

**Commissioner-General's delivery of the Second Steinkraus-Cohen International Law Lecture, sponsored by the United Nations Association of Westminster in association with the International Relations Committee, the Bar Council and the Law Department, London School of Economics
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“UNRWA's Operational Environment and the Role of International Law”

Ladies and Gentlemen

1. I am honoured to have been invited to deliver the second annual Steinkraus-Cohen International Law Lecture. I would like to extend my warm appreciation to the United Nations Association of Westminster, the Bar Council and the Law Department of the London School of Economics for taking the initiative to co-sponsor and host this important event. I would also like to pay tribute to the memory of the woman in whose name this event has been organized. Ruth Steinkraus-Cohen's untiring support of the United Nations and her interest in and advocacy for the continued development of public international law serves as an excellent example to common people who aspire to help shape a better, more just world, one that is rooted in the fundamental equality of all individuals and peoples, in universal human rights and in the rule of law.
2. The inaugural Steinkraus-Cohen International Law Lecture, delivered by my former colleague, Mr. Hans Corell, Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, set out well the importance of public international law, from the time of Grotius to the present, and

the centrality of the United Nations in its development in the post-1945 era. In contrast to the more theoretical reflections shared by Mr. Corell last year, I have today been asked as a humanitarian practitioner to discuss the role and application of public international law in “the field”, as it were, particularly as it relates to the Israeli-Palestinian conflict and the Palestine refugee problem, itself almost as old as the United Nations.

Ladies and Gentlemen

3. As you are surely aware, the United Nations has played a central role in the conflict over Israel-Palestine: from the General Assembly’s recommendation to partition Palestine in resolution 181(II) of 29 November 1947 to its current involvement in efforts to achieve peace through the “roadmap” as a member of the international Quartet. Since 1950, and in response to the creation of the Palestine refugee problem during the war of 1948, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has provided essential education, health, relief and social services, and micro-credit, to Palestine refugees – now number over four million – within its five areas of operations: Jordan, Lebanon, the Syrian Arab Republic, and the West Bank and Gaza Strip, the last two of which are also referred to as the occupied Palestinian territory or OPT.
4. Notwithstanding the complex legal and political issues UNRWA has had to deal with in its area of operations, many of which I shall today discuss, the role of law in the organization’s operating environment is no different than it is at the municipal level – to serve as a normative force in governing relations between actors, particularly those of unequal strength; to prescribe rules by which all subjects shall be bound so as to ensure a minimum degree of

predictability, fairness, and justice. I have elsewhere discussed the subject of justice and the Palestine refugee problem; suffice it to say that, in my opinion, in the absence of a just resolution to their plight – one that is fair, equitable and in keeping with relevant principles of public international law – a durable solution to the conflict in Israel-Palestine will continue to elude us.

The Palestine refugee problem and the role of international law

5. Before I delve into the topic of the role of international law in UNRWA's operational environment from a humanitarian perspective, it is important to discuss the role of international law with respect to the Palestine refugee problem.
6. Many of you will be familiar with the well established legal maxim "ubi jus ibi remedium": meaning "where there is a right, there is a remedy". In plain terms, this maxim embodies the principle that for the law to matter, there must always be an accessible forum in which complaints against violations of the law may be made and, more importantly, effective mechanisms for the delivery of appropriate remedies may be sought. In the absence of law enforcement, it has been argued, the law is "not worth the paper it is written on".
7. While international law lacks the range of enforcement mechanisms available at the municipal level, adherence to international law prescriptions is usually ensured through other mechanisms including moral suasion, good faith, and comity. In rare cases, the international community has ensured adherence to principles of international law through the UN Security Council, including under the provisions of Chapter VII of the Charter, when the issue has been considered a threat to international peace and security.

Leaving aside these rare occasions, as noted by Mr. Corell in last year's address, most international law "is faithfully applied on a daily basis throughout the world, touching upon almost all activities of human beings that one can think of", from trade to human rights, and from the environment to organized crime.

8. Having said that, there have been some cases in which the fair and equitable application of international law has been perceived as being severely wanting, smacking of a double standard. One such case has been that of the Palestine refugees. For over half a century, the Palestine refugees have clung to their right to return to the homes from which they were displaced in 1948, a right that was originally affirmed by the General Assembly in resolution 194 (III) of 10 December 1948 and which has been annually reaffirmed by the Assembly to this day. Notwithstanding the centrality of their plight to the Israeli-Palestinian conflict, the concrete and practical support of the Security Council for a durable solution to the Palestine refugee problem has never existed beyond its affirmation, in resolution 242 of 22 November 1967 of the necessity of achieving "a just settlement of the refugee problem", and its more recent affirmation in resolution 1515 of 19 November 2003 of the need for the parties to conclude a peace agreement through the roadmap, including "an agreed, just, fair, and realistic solution to the refugee problem."
9. In contrast to this, the Security Council has unequivocally, and many a time under Chapter VII of the Charter, supported the right of refugees in other conflict zones to exercise their right to return to their homes, particularly in Kosovo, East Timor, Afghanistan, Iraq, and Namibia to name but a few. Rightly or wrongly, the Palestine refugees view this difference in approach as a double standard in the application

of international law. This perception of a double standard must end if international law is to retain its meaning and relevance in the Middle East as a whole.

10. I shall now turn to a discussion of the various branches of international law that have a role and impact on UNRWA's operational environment from a humanitarian point of view. With respect to the OPT, I would like to state at the outset that parties to the Israeli-Palestinian conflict, including Israel, have legitimate security concerns which the United Nations has acknowledged. Many Israeli citizens have been killed or injured in acts of terrorism and violence. Yet, it is the view of the international community, including the United Nations, that Israeli measures to ensure the safety and security of its citizens must be balanced by respect for human rights and international humanitarian law and guided by the principle of proportionality.

UN Law

11. It goes without saying that the central legal foundation upon which the Agency's work is based is the Charter of the United Nations, Article 1 of which stipulates that the purpose of the UN is to bring about an "adjustment or settlement of international disputes" through "peaceful means and in conformity with the principles of justice and international law". As a humanitarian organization, UNRWA's role is to help assist the Palestine refugees until such a peaceful settlement to the Israeli-Palestinian dispute can be concluded between the parties to the conflict, all of whom ought to act in accordance with principles of justice and international law in the course of their dealings with each other and the Agency.

12. Another important instrument of UN law that impacts the operational environment of the Agency is the 1946 Convention on the Privileges and Immunities of the United Nations. Based on the principles set out in Articles 104 and 105 of the UN Charter, the Convention provides that the UN and its duly appointed representatives shall enjoy in the territory of each of its Member States such privileges and immunities as are necessary for the fulfillment of their purposes and for the independent exercise of their functions. Specifically, it provides that the property and assets of the UN, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference”. It further provides that UN assets, income and other property shall be exempt from all direct taxes, and that its imports and exports for official purposes shall be exempt from customs duties and prohibitions and restrictions. Importantly, it stipulates that officials of the United Nations shall be immune from legal process in respect of all acts performed by them in their official capacity. In relation to each of the States in which UNRWA operates, the Agency has heavily relied on the 1946 Convention to assist it in fulfilling its mandate.

13. This has been particularly so with respect to its operations in the OPT over the course of the current intifada, where Israel has imposed a number of measures that have directly impinged on the movement of UNRWA staff and goods in violation of the Agency’s privileges and immunities. The most recent of such violations forced the Agency to suspend its emergency food distribution programme in the Gaza Strip in early April as a result of restrictions imposed by the Israeli authorities at the sole commercial entry point for the Strip – the Karni crossing. The Agency regularly makes representations to the Israeli authorities based, in part, on the 1946 Convention. In the case of the emergency food

distribution programme, many such representations probably assisted in getting the restrictions imposed by Israel lifted which facilitated the Agency decision to recommence the programme in late April. In addition, there remains a blanket prohibition on marked UNRWA trucks moving into and out of the Gaza Strip, a container transit fee at Karni crossing and a requirement that all goods and containers be unloaded from one truck and reloaded to another truck at the crossing. Furthermore, during the period 1 July 2002-30 June 2003, there were some 1,161 major incidents involving denial of entry or delay of UNRWA staff and vehicles at Israeli military checkpoints in the West Bank involving some 5,078 UNRWA employees resulting in 7,959 lost working hours (equivalent to 1,061 working days). In some instances staff members' UNRWA identification cards were confiscated and occasionally summonses were issued to staff members instructing them to appear for questioning. On a number of occasions, staff members waiting at checkpoints were abused, physically assaulted and even fired upon by IDF troops. During the same period, there were many incursions by the IDF into UNRWA installations in the West Bank in contravention of Israel's obligations under the 1946 Convention. One such example occurred on 25 September 2002, when an IDF special unit made an incursion into UNRWA's Qalqilya hospital where they threatened staff and patients at gunpoint, beat five members of the hospital staff, including a female administrator and a health official who had arrived at the scene to treat the wounded, and then arrested three other Agency staff members. On another occasion, on 2 April 2003 IDF troops forcibly entered UNRWA's Tulkarem Girls School and used the grounds of the compound for several days as a temporary detention centre for male camp residents. As to staff safety and immunity, since the beginning of the current intifada in September 2002, ten UNRWA staff members have been

killed by the IDF, two while on duty, and between 1 July 2000-26 April 2004, 130 have been arrested and/or detained by Israel.

14. Another aspect of UN law that is relied upon by the Agency is the great body of UN resolutions that support its operations. The General Assembly created UNRWA through resolution 302 (IV) of 8 December 1949 to “carry out in collaboration with local governments...direct relief and works programmes”, and to “consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available”. Resolution 302 recognized that “continued assistance for the relief of Palestine refugees” was “necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability”, without prejudice, of course, to paragraph 11 of resolution 194(III) concerning the right of the refugees to return and to compensation. Since then, the Agency’s mandate has repeatedly been refined and shaped by other General Assembly resolutions, which have allowed it to shift its focus from reintegration efforts in its early years to human development projects through to this very day.

Agreements with Host Governments and Local Authorities

15. Another aspect of international law that has marked UNRWA’s operational environment has been the various bilateral agreements it has concluded with Host Governments and Local Authorities in its areas of operations. As pointed out by Sir William Dale, former General Counsel to UNRWA, the Agency’s status as a subsidiary organ of the General Assembly has meant that its structure and terms of reference are not as definite and may be modified by the

international community without reference to any governing treaty, which would otherwise serve to outline in specific language the powers, functions and organs of the Agency, as well as set out the obligations of member states in respect of it. The general language of resolutions which create and govern the activity of subsidiary organs places them in the distinctly different position of having to conclude additional agreements with the relevant authorities in order to effectively operate within their territories. These agreements, of course, establish terms of reference that are supplementary to those that exist in any governing resolution, as well as in the UN Charter. Treaty based bodies, such as the WHO or ILO, do not have to go through the trouble of concluding such agreements as their governing statutes may be turned to in the event of disputes between the respective organization and Member States regarding the roles, rights and duties of each.

16. In UNRWA's operational environment, the Agency has concluded a number of supplementary agreements as follows:

- Lebanon: Exchange of letters between the Government of Lebanon and UNRWA dated 26 November 1954;
- Syrian Arab Republic: Agreement between the Government of the Syrian Arab Republic and the United Nations Mediator for Palestine dated 28 August 1948;
- Jordan: Agreement between the Government of Jordan and UNRWA signed on 14 March and 20 August 1951;
- Egypt: Agreement between the Government of Egypt and UNRWA dated 12 September 1950;
- OPT: Exchange of letters between the Government of Israel and UNRWA dated 14 June 1967. (In respect of the Gaza Strip, there was also an exchange of letters between UNRWA and the Israel Defense Forces Chief of Staff

following Israel's occupation in 1956). Exchange of letters between the Palestine Liberation Organization and UNRWA dated 24 June 1994. Agreement between the Palestinian Authority and UNRWA dated 5 July 1996.

International Humanitarian Law

17. Another important body of international law that the Agency relies upon in its operational environment, particularly in the areas that have been occupied by foreign military forces, has been international humanitarian law. In today's context, this body of law is most relevant to Agency operations in the OPT, where Israel's authority derives from its status as occupying Power, making it bound by the 1907 Hague Regulations and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, not to mention relevant principles of customary international law as it relates to belligerent occupation. The Fourth Geneva Convention, in particular, provides for the protection of numerous rights of the civilian population including the right to be protected against wilful killing, collective punishment, torture or inhuman treatment, unlawful deportation or transfer, wilful deprivation of the right to a fair trial, and extensive destruction and appropriation of property.

18. From the standpoint of the Agency's humanitarian operations the Fourth Geneva Convention sets forth the legal obligations and duties of Israel, as occupying Power, toward the Palestinian civilian population, including ensuring that the Palestinians have access to adequate education, health, food, shelter and other such socio-economic services. The Israelis have never recognized the *de jure* applicability of the Convention to the OPT, arguing that they are only bound by its so-called "humanitarian provisions" without defining

which provisions it considers as “humanitarian”. Nevertheless, guided by the General Assembly, the Agency has framed its relationship with Israel with respect to its operations in the OPT in terms of the Convention. The Agency’s representations to the Israeli authorities often rely in part on the Convention; for instance, when its schools have been commandeered or come under fire by Israeli forces or its staff has been physically molested or prohibited from delivering badly needed food supplies or medical assistance to Palestinian villages cordoned off by military checkpoints and settler by-pass roads.

19. By way of example, the convention provides that protected persons shall at all times be treated humanely, without discrimination, and shall be protected especially against all acts of violence to life and person. Since September 2000, close to 3000 Palestinians have been killed by Israeli military forces, the great majority of whom have been civilians and therefore protected persons. The Convention also prohibits the destruction by the occupying Power of real or personal property, except where such destruction is rendered absolutely necessary by military operations. Between October 2000 and March 2004, at least 2,700 refugee shelters in the Gaza Strip and 650 refugee shelters in the West Bank have been demolished. In the Gaza Strip alone, these demolitions have affected some 13,000 refugees. The Agency has taken the view that these acts of destruction cannot reasonably be justified on grounds of military security, as asserted by the Israeli authorities. The Convention further stipulates that the wounded and sick, as well as the infirm, and expectant mothers shall be the object of particular protection and respect, and that persons engaged in the operation and administration of civilian hospitals and in the search for, removal and transporting of and caring for the wounded and sick civilians, including the infirm and

maternity cases, shall be respected and protected. During the course of the current intifada, the restrictions on free movement imposed by the Israeli authorities have prevented many patients and medical staff from attending hospitals and health centers. On several occasions during the strife, UNRWA ambulances have been fired upon by IDF soldiers, with at least five Agency ambulance drivers injured and one Agency staff member killed in an ambulance while assisting the injured. The Convention provides that the occupying Power is under an obligation to facilitate the proper working of all institutions devoted to the care and education of children. In the Gaza Strip alone, since the beginning of the current intifada in September 2000, 92 UNRWA pupils were killed and more than 1,100 were injured, some of whom sustained disabilities.

International Human Rights Law

20. International human rights law has also played an important role in UNRWA's operational environment. In places such as Jordan, Lebanon, and the Syrian Arab Republic, Agency interventions in education and health have always been framed within a rights-based context that finds its roots in, among other things, the international Bill of Rights. There are now moves afoot aimed at bringing the Agency's shelter and housing interventions in-line with a rights-based approach, particularly through the shelter rehabilitation and rehousing projects currently underway in the Gaza, West Bank and Syria fields.

21. The General Assembly, in resolution 37/120 J of 16 December 1982, urged "the Secretary-General, in consultation with UNRWA, and pending the withdrawal of Israeli forces from the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem, to

undertake effective measures to guarantee the safety and security and the legal and human rights of the Palestinian refugees in the occupied territories”. In the OPT, human rights law continues to form a basis for Agency interventions with the refugees and with respect to its relationship with the occupying Power. The Palestinian civilian population in the OPT has been long deprived of its human rights, including the fundamental right to life and security of the person. While Israel has legitimate security concerns, its measures against Palestinian violence during the current intifada appear not to have been balanced by sufficient concern for fundamental human rights nor always guided by the principle of proportionality. Many of the operations and actions of the Palestinian militants have also not been consistent with fundamental respect for human rights. Protection of human life, the most fundamental human right, has been violated by both the Israeli military and the Palestinian militants. Since September 2000, more than 2800 Palestinians and 800 Israelis have been killed, and approximately 28000 Palestinians and 5600 Israelis injured. More than six hundred children have been killed of whom around five hundred were Palestinian and the rest were Israeli. Continuing extrajudicial killings by the Israeli military and suicide bombings by Palestinian militants have only raised levels of frustration and anger, further complicating UNRWA’s operations and service provision.

International Refugee Law

22. Surprisingly, the role of international refugee law is limited in UNRWA’s operational environment. This is by virtue of the fact that the Palestine refugees are implicitly excluded from the benefits of the principal legal instrument governing treatment of refugees, the 1951 Convention Relating to the Status of Refugees. Article 1D of the 1951

Convention provides that it “shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance”. When this article was drafted, the Palestine refugees were receiving protection from the United Nations Conciliation Commission for Palestine and assistance from UNRWA. Today, only UNRWA effectively continues to operate.

23. Functionally, the UNHCR and UNRWA have operated according to an understanding that the 1951 Convention may still apply to Palestine refugees who are outside UNRWA’s area of operations – for instance, those seeking asylum in third party states. This is based on Article 1D’s so-called inclusion clause by which the Convention provides that when such protection or assistance ceases for any reason without the position of the refugee being settled in accordance with relevant General Assembly resolutions, its provisions may *ipso facto* apply to that person.

24. For its part, the Agency has been vested by the General Assembly from time to time with a passive protection mandate, particularly during crises such as the Sabra and Shatila massacre or the intifada of 1987-1993, designed to offer a measure of passive protection for Palestine refugees in its area of operations. The Agency is currently engaged in consultations with UNHCR aimed at clarifying and addressing all aspects of the interpretation of Article 1D of the 1951 Convention.

25. Last year, it was conveyed by Mr. Corell that in order to ensure stability in international relations and assure legitimacy for actions taken by both States and international organizations alike, international law must be respected universally. I would suggest that from a practical standpoint,

the extent to which UNRWA has resorted to public international law principles to define and shape its relations with stakeholders in its operational environment, particularly Israel and the host governments, serves as a cogent example of this proposition.

26. For over fifty years, UNRWA has used international law to implement its mandate and render essential services to the Palestine refugees. Four generations of Palestine refugees have directly benefited from the humanitarian interventions of the Agency in the areas of education, health, relief and social services, and more recently micro-credit. UNRWA's role has always been and continues to be temporary. The Palestine refugee problem remains unresolved and until the parties to the conflict conclude an agreement that promises a just and durable solution to the plight of the refugees in accordance with relevant principles of international law, I fear that peace will, as I said earlier, continue to elude us. As men and women who care deeply about the rule of law, universal human rights and the role the United Nations has in upholding these important principles, we must all continue to do our part in helping Israelis and Palestinians resolve their differences with due regard to international law.

Thank you.