review (n 1), 28.

62 For more information, see BADIL, 'BADIL Commends UNRWA on Rejecting IMPACT-se's Fallacious Reports: Educational Contents Discussing the Palestinian Narrative is a Right, Not a Form of Antisemitism' (*BADIL*, 11 August 2022) <https://www.badil.org/press-releases/13241.html>; BADIL, *Israel's Apartheid-Colonial Education: Subjugating Palestinian Minds and Rights* (Working Paper No. 26, BADIL 2020) [hereinafter BADIL, Israel's Apartheid-Colonial Education] <https://www.badil.org/cached_uploads/view/2021/04/19/wp26-right2education-1618824001.pdf>

63 UNRWA Review (n 1), 29.

country's curricula,[64] but are docile to Israel's long-established attempts to censor Palestinian books from the Palestinian people's identity and history.[65] In fact, most criticism against Palestinian textbooks used by UNRWA in the occupied Palestinian territory, including that mentioned in the UNRWA Review, has been based on a very selective interpretation of UNESCO standards – specifically focused on principles of peace and tolerance enshrined in international law. However, UNESCO grounds its mission in a much more comprehensive set of human rights instruments that are relevant to the context of colonization in Mandatory Palestine.[66] It must be understood that respect for the human dignity of the Palestinian people cannot be complied with or achieved within the context of colonial oppression, especially in the realm of education. The denial of the Palestinian people's existence and attempts to precipitate their erasure through the colonization of education is as such an infringement on their dignity and their entitlement to their inalienable rights. Any critical analysis on the curricula that is taught in UNRWA schools would be meaningless if devoid of the context and the general framework in which they operate. A contextualized education curriculum must address the implications of life under Israel's colonial-apartheid regime.

Alarmingly, the Review Group has resorted to regurgitating Zionist colonial claims, equating the retention of Palestinian history, maps, and city names in the face of ongoing Zionist ethnic cleansing and erasure as a "grave violation of neutrality."[67] The recommendations ultimately adopt reports from Zionist institutions that aim to strip the Palestinian identity from the soul and mind of every Palestinian, through a process of de-Palestinianization of the education curricula. They promote a grim future in which a Palestinian teacher will be forced to teach a

64 UNRWA, 'UNRWA School Parliaments: Good Practices Booklet' (*UNRWA*, 25 November 2015) <https://www.unrwa.org/resources/reports/unrwa-school-parliaments-good-practices-booklet>

65 BADIL, Israel's Apartheid-Colonial Education (n 62).

66 ibid 31-39.

67 UNRWA Review (n 1), 29.

classroom of Palestinian children to forget about their identity, culture and history, and the cities they were displaced from, and to instead adopt the language and history of their colonizer and be taught the Zionist colonial ideology.

2.8 Complete Negligence of the Protections due to Palestinian Staff and Refugees

While the Review stresses in multiple areas the necessity of maintaining the neutrality of UNRWA facilities and its employees, it neglects the due protection for Palestinian employees. The Review ignores the fact that international protection is obligatory for everyone, not just foreign facilities and employees. Protection for UNRWA's Palestinian employees is conferred by the Convention on the Safety of United Nations and Associated Personnel as "civilian components of a United Nations operation," the definitions of which are clearly set and defined in the convention.[68] Furthermore, UNRWA staff members are still protected by International Humanitarian Law (IHL) and relevant human rights rules and principles. Under Rule 31 of the IHL Customary Law Rules, humanitarian relief personnel must be respected and protected, with state practice establishing "this rule as a norm of customary international law applicable in both international and non-international armed conflicts."[69] This rule is codified in Article 71 of the Additional Protocol I to the Geneva Conventions,[70] as well as under Article 8(2)(b)(iii) of the Rome Statute which defined the intentional attacking of

68 Convention on the Safety of United Nations and Associated Personnel (adopted 9 December 1994, entered into force 15 January 1999) UNGA Res 49/59 A/RES/49/59 <https://treaties.un.org/doc/source/docs/A_RES_49_59-E.pdf>

69 'Rule 31. Humanitarian relief personnel must be respected and protected' in ICRC, *Customary International Humanitarian Law* (Volume 1: Rules, Cambridge University Press 2005), 105-109 <https://www.refworld.org/reference/research/icrc/2005/en/98261>

70 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 71 <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-71?activeTab=undefined>

humanitarian personnel as a war crime.[71] Additionally, the Palestinian people are a protected people by virtue of them being an occupied people as well as being refugees,[72] and UNRWA staff who are Palestinian are no exception.

As stated throughout this paper, rather than basing its recommendations and approach on these international principles, the Review Group instead bases its analysis on the narratives promoted by Israel and its allies and therefore bases its concept of neutrality in a framework that only prioritizes Israel's protection. The Review completely disregards that the protection of UNRWA staff is consistently violated and stripped by Israel, thus jeopardizing the protection and violating the neutrality of the Agency as a whole.

71 Rome Statute of the International Criminal Court (adopted 7 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 8(2)(b)(iii) <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

72 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 4 <https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf>

3. Conclusion and Recommendations

The UNRWA Review did present the positive assertion that "UNRWA is irreplaceable and indispensable to Palestinians' human and economic development"[73] and that Israel has provided no evidence for its allegations against UNRWA staff. However, the Review Group has failed in its approach by (1) applying the concept of neutrality as derived from Israel's, the USA's, and the EU's understanding, (2) adopting a definition of terrorism as defined by Israel, the USA, and the EU, (3) carrying out the politically-motivated practice of extending its mandate and imposing irrelevant issues, (4) focusing on the non-affiliation of employees rather than the neutrality of the Agency itself, and (5) carrying out the Review under the willful ignorance of the historical and political context while ignoring Israel's illegal practices that affect UNRWA's operation and neutrality. This failed approach is clearly politically-motivated, and has led to the dangerous recommendations that are set out in the Review. The recommendations essentially establish the scope of the concept of neutrality based on Israel's definition of terrorism, extend the Review Group's mandate, call for the creation of an international supervisory body and the adaptation of UNRWA's internal structure, the "internationalization" of UNRWA and its staff, the granting to Israel the legal and political power to directly intervene in UNRWA's work, the transferring of UNRWA's mandate under the guise of partnership, the promotion of the UNRWA' securitization, and the interference, colonization and de-Palestinianization of UNRWA's educational curricula, all while undermining the protection of UNRWA's staff.

The Review completely strips UNRWA of the political and historical context it finds itself in: there is no acknowledgment of the root causes of Palestinian displacement, and that the reason why 9.17 million Palestinian refugees are still denied their right of return is because Israel, a colonial-apartheid regime from its foundations, has been

73 UNRWA Review (n 1), 4.

carrying out the direct and indirect forced displacement and population transfer of the Palestinian people since before 1948. Additionally, there is no mention of the ongoing genocide Israel has been committing in Gaza, and that Israel has not only been killing UNRWA staff members and attacking UNRWA premises but has also been actively obstructing the entry of humanitarian aid and preventing UNRWA from fulfilling its mandate in its campaign of starvation as an act of genocide.[74]

Furthermore, while the Review cites UNRWA's financial and capacity issues as threats to the Agency's neutrality, it shows no recognition that Israel has, for years, undermined UNRWA's operations, criminalized Palestinian activism and dissent, and launched a widespread defunding campaign against UNRWA with the help of its allies. The actions taken by Israel are the very reasons why there is, in the words of the Review, a "trust deficit"[75] between UNRWA and its donors that are the very same allies of Israel that apply conditional funding clauses on UNRWA to further subject the Agency to states' political will.

Finally, the Review does not consider that UNRWA's neutrality is being compromised by Israel itself through its strikes, attacks, invasions, and its demonization campaign. The Review's omission of this context promotes, even if implicitly, the notion that Palestinians are the perpetrators and must be monitored, and that Israel's crimes and violations of international law are admissible enough to be disregarded. Indeed, throughout the whole Review, instead of adopting a framework of protection of UNRWA and its staff, the Review Group has instead opted to adopt a framework of terrorism and securitization as defined by Israel and its colonial allies.

74 BADIL, 'Israel's Use of Starvation as an Act of Genocide' (*BADIL*, 17 July 2024) <https://www.badil.org/press-releases/15192.html>

75 UNRWA Review (n 1), 36.

As such, BADIL recommends that:

1. The Review removes its biased understanding of terrorism derived from and based on Israel's and its allies' criteria, and takes into serious consideration the context in which UNRWA is operating.

2. The Review must institutionalize its approach on humanitarian principles, especially the principle of neutrality, as set in international law and not as defined by individual states' legislations and national understandings. Thus, the Review must withdraw all recommendations that stand in contradiction with international standards and principles.

3. The Review recognizes that the UNGA is the sole body that has the authority to supervise or direct UNRWA or to amend its mandate, and that any other body outside the UNRWA or UN system that might be created must not be given more than advisory or consultative status and the Review must correct its recommendations accordingly.

4. Under no circumstances must Israel or any other state be granted any power to interfere with UNRWA, its mandate and its operations.

5. The Review recognizes and reaffirms the comprehensive protection that UNRWA and its staff, including its Palestinian staff, are entitled to in accordance with customary international law, humanitarian principles, and the Convention on the Safety of United Nations and Associated Personnel.

6. The Review emphasizes that UNRWA should be released from political influence by the creation of an adequate and obligatory funding mechanism enforced by the UNGA.

7. The Review removes any recommendations that promote the securitization of UNRWA.

8. The Review removes any recommendations that interfere with the educational curricula of UNRWA, and removes any recommendations that promote the colonization of Palestinian children's education and minds through education curricula that erases their history, material reality, rights and identity.

9. The international community increases UNRWA's core funding to stop and prevent its vulnerability to political blackmailing in the form of political conditional funding and in order to alleviate UNRWA's financial deficit to enable it to fulfill its mandate and responsibilities towards all Palestinian refugees, and especially those internally displaced inside the Gaza Strip.

10. The Review adopts a balanced and objective approach to handle the neutrality issue and addresses Israel's acts that undermine UNRWA's neutrality, such as Israel's bill to designate UNRWA as a terrorist organization, its forced closure of UNRWA's premises in Jerusalem, and its denial of entry of UNRWA's Commissioner-General, Philippe Lazzarini, into Gaza.

Even though UNRWA "possesses a more developed approach to neutrality than other similar UN or NGO entities," the Review proposes 50 recommendations within "eight critical areas requiring immediate improvement." Furthermore, the proposed measures are formulated in an unclear, vague manner that leaves them open to dangerous interpretations that can be made by states and donors complicit in the crimes of Israel's colonial-apartheid regime, threatening not only UNRWA's neutrality but its work and very existence.