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The Responsibility to Enforce?

A Study of the Responsibility for the Human Rights of
the Palestine Refugees

Desirée Sterner

Division of Human Rights Studies
Department of History
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Supervisors: Andrea Karlsson & Lina Sturfelt



Abstract

The question of the Palestine refugees has been an issue to the United Nations' General Assembly (UNGA) ever since its creation in 1948, and it has played an immense role in the Israeli-Palestine conflict. Everyone involved wants to find a solution to the problem, but 65 years on, the issue is as complex as it has ever been. The question of which actor have the main human rights responsibility for the Palestine refugees remains unclear. This essay examines the United Nation's perspective on the human rights responsibility for the Palestine refugees, via the use of Susan James theory *Rights as Enforceable Claims* to analyze the UNGA resolutions 194(III), 302(IV), 66/72, 67/19 and 67/114, and a document from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

Keywords: Palestine refugees, Human rights, the United Nation, the General Assembly, UNRWA, UNGA resolutions, UNGA Resolution 194(III), UNGA Resolution 302(IV), UNGA Resolution 66/72, UNGA Resolution 67/19, UNGA Resolution 67/114

List of Abbreviations

DoP	Declaration of Principles
FES	Friedrich Ebert Foundation
IAF	Israeli Air Force
MMD	Microfinance and Microenterprise Department (UNRWA)
UN	United Nations
UNCCP	Conciliation Commission for Palestine
UNGA	United Nation's General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
PA	Palestinian Authority
PLO	Palestinian Liberation Organization

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1. Introduction

1948 was a historical year. It was the year when the General Assembly of the United Nations (UN) created and signed the Universal Declaration of Human Rights. This crucial document includes 30 articles and was adopted on 10 December as Resolution 217(III). The preamble states:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world[...]

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms¹

By ratifying the declaration the states promised to respect, protect and fulfill the Human Rights of their citizens, who fell under their responsibility. However, the responsibility for the Human Rights of the people who were not included in the state system, i.e. refugees and stateless people, were left undetermined.

1948 was a historical year for another reason as well. Resolution 194(III) was adopted the day after the Universal Declaration of Human Rights was adopted. This resolution dealt with the pressing issue of the conflict in the former British mandate of Palestine. It is an issue, which 65 years later, has not been resolved.

1948 was the year of the first Arab-Israeli war, the creation of the state of Israel, and the displacement of approximately 750 000 Palestinian Arabs, who became the Palestine refugees.² During the 65 years since 1948 the area has been the scene for several conflicts and the Palestine refugees have grown in numbers. The increase is not merely due to a normal growth in population, but also an effect of the war in 1967 and the following occupation, which forced many Palestinians to relocate.³ As of 2007 the estimation of Palestine refugees registered with UNRWA was 4.3 million⁴ and the Palestine refugees have been stateless and refugees for three generations.⁵ Their legal status is unique due to their exclusion from the competence of the United Nations High Commissioner for Refugees (UNHCR) and also from

¹ United Nations General Assembly, Resolution 217(III) A. *Universal Declaration of Human Rights*, 10 December 1948, preamble

² Fischbach, Michael R., *The peace process and Palestinian refugee claims: addressing claims for property compensation and restitution*, United States Institute of Peace Press, Washington, D.C., 2006, p. 3

³ Pappe, Ilan, *A history of modern Palestine: one land, two peoples*, 2.ed., Cambridge University Press, Cambridge, 2006, p. 186-187

⁴ UNRWA, Public Information Office, Headquarters, (2007), “The United Nations and the Palestinian Refugees January” (<http://www.unrwa.org/userfiles/2010011791015.pdf>) Accessed 29 may 2012, p. 6

⁵ Takkenberg, Lex, “UNRWA and the Palestinian Refugees after sixty years: Some Reflections”, *Refugee Survey Quarterly*, Vol. 28, No 2 & 3, (2010), p. 257

the 1951 Convention relating to the Status of Refugees.⁶ Instead they fell under the protection of UNRWA.⁷ The question of who is responsible for their human rights remains to this day unclear.

1.1 Purpose

The purpose of this essay is to discuss and analyze the United Nation's perspective on the responsibility of human rights for stateless people, by using the example of the Palestine refugees. The common view is that it is the sovereign state which bears the responsibility to ensure, respect, protect and fulfill the human rights for their people. It is, however, not as clear where the human rights responsibility lies for the people without a state, people such as the Palestine refugees. With their unique status in the international community, they have, been the frequent subject for discussion in the sphere of the UN and the amount of resolutions concerning the Palestine refugees is vast.

This essay will therefore use Susan James theory *Rights as Enforceable Claims* to examine how the UN views the responsibility of human rights for such stateless people by analyzing resolutions formed by the General Assembly, and a document from the UNRWA.

1.2 Problem Statement

The legal status of the Palestine refugees has a special position in the international legal framework and the issue with them is in many ways unique due to the extensive time period, the ongoing conflict and the multiple actors involved. The Palestine refugees are not considered to be the responsibility of UNHCR and therefore the legal status of the 1951 convention is not applicable. In order to be considered as refugees, and obtain rights derived from that status, they need to be registered with the UNRWA. According to the Universal Declaration of Human Rights, human rights are universal and therefore these rights should be enjoyed by refugees on the grounds of being human beings, and not refugees. The fact that the Palestine refugees need to be registered with UNRWA in order to enjoy their human rights indicates that there is a problem, as they are separated from the regular concept of refugeehood.

⁶ Goodwin-Gill, Guy S. & McAdam, Jane, *The refugee in international law*, 3. ed., Oxford University Press, Oxford, 2007, p. 437

⁷ Caplan, Neil, *The Israel-Palestine conflict: contested histories*, Wiley-Blackwell, Oxford, 2010, p. 113

1.3 Research Questions

In order to reach my purpose and analyze the resolutions and the UNRWA document, I have chosen three research questions. The questions are:

Which actors bear the responsibility for the human rights of the Palestine refugees according UNGA resolutions and the UNRWA document?

Based on Susan James theory on enforceable claims, how important is the state's role in the enforcement of the human rights of the Palestine refugees?

How does the role of the UNRWA fit into Susan James theory and what is their part in enforcing the human rights of the Palestine refugees?

1.4 Material

The primary material used in this essay will be five of the United Nation's General Assembly's (UNGA) Resolutions and these are UNGA Resolution 194(III), 302(IV), 66/72, 67/19 and 67/114. Since the creation of Israel in 1948 there have been a number of resolutions regarding the Palestine refugees. My choice of which resolutions to use in this essay is based on two things: the historical importance of the resolution and how useful it is to describe the contemporary situation.

Resolution 194(III) and Resolution 302(IV) are both important documents for the Palestine refugees and they are referred to in many of the resolutions that follow. Resolution 194(III) dates to 11 December 1948 and is one of the first resolutions which concern the Palestine refugees. The resolution is five pages long, entails 15 articles and has the title *Palestine – Progress Report of the United Nations Mediator*. Resolution 194(III) is relevant and interesting due to its impact on the following resolutions. The resolution created the framework of rights for the Palestine refugees, and has been their constant frame of reference. The one that has had the most impact is the eleventh article. The article established “*the right of return*” for the Palestine refugees, a right they have held on to for the past 65 years.

Resolution 302 (IV) of 8 December 1949 has the title *Assistance to Palestine refugees*. The resolution is three pages long and entails 22 articles. It established and created the mandate for the UNRWA. The entire resolutions are instructions for how the UNRWA should be created and which position are to be filled. This resolution is interesting to examine since it expresses the aim and purpose of the UNRWA.

Resolution 66/72 is from 12 January 2012 and it too deals with *Assistance to Palestine refugees*. It can be seen as a status report on the situation for the Palestine refugees. The resolution is two pages long and consists of six articles, but it does not add anything significant important to the previous resolutions. The only new thing is that the resolution invites Luxembourg to become a member of the Advisory Commission of the UNRWA. It works as a way to continue the mandate for the UNRWA. The reason why this resolution is interesting to analyze is the fact that it is the resolution which is the closest in time to resolution 67/19.

Resolution 67/19 is from 4 December 2012 and is called *Status of Palestine in the United Nations*. The resolution is four pages long, entails 7 articles and is interesting to analyze due to several reasons. The most important are that article two upgraded the status of Palestine to an observer state in the General Assembly, and that in article three the UNGA expresses hope that the Security Council will grant the state of Palestine full membership of the UN.

Resolution 67/114 from 14 January 2013 is also on the topic of *Assistance to Palestine refugees*. It is the most recent resolution concerning the Palestine refugees and it can be seen as a status report on the situation for the Palestine refugees. The resolution is two pages long and consists of five articles. It expresses the general assembly's concern for the Palestine refugees and it continues UNRWAs mandate in the region, but apart from that, it does not add anything new to the resolutions. It is however interesting to analyze the resolution since it is the most recent resolution.

To get a deeper perspective of how the UNRWA regards its mandate and mission I wanted to use material from UNRWA. Therefore, I use an official document called *Consolidated Eligibility and Registration Instructions*. In its 34 pages this document presents the framework for the criteria and standards for identifying those who is entitled to be registered in UNRWAs Registration System and/or to receive the Agency's aid services. This means that the document specifies who the UNRWA deems to be under their responsibility and by extension the responsibility of the UN. Not everything in the document is important or of value for my purpose. The instruction of how the registration works and the purpose of the Instructions, for instance, are not useful in my research. I will focus on the criteria for qualifying for aid from UNRWA and to some extent to what may disqualify one from aid. The document also works as a source of information concerning the different services the

Agency provides for the registered Palestine refugees. This will be used in my analysis in order to see how the services UNRWA provides might be similar to the services provided by a state. The parts of the document I focus on will be demonstrated with quotes directly taken from the document.

I will not use any official material from the Israeli or Palestinian governments. This is due to a lack of official documents available in English and also due to my wish to solely examine the UNs view on the human rights responsibility for the Palestine refugees.

1.5 Literature and Previous Research

The question of the Palestine refugees belongs to a complex and problematic history as one of the main issues in the Israel-Palestine conflict. I use previous research and literature on the subject of the Palestine refugees and their relation with the UN to build a historical context. The literature I use is primarily focused on the Israel-Palestinian conflict and the refugee issue. The reason for this is that I have not been able to find an extensive amount of literature which deals with the UN and their responsibility for the human rights of the Palestine refugees. The majority of the literature concern how different states such as Israel and the countries that are hosting the Palestine refugees, i.e. Jordan, Lebanon, the Syrian Arab Republic(hereafter known as The Hosting Countries), act. The UNGA have stated that UNRWA is responsible for the Palestine refugees, but there is a lack of research concerning what responsibility the UNs has when it comes to the Palestine refugees human rights. The research that has been done concerns other aspects, such as human rights violations by Israel and the hosting countries. I do not focus on these due to the fact that I use Susan James theory *Rights as Enforceable Claims* to see if the UN organ is enough to ensure human rights for the thousands of Palestine refugees in the Near East.

The UN has not been the focus of studies concerning the Palestine refugees and their part in the responsibility for the Palestine refugees' human rights has not been examined. According to the UNGA resolutions it is the UNRWA who is supposed to assure the human rights for the Palestine refugees under UNRWAs protection. The fact that there has been little or next to none question of this is problematic and this essay aim to make an attempt to fill the void in the discourse.

One of the main issues regarding the conflict is that there are competing narratives being used. In the academic world the goal is to be as impartial as possible, but when it comes to the literature regarding the Israel-Palestine conflict it is clear that this might not always be the

case. I therefore try to use as impartial literature as possible, or when subject material is used, it is to demonstrate that subjective view.

The Israel-Palestine Conflict – Contested Histories by Neil Caplan was first published in 2010 by Blackwell Publishing. Caplan holds a PhD in Politics from London School of Economics & Political Science, and has written several books on the subject. The book provides the reader with a general introduction to the conflict and a historical overview of the conflict. The author does this without favoring one of the competing narratives and instead he gives a voice to both parties. He explains the problems with the competing narratives in the conflict and highlights the tangible issues, but examines the conflicts underlying intangible factors.

The Future for Palestinian Refugees - toward equity and peace by Michael Dumper, discuss the historical background for the Palestine refugees, the role of the UNRWA and different possible solutions to the issue with the Palestine refugees. The author is a professor in Middle East Politics at University of Exeter, United Kingdom and the book is published by Lynne Rienner Publisher Incorporated in 2007.

The book *The Peace Process and Palestinian Refugee Claims – Addressing Claims for Property Compensation and Restitution* by Michael R. Fischbach is published by the United States Institute for Peace, where the author was a grantee in 2003-2004. This scholar is a professor of History at Randolph-Macon Collage and has previously written the acclaimed historical study *Records of Dispossession*. The book deals with the claims for property, compensation and restitution by going over the history of the refugee issue. It is written with policymakers, policy analysts and diplomats in mind and aspires to help in future negotiations.

A History of Modern Palestine- One Land, Two People by Ilan Pappe was first published in 2004. The second edition was published in 2006 and entailed a new part regarding the second intifada. Pappe is a senior lecturer in Political Science at Haifa University in Israel. He is well known for his new take on Israel's history and for his extensive writing on the Politics of the Middle East. The book deals with the history of the area we now call Israel and the Occupied Palestine territories. It starts in 1856 and takes on the many historical changes in the area until 2006.

Michael Bröning is the author of *The politics of change in Palestine state-building and non-violent resistance*. Bröning is the Director of the Friedrich Ebert Foundation (FES) in the Palestinian Territories, and he has previously represented FES in Jordan and Iraq. The book was published in 2011 by Pluto Press and it challenges different myths regarding the Palestinian actors in the Israeli-Palestine conflict. Bröning identifies the key Palestinian actors, and explains their history and present, in the context of the conflict.

The Refugee in International Law- Third Edition by Guy S. Goodwin-Gill and Jane McAdam resembles a guide-book concerning refugees legal status in International Law. Guy S. Goodwin-Gill is Professor of International Refugee Law, University of Oxford, Senior Research Fellow, All Souls College, University of Oxford and a Barrister at Blackstone Chambers, London. Jane McAdam is a Senior Lecture and the Director of International Lay Programs, Faculty of Law University of New South Wales, Sydney. The book is used a source of information and facts about international refugee law and the UNRWA.

The article *UNRWA and the Palestinian Refugees after sixty years: Some Reflections* by Lex Takkenberg describes the history of the Agency, their mandate and the future of the Agency. The author is UNRWA's Senior Ethics Officer and has worked in different positions in the Agency since 1989. The article was published in Refugee Survey Quarterly Volume 28 Issue 2-3, 2010. The Editor-in-Chief is Prof. Vincent Chetail and it is a peer-reviewed journal published by Oxford University Press.

The Mandate of UNRWA at Sixty by Lance Bartholomeusz, who is Chief, International Law Division, Department of Legal Affairs, United Nations Relief and Works Agency for Palestine refugees in the Near East (UNRWA). The article discusses what the mandate of the Agency entails and to whom it extends. The article was published in the same volume of Refugee Survey Quarterly as the one above.

“*The Three Faces/Phases of Palestinian Nationalism, 1948–2005*” is an article written by Helga Baumgarten, who is a DAAD Professor of Political Science at Birzeit University. The article takes a comparative look at the three main manifestations of Palestinian nationalism since 1948: the Movement of Arab Nation-alists, embodying its pan-Arab phase; Fatah, its specifically Palestinian form; and Hamas, its religious (Islamic) variant, and their different ideologies.

The article *Palestinian Refugee Rights Time-Out for Politics - A Time for Accountability and the Rule of Law* by Ingrid Jaradat Gassner, who is the director of Badil Resource Center for Palestinian Resistance and Refugee Rights in Bethlehem. She holds an MA in education and sociology, and has worked in the Palestinian NGO sector since 1988. The article discusses the question of the right of return for the Palestine refugees, why it has not been implemented, and what needs to be done to change it. The focus of the article is on the different negotiations concerning the right of return.

The issue with the Palestine refugees continues into the present day. I have not been able to find any books or articles which deals with the most resent resolutions and their historical context. For me to be able to describe them, I have used three Newspapers internet magazines. These Newspapers are the Haaretz Daily Newspaper, the Washington Post and the Jerusalem Post. The Haaretz Daily Newspaper is the oldest Israeli newspaper. It is published in both English and Hebrew. The responsible publisher is Amos Schocken. I have used it for the full transcript of Abbas speech at UN General Assembly on 23 of September 2011.

The Washington Post is an American newspaper, founded in 1877. The publisher is Katharine Weymouth and Marcus Brauchli is the editor. I have used the article “After Israel, Hamas reach Gaza cease-fire, both sides claim victory” by Ernesto Londoño and Michael Birnbaum to describe the events in between the 14th and 21st of November 2012.

The Israeli newspaper The Jerusalem Post was founded in 1932 by Gershon Agron, and the editor in chief is Steve Linde. From the Jerusalem Post I have used two different articles. The first one is “IAF strike kills Hamas military chief Jabari” by Yaakov Lappin. This article reports on the killing of Hamas military chief Jabari, in 14 November 2011. The second article from the Jerusalem Post is “Israeli, Palestinian negotiators to meet in Amman” by Herb Keinon, and Khaled Abu Toameh, and reports on the meeting between the Israelis and Palestinian on January 3 2013.

I will also use a document from the UNRWA and the UNHCR from January 2007 called The United Nations and the Palestinian Refugees. I have found the document on the website of UNRWA, and both UNRWA and UNCHR are responsible for the publication. The document explains the mandate the UNRWA and UNHCR and how the mandates differ. It describes how the two UN organs conduct their work for the Palestinian refugees and how they operate.

1.6 Restrictions

There is much to study concerning the situation for the Palestine refugees in context of the Israel-Palestine conflict and since there is a limit to this work, I decided to only work with the UNs perspective of the roles in the refugee issue. Actors, such as Israel, the neighboring Arab countries and the Palestinian Authority (PA) or a future Palestinian State plays a vital part in the conflict and the solution of the refugee issue. They will, however, only be discussed as part of the UNGA resolutions. I do this for the reason that it is the UN's responsibility that I study and not the other actors.

Something which has played a vital part in the previous literature is the right of return. I do not argue that this right is one of the main issues concerning the Palestine refugees, but it will not be my main focus. I will place my attention on responsibility, and as a part of this the right of return will be discussed.

The issues of the Palestine refugees are as complex as the conflict their situation originates in. The first thing to discuss is who the Palestine refugees are. The UN resolutions use the term Palestine refugees, but the PA, and most of the literature which deals with the Israel-Palestine conflict use the term Palestinian refugees. The Palestine refugees refer to people who lived in the British mandate of Palestine⁸, whereas the term *Palestinian refugees* include everyone who considers themselves as Palestinians.⁹ It would have been interesting to study the question of the Palestinians human rights, and by Palestinians I mean including everyone who considers themselves as Palestinian. This is not possible in this essay, and since the Resolutions only discuss the Palestine refugees, I choose to focus on them.

2. Theory and method

2.1 Theory

This essay will take inspiration from the work of Hannah Arendt in *The Origins of Totalitarianism*. Her theory is that human rights in fact are rights we hold as citizens, and not as humans. Arendt argues that when we are the most vulnerable there is no institution to

⁸ UNRWA, 2007, p. 5

⁹ UNRWA, 2007, pp. 1-16

guarantee our human rights and that the right to have rights is the most fundamental human right.¹⁰

Hannah Arendt talks about when people lose their home and become stateless they also lose the possibility of gaining a new home since they also lose the ability to seek refuge in another country.¹¹ Her theory has several valuable points and I believe that it would be a useful tool to analyze the Responsibility for the Human Rights of the Palestine refugees. It will however not be my main theory. It will instead work as a steppingstone to analyze and discuss how the UNGA resolutions and the UNRWA document portray the Responsibility for the Palestine refugees' human rights.

The theory I will use to analyze and problematize the responsibility of human rights for the Palestine refugees is *Rights as Enforceable Claims* by Susan James. She argues that in order to talk about human rights they have to be enforceable. Otherwise they are just empty gestures and mockery. Her question is whether or not we can talk about human rights when there is no state to ensure them.¹²

She argues that in order for us to be able to talk about human rights, three conditions of enforceability are required. These are institutions, agents who fulfill obligations and agents who claim rights.¹³ She builds her argument on the work of Onora O'Neill's in *Towards Justice and Virtue, A Constructive Account of Practical Reasoning* and Raymond Geuss in *History and Illusion in Politics*. O'Neill's theory is that "a right is only claimable when we can identify agents who are under an obligation to ensure that the entitlements is met."¹⁴ Raymond Geuss "agrees that the existence of a right depends on the existence of a specifiable mechanism for enforcing it, but adds that this must be 'backed up by an effective method if implementation'."¹⁵ Geuss argues that if rights are effectively enforceable claims "they must be claims against some individual or collective agent who is capable of effectively enforcing them."¹⁶ Based on this James argues "the obligations from which rights flow only emerge within elaborate and interlocking sets of institutions". The institutions are dependent on established rights-generating practices, specific rules as well as guidelines and "co-operate to

¹⁰ Arendt, Hannah, "The Perplexities of the Rights of Man", In *The origins of totalitarianism*, 2. enl. ed., London, 1958, p. 290-302

¹¹ Arendt, 1958, p. 295

¹² Susan James, "Rights as Enforceable Claims". *Proceedings of the Aristotelian Society*, Vol. 103, (2003), p. 1

¹³ James, 2003, p. 141

¹⁴ James, 2003, p. 134

¹⁵ James, 2003, p. 136

¹⁶ James, 2003, p. 137

produce and sanction the patterns of obligations that constitute particular clusters of rights.” James reasons that such network is a precondition for there to be any enforceable rights at all.¹⁷

James further argues that these institutions must be brought to life by individual agents who take on various sets of responsibilities, and by doing so, contribute to the creation of rights.¹⁸ For these agents to exercise their power effectively, they have to understand their obligations and have knowledge of how to carry out their obligations.¹⁹

She also points to the importance of the agents who claim rights²⁰ and how their capability to claim their rights depends on a wide range of institutions and cultural practices, such as “access to money, information about procedures and entitlements, sufficient authority to lodge and negotiate her claim, and access to specialists of various kind.”²¹ The institutions, agents who fulfill obligations and agents who claim rights must work together in order to avoid disturbances which can make it impossible to enforce claims effectively.²²

These conditions must happen within four circumstances. First of all it has to be an effective source of political authority and accepted jurisdiction. Without this the institutions may have problems to operate effectively or there may be competing authorities whose institutions are likely to disturb one another. The second circumstance is that the power in society needs to be distributed fairly evenly. If one group in the society in question have little power and no one to represent them, their ability to enforce their rights is likely to be limited.²³ Thirdly, for the rights to be enforceable the institution has to have sufficient resources and they need to be able to distribute them. If the agents who have obligation do not have relevant resources, they will be unable to carry out the duties that institutions placed on them, and therefore the claims are not enforceable. The final circumstance is that the people in the society must share the values embodied in the obligations. If the people do not share the same values from which the rights are derived from, they may actively resist their obligation to enforce the rights.²⁴

¹⁷ James, 2003, p. 139

¹⁸ James, 2003, p. 139-140

¹⁹ James, 2003, p. 140

²⁰ James, 2003, p. 140-141

²¹ James, 2003, p. 141

²² James, 2003, p. 141

²³ James, 2003, p. 142

²⁴ James, 2003, p. 143

I use James' theory to study the human rights situation for the Palestine refugees. I wish to see who bears the responsibility to enforce the Palestine refugees Human rights and their ability to do so. The situations for the Palestine refugees are quite unique and part of how the situation emerges can be seen from the resolutions. I use James' theory to discuss why it may be problematic with stateless people and their claims to rights.

2.2 Method

In this essay I use a textual analysis on the resolutions to see what the resolutions say regarding the responsibility for the human rights of the Palestine refugees. I compare the use of language in the resolutions with each other and with the document from UNRWA. To do this study I use Susan James theory to see whether or not the UNGA resolutions and the UNRWA documents express or promote the conditions and circumstances that James argue is necessary to be able to have enforceable rights.

I also wish to use James theory to see which role Palestine is given in the resolutions. I use the word "given" since it was not until resolution 67/19 that Palestine became an observer state in the general assembly, and even as such they do not have the right to vote.

I use a conceptual analysis on certain key concepts used in the resolutions such *responsibility*, *refugee*, *people*, *rights* and *claim*. By analyzing the concepts of these terms I examine if the meaning of them, the context of the concepts and if there is any connection between certain concepts.

I divide my analysis into three different parts: *Responsibility*, *Refugees and People*, and *Rights and Claims*. In the first part I discuss *Responsibility*. I use the resolutions and the UNRWA document to form an idea of what the UN's notion of responsibility is regarding the Palestine refugees. I use James theory to examine where the responsibility to handle the problem with the Palestine refugees lies. By applying her three conditions on my primary material I will assess what function the UNRWA, the Israeli state, the PA, the hosting countries, and the Palestine refugees have.

In the second part I discuss the terms *Refugees and People*. The two concepts are used throughout my primary material and I examine why one is used in one context and another concept in another context. I use James theory to study the distinction between the two concepts, and to examine possible consequences of this.

In the third part I study *Rights and Claims*. What is it that the resolution claims that the Palestine refugees have right to and who hold the responsibility to ensure them? I use James theory to study what it means to have rights and claims in this context. Furthermore I examine if the rights of the Palestine refugees are enforceable or not, based on James three conditions, i.e. the institutions, agents who fulfill obligations and agents who claim rights.

3. Main body

3.1 Historical Background

To understand the problems with the Palestine refugees it is important to take the historical context into consideration. These past 65 years have seen several wars, conflicts and peace processes, and there is more than one way to interpret history. The issues with the Palestine refugees remain unsolved, and in order to be able to see the cause of the failure to solve the problem, it needs to be seen in the context of the Israel-Palestine conflict.

3.1.1 The War of Independence or the Catastrophe?

There is no way to pinpoint the moment when the conflict in the region started. However, the war of 1948 can be seen as the starting point of the refugee issue. The two sides have two different names for the war: the war of Independence (*Milhemet ha-atzma'ut*) for the Israeli side and the Catastrophe (*al-nakba*) for the Palestinian side. The start of war is also disputable, but there are two dates which have been used. The first date is the 30th of November 1947, the day after the general assembly passed resolution 181 (II).²⁵ The resolution proposed to divide the British mandate of Palestine into two states, one Jewish state and one Arab state, with Jerusalem as a Permanent Trusteeship.²⁶ The response to the resolution was divided. The Zionists, who wanted a Jewish state, were thrilled with the result, while the Palestinians and the Arabs were outraged, and vowed to defend Arab Palestine from what they considered the unjust imposing of a Jewish state.²⁷

The second date is the 15th of May 1948, when the Provisional Government of Israel declared its independence.²⁸ 1948 war was between the Jews and the Arabs, who fought for control over the area which had previously been the British mandate of Palestine.²⁹ The war lasted

²⁵ Caplan, 2010, p. 111

²⁶ Caplan, 2010, p. 108-110

²⁷ Caplan, 2010, p. 110

²⁸ Caplan, 2010, p. 111

²⁹ Fischbach, 2006, p. 9

with irregular fighting until early 1949 and took the lives of 6000 Israelis, 13,000 to 15,000 Palestinians and 2000 to 2500 other Arabs.³⁰

The war left the Palestinians with the loss of their homes and their livelihood, the destruction of their social community³¹ and with no Palestinian political society.³² It was a socioeconomic catastrophe for the Palestinians with more than half the Arab population being displaced, expelled and forced to flee. They became the refugees, stateless and the responsibility of the UNRWA.³³ Some historians argue that the war of 1948 was in fact an ethnic cleansing with massacres and forced expulsion.³⁴

The aftermath of the events of 1948 is the uniqueness of the legal status of the Palestine refugees. This is due to their exclusion from the competence of the United Nations High Commissioner for Refugees (UNHCR) and also from the 1951 Convention relating to the Status of Refugees. What this mean in legal terms is that states that have signed and committed to the 1951 Convention relating to the Status of Refugees is not obliged to fulfill these obligations towards the Palestine refugees, since they are not concerned by this convention.³⁵

3.1.2 The War of 1967 and the Lebanese Civil War

In 1967 the relations between Israel and its neighboring countries were as strained as ever, and threats and blood-curdling rhetoric was used on both sides. On the morning of the 5th of June 1967 Israeli fighter jets bombed Egyptian Airfields and destroyed most of the aircrafts. Egypt and Jordan had recently signed a mutual defense pact, and bound by that, Jordan opened fire on Israeli positions in, and around Jerusalem, causing Israel to fight on two fronts.³⁶ On the 9th of June, Israeli forces were ordered to attack, and conquer the Syrian controlled Golan Heights. The war lasted six days, and is commonly known as “The Six Day War”. A consequence of the war was the ongoing Israeli occupation of the Gaza Strip, the West Bank, Sinai Peninsula and the Golan Heights.³⁷

³⁰ Fischbach, 2006, p. 11

³¹ Caplan, 2010, p. 113

³² Fischbach, 2006, p. 10

³³ Caplan, 2010, p. 113

³⁴ Pappe, 2006, p. 129-130,136. For more information see Pappe, Ilan, *The ethnic cleansing of Palestine*, Oneworld, Oxford, 2006, (ISBN: 1-85168-467-0)

³⁵ Goodwin-Gill, Guy S. Jane McAdam, 2007, p. 437

³⁶ Caplan, 2010, p. 145

³⁷ Caplan, 2010, p. 146

The occupation that followed the war in 1967 caused an increase in refugees. In 1972 there were 1.5 million refugees, 650,000 of whom lived in thirteen large camps in Palestine, Jordan, Syria and Lebanon. The number would increase to about 2 million by 1982.³⁸

The persons who were displaced as a result of the June 1967 and subsequent hostilities are not eligible to register with the UNRWA, but the UNRWA have a responsibility 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 currently displaced and in serious need of continued assistance as a result of the June 1967 and subsequent hostilities”. These terms were established in UNGA resolution 2252 of the 4th of July 1967.³⁹

Another event that affected the Palestine refugee issue happened during the Lebanese civil war. In 1964 the Palestinian Liberation Organization (PLO) was founded on the initiative of the Egyptian President Gamal Abdel Nasser. The PLO was in 1968/9 taken over by the Palestinian Organization Fatah,⁴⁰ founded by Yasir Arafat, Salah Khalaf and Khalil Al-Wazir in 1958/9. Fatah, who engage in military operations in the historic Palestine, was a symbol of resistance.⁴¹ The PLO had used the southern parts of Lebanon as headquarter after 1970, and the area became a war zone with a steady escalation of attacks and counter-attacks. In April 1982 Israel evacuated Sinai, and prepared for forcefully remove the military threat posed by the PLO forces, which in all but in name, ruled the southern parts of Lebanon. An attempted murder on an Israeli diplomat in London was the provocation Israel needed to launch a large scale invasion of Lebanon on June 6 1982. The declared military goal was to drive the Palestinian artillery and base to a distance 40 km from the boarder. The unspoken political goal was however to try and expel the PLO from Lebanon all together.⁴² As a consequence of the invasion, the General Assembly expanded the scope of UNRWA’s mandate to provide humanitarian aid to persons displaced by “subsequent hostilities” to the war in 1967.⁴³

³⁸ Pappe, 2006, p. 186-187

³⁹ UNRWA, (2010), “Consolidated Eligibility and Registration Instructions”, (<http://unispal.un.org/pdfs/UNRWA-CERI.pdf>), Accessed 28 may 2012, p. 7

⁴⁰ Baumgarten Helga. “The Three Faces/Phases of Palestinian Nationalism, 1948–2005” *Journal Of Palestine Studies*, Vol. 34, No. 4 (2005), p. 29-30

⁴¹ Bröning, Michael, *The politics of change in Palestine state-building and non-violent resistance*, Pluto Press, London, 2011, p. 57

⁴² Caplan, 2010, p. 185

⁴³ Bartholomeusz, Lance. “The mandate of UNRWA at sixty”. *Refugee Survey Quarterly*, Vol. 28, No 2 & 3, (2010), p. 9. United Nations General Assembly, Resolution 37/120 A-K, *United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 16 December 1982, Part B, article 2.

3.1.3 The Two Intifadas and the Peace Process

After the Lebanese civil war the conflicts in the area has continued, and even though the area has seen two Intifadas, and an extensive Peace Process, there is still no solution in sight. The Refugee issue is considered one of the main issues that need to be solved in order to reach a long term, and just solution to the conflict.

In 1987 the West Bank and the Gaza Strip had been under Israeli occupation for 20 years. The situation for the Palestinians living under occupation was harsh and the people had lost their faith in getting help from outside actors. Being inspired by the liberation movements going on in East Asia, Eastern Europe and South Africa, and being frustrated at the failing of the Palestinian leadership, a grassroots movement began to rise. The goal was to end the Israeli presence in the West Bank and the Gaza Strip, and in December 1987 the first Intifada began. The word Intifada translates to “shaking off” and the goal was to “shake off” the occupation.⁴⁴ The intifada lead to the understanding that something had to be done to change the situation and a new peace process was born.

The peace process of the 1990s made many hopeful for a peaceful future.⁴⁵ The process started with the Madrid conference, which had its historical opening on 30 October 1992 at the Madrid Royal Palace. It broke decades of taboo about Arabs and Israelis not being able to appear in the same room or at the same negotiating table.⁴⁶ For the first time in history the Palestinian was represented by Palestinians, not the Hosting countries, and the PLO, who had in previous years abandoned the violent resistant strategy,⁴⁷ became the official recognized representative of the Palestinian people.⁴⁸ The Madrid Conference broke the ice, and during the following year the delegations continued to meet. It led to the Oslo process which took place in 1993. Under Norwegian and American mediation the Israelis and Palestinians sides agreed to recognize and negotiate with each other, along with a 17-article “Declaration of Principle on Interim Self-Government Arrangements”.⁴⁹ The mutual recognition in September 1993 between Israel and PLO was historic, as it was the end of decades of dismissing each other’s claims to the land.⁵⁰ The Oslo process resulted in an agreement called the Declaration of Principles (DoP). It stated, among other things, that the Israelis should withdraw from Gaza

⁴⁴ Pappe, 2006, p. 230

⁴⁵ Pappe, 2006, p. 276

⁴⁶ Caplan, 2010, p. 202

⁴⁷ Baumgarten, 2005, p. 36

⁴⁸ Pappe, 2006, p. 243

⁴⁹ Caplan, 2010, p. 202-203

⁵⁰ Pappe, 2006, p. 276

and Jericho, followed by a gradual transfer of certain civil functions from Israel to the PLO, and an eventual Israeli withdrawal from all Palestinian towns.⁵¹ This allowed the Palestinians to start taking their first steps in nation-building with self-rule over 22 per cent of the area that has been the British Mandate of Palestine.⁵² Another consequence of the Oslo process was the creation of the PA.⁵³

A problem with the Oslo Process was that the American mediators in the Oslo accord adopted the Israeli perspective that the conflict began in 1967 with the occupation of the West Bank and the Gaza Strip. In order to reach peace in the area, a withdrawal from the occupied territories would be necessary. This means that Palestine refugees who originate from cities, towns and villages that now are in Israel do not have the right of return.

The Oslo process avoided three of the main issues that are most important to the conflict, the refugee problem, the question of Jerusalem and the problem with the Jewish settlements in the occupied territories. These were left for the future.⁵⁴ It was not specified when the terms from the DoP were to be implemented, but it was decided that the negotiations should continue to solve the previously mentioned issues.⁵⁵ It happened at the Second Camp David, which was the last peace talk of the initiative of the US president Bill Clinton. It took place during the summer of 2000, but was not a success. The reason for the failure depends on the narrative which is used. What both sides agree upon is that an offer was made to Arafat, and that he refused it.⁵⁶ The Second Camp David and the Oslo process tried to persuade the Palestinian leadership to accept a limited sovereignty in the West Bank and the Gaza strip. In addition to this, the leadership was asked to forsake the right of return.⁵⁷ Arafat refused to accept these terms, and the people under occupation found the offer made by President Clinton and Prime Minister Barak to be an insult. Their reaction to the Camp David proposal was fierce, violent and the Second Intifada would follow.⁵⁸

The second Intifada started in October 2000 when Ariel Sharon visited Haram al-Sharif in Jerusalem. Unarmed Palestinians went out to protest against the visit and the humiliating offer

⁵¹ Pappe, 2006, p. 241

⁵² Pappe, 2006, p. 276

⁵³ Pappe, 2006, p. 243

⁵⁴ Pappe, 2006, p. 241

⁵⁵ Pappe, 2006, p. 276

⁵⁶ Caplan, 2010, p. 207

⁵⁷ Pappe, 2006, p. 276

⁵⁸ Pappe, 2006, p. 276

made by the Israeli Prime Minister Barak at Camp David. They were met by fully-equipped Israeli border police and thirteen Israeli Palestinian citizens were shot to death.⁵⁹

3.2 The Resolutions

3.2.1 Resolution 194 (III)

Resolution 194 was adopted on 11 December 1948 as response to the ongoing Arab-Jewish war. The resolution established the United Nation Conciliation Commission for Palestine (UNCCP) which was charged with taking steps to achieve a final settlement of the problem⁶⁰ and to “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation”. A problem for the UNCCP has been their dependence on cooperation and political will from the states concerned, i.e. the hosting countries and Israel.⁶¹

The resolution calls for governments and authorities to take responsibility and to negotiate, but the resolution do not specify which these governments and authorities are. It can, however, be assumed that these are the governments and authorities of the hosting countries and Israel, as well as what was left of the Palestinian authorities at the time. Article 5 states:

5. Calls upon the Governments and authorities concerned to extend the scope of the negotiations provided for in the Security Council’s resolution of 16 November 1948 and to seek agreement by negotiations conducted either with the Conciliation Commission or directly, with a view to the final settlement of all questions outstanding between them.⁶²

Article 6 continues on the same note

6. Instructs the Conciliation Commission to take steps to assist the Government and authorities to achieve a final settlement of all questions outstanding between them.⁶³

The eleventh article establishes the right of return and it correlate to article 13 (2) in the Universal Declaration of Human rights which states that “*Everyone has the right to leave any country, including his own, and to return to his country,*”⁶⁴ and article 17 (2) “*no one shall be arbitrarily deprived of his property*”⁶⁵. The right of return is expressed as following:

⁵⁹ Pappe, 2006, p. 276

⁶⁰ Goodwin-Gill, Guy S. Jane McAdam, 2007, p. 436

⁶¹ Goodwin-Gill, Guy S. Jane McAdam, 2007, p. 438

⁶² United Nations General Assembly, Resolution 194(III) *Palestine - progress report of the United Nations Mediator*, 11 December 1948, article 5

⁶³ UNGA Resolution 194(III), 1948 article 6

⁶⁴ UNGA Resolution 217(III), 1948, article 13 §2

⁶⁵ UNGA Resolution 217(III), 1948, article 17 §2

11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which under principles of international law or in equity, should be made good by the Governments or authorities responsible.

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations⁶⁶

This article has to this day not been implemented, and has been a reoccurring article to refer to in literature and resolutions. The reason for the lack of implementation is not quite clear, but one might be the fact that there is no fixed date when it should have been done. Some claim that it is Israel who has not wanted the right of return to become reality. The reason Israel made for why it was impossible for the Palestine refugees to return in 1951 was of political, security and economic concerns.⁶⁷ It is said that Israel wants to keep Israel Jewish for security and cultural reasons.⁶⁸ The Palestine refugees right of return, to what is now Israel would alter the Israeli demographic, and it would no longer be a Jewish state. The Refugees thus pose an existential threat to Israel.⁶⁹ Others say that Israel showed to be willing to compensate the refugees, but it was not accepted. This was because the Palestine refugees had a fear of forsaking the right of return if they accepted the compensation.⁷⁰ Palestine refugees have sent letters and petitions to UNRWA and other international organizations to call for their right of return to homes and property.⁷¹

3.2.2 Resolution 302 (IV)

In 1949 it became clear to the UNGA that the people who had become refugees, as a result of the Arab-Israeli war would need assistance from the UN. To deal with this issue, the UNGA adopted resolution 302 (IV) on 8 December 1949 and established the UNRWA.⁷² It replaced

⁶⁶ UNGA Resolution 194(III), 1948, article 11

⁶⁷ Gassner, Ingrid Jaradat. "Palestinian Refugee Rights Time-Out for Politics -- A Time for Accountability and the Rule of Law", *Palestine-Israel Journal Of Politics, Economics & Culture*, Vol. 15/16, no. 4/1, (December 2008), p. 73

⁶⁸ Dumper, Michael, *The future for Palestinian refugees: toward equity and peace*, Lynne Rienner, Boulder, Colo, 2007, p. 5

⁶⁹ Dumper, 2007, p. 1

⁷⁰ Fischbach, 2006, p. 5

⁷¹ Gassner, 2008, p. 77

⁷² Goodwin-Gill, Guy S. Jane McAdam, 2007, p. 436

the United Nations Relief for Palestine refugees.⁷³ When the Agency began to operate in May 1950⁷⁴ there were close to 1 million refugees eligible for registration with the Agency.⁷⁵

UNRWA is established under article 7:

7. Establishes the United Nations Relief and Works Agency for Palestine Refugees in the Near East:
 - (a) To carry out in collaboration with local governments the direct relief and works programmes as recommended by the Economic Survey Mission;
 - (b) 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;⁷⁶

The article tells the UNRWA to collaborate with the local governments and to prepare for the time when the UNRWA is no longer needed. This suggests the idea that the problem was thought to be temporary and with a solution in the near future.

The right of return is cited in resolution 302(VI) in the fifth article:

5. Recognizes the, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948, continued assistance for the relief of the Palestine refugees is necessary to prevent conditions of starvation and distress among them and to further conditions of peace and stability, and that constructive measures should be undertaken at an early date with a view to termination of international assistance for relief.⁷⁷

This article shows how urgent the UN viewed the situation, and also how the issue with the Palestine refugees was seen as temporary.

3.2.3 Resolution 66/72

The resolution is from the 81st plenary meeting of 66th session of the UNGA on 9 December 2011 and the resolution came into force on 12 January 2012. Resolution 66/72 builds upon the previous resolutions, the most recent in time being resolution 65/98 of 19 December 2010.⁷⁸ Between these two resolutions the conflict continued as it had previous year. Nevertheless one important thing happened. On the 23rd of September 2011, the President of the PA Mahmoud Abbas, also known as Abu Mazen, addressed the General Assembly, stating that he, previously that day, submitted an application for the admission of Palestine on the basis of the

⁷³ United Nations General Assembly, Resolution 302(IV) *Assistance to Palestine refugees*, 8 December 1949, article, article 12

⁷⁴ The United Nations and Palestinian Refugees, 2007, p. 4

⁷⁵ Takkenberg, 2010, p. 255

⁷⁶ UNGA Resolution 302 (IV), 1949, article 7

⁷⁷ UNGA Resolution 302 (IV), 1949, article 5

⁷⁸ United Nations General Assembly, Resolution 67/114, *Assistance to Palestine refugees*, 14 January 2013, preamble

4 June 1967 borders, with Jerusalem as its capital, as a full member of the UN.⁷⁹ This is not mentioned in resolution 66/72. However, it is the start of the full recognition of a Palestinian State.

A substantial part of resolution 66/72 gives room to fact and statement which in the context may feel like a given knowledge.

It states that the UNGA is

Aware of the fact that, for more than six decades, the Palestine refugees have suffered from the loss of their homes, lands and means of livelihood [...]
Expressing grave concern at the especially difficult situation of the Palestine refugees under occupation, including with regard to their safety, well-being and socioeconomic living conditions,⁸⁰

Furthermore it states that they

Acknowledging the essential role that the United Nations Relief and Works Agency for Palestine Refugees in the Near East has played for over sixty years since its establishment in ameliorating the plight of the Palestine refugees through the provision of education, health, relief and social services and ongoing work in the areas of camp infrastructure, microfinance, protection and emergency assistance,⁸¹

By describing the UNRWA as having an *essential role* makes it hard to see if the UNGA considers any other actor as responsible for bettering the plight of the Palestine refugees.

In the second article the GA

2. *Also notes with regret* that the United Nations Conciliation Commission for Palestine has been unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and reiterates its request to the Conciliation Commission to continue exerting efforts towards the implementation of that paragraph and to report to the Assembly on the efforts being exerted in this regard as appropriate, but no later than 1 September 2012.⁸²

Something interesting about this is how it is the United Nations Conciliation Commission for Palestine, who has been unable to find the means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III). It is not Israel, the PA or the hosting countries, who are given the responsibility or the blame for the failure, but the UN administered organ.

⁷⁹ Haaretz Daily Newspaper, "Full transcript of Abbas speech at UN General Assembly," *Haaretz Daily Newspaper*, Published 23 September 2011, (<http://www.haaretz.com/news/diplomacy-defense/full-transcript-of-abbas-speech-at-un-general-assembly-1.386385>), Accessed 28 may 2013

⁸⁰ UNGA Resolution 67/114 preamble

⁸¹ UNGA Resolution 67/114 preamble

⁸² United Nations General Assembly, Resolution 66/72, *Assistance to Palestine refugees*, 12 January 2012, article 2

In the resolution Israel is more than once left out of the context. The resolution mentions the state of Israel in one paragraph:

Noting the Signing of the Declaration of Principles on Interim Self-Government Arrangements on 13 September 1993 by the Government of Israel and the Palestine Liberation Organization and the subsequent implementation agreements.⁸³

Considering the part Israel has played in the issue with the Palestine refugees, it is quite peculiar how they are excluded in the resolution.

Another important term that the UNGA fails to use is the term “the Occupied Palestinian Territory”, since is used twice. The first one is in the preamble:

Aware of the continuing needs of the Palestine refugees throughout all the fields of operation, namely, Jordan, Lebanon, the Syrian Arab Republic and the Occupied Palestinian Territory,⁸⁴

The second time is in article four. The article states that the UNGA

Calls upon all donors to continue to strengthen their efforts to meet the anticipated needs of the Agency, including with regard to increased expenditures arising from the serious socioeconomic and humanitarian situation and instability in the region, particularly in the Occupied Palestinian Territory, and those needs mentioned in recent emergency appeals and in the consolidated humanitarian response plan for the Syrian Arab Republic;⁸⁵

The fact that the term the Occupied Palestinian Territory only is used to describe a field of operation for the UNRWA, and to say that this area is particularly instable in the region, is quite interesting. How the UNGA can claim that the “instability in the region” is particularly situated in the Occupied Palestinian Territory can be questioned, especially since the UNGA does not elaborate in what manner this is the case.

Another interesting article in the resolution is the fifth. In the article the UNGA

5. *Commends* the United Nations Relief and Works Agency for Palestine Refugees in the Near East for its provision of vital assistance to the Palestine refugees and its role as a stabilizing factor in the region and the tireless efforts of the staff of the Agency in carrying out its mandate.⁸⁶

⁸³ UNGA Resolution 67/114 preamble

⁸⁴ UNGA Resolution 67/114 preamble

⁸⁵ UNGA Resolution 67/114 preamble

⁸⁶ United Nations General Assembly, Resolution 67/19, *Status of Palestine in the United Nations*, 4 December 2012, article 5

The UNRWA is described as a “stabilizing factor”, providing “vital assistance” and doing this with “tireless efforts”. A resolution which is neutral to the point where it turns into vague formulations, spare no praise for their own work.

3.2.4 Resolution 67/114

The resolution is from the 59st plenary meeting of 67th session of the United Nations General Assembly on 18 December 2012, a little more than a month after Resolution 67/19, and the resolution came into force on 14 January 2013. Something interesting is the fact that, besides the sixth article in 66/72, the entire resolution 67/114, from 2013, is the same as its predecessor 66/72(2012). There are, however, some words that are different. In 66/72 the UNGA acknowledge the essential role of “the United Nations Relief and Works Agency for Palestine refugees in the Near East” for “sixty year”⁸⁷, whereas in resolution 67/114 it is “the Agency” which have played an essential role for “60 years”.⁸⁸

The second thing that differs is how resolution 66/72 takes note of the report of the Commissioner-General of the UNRWA covering the period from 1 January to 31 December 2010⁸⁹, while resolution 67/114 takes note of the report of the Commissioner-General of the Agency covering the period from 1 January to 31 December 2011.⁹⁰

The final difference between the two resolutions is the date the Conciliation Commission should report to the UNGA. In resolution 66/72 it is no later than 1 September 2012,⁹¹ while in resolution 67/114 1 September 2013.⁹²

3.2.4 Resolution 67/19

The year of 2012 was an eventful year for the conflict. The year started on a positive note on January 3, when the negotiators from Israel and the PA meet in the Jordanian capital, Amman, for the first time in 16 months.⁹³ However, two weeks before Resolution 67/19 was adopted, Hamas and Israeli forces clashed once more in, what by the Israelis called “Operation Pillar of Defense”.⁹⁴ The clash began on the 14th of November 2012, when the Israeli Air Force (IAF)

⁸⁷ UNGA Resolution 66/72, p. 1

⁸⁸ UNGA Resolution 67/114, p. 1

⁸⁹ UNGA Resolution 66/72, p. 1

⁹⁰ UNGA Resolution 67/114, p. 1

⁹¹ UNGA Resolution 66/72, article 2

⁹² UNGA Resolution 67/114, article 2

⁹³ Keinon, Herb, and Khaled Abu Toameh, “Israeli, Palestinian negotiators to meet in Amman”, *Jerusalem Post*, Last updated: January 3, 2012 (<http://www.jpost.com/Diplomacy-and-Politics/Israeli-Palestinian-negotiators-to-meet-in-Amman>), Accessed 28 may 2013

⁹⁴ Londoño, Ernesto and Michael Birnbaum, “After Israel, Hamas reach Gaza cease-fire, both sides claim victory”, *Washington Post*, Published: November 21, 2012,

struck and killed Hamas armed wing Izzadin Kassam Brigades commander Ahmed Jabari in central Gaza.⁹⁵ Between the 14th and 21st of November hundreds of Palestinian rockets were fired into southern Israel and hundreds of Israeli airstrikes targeted Gaza. On November 21st a cease fire was announced by the US Secretary of State Hillary Clinton and Egyptian Foreign Minister Mohamed Kamel Amr. The agreement commands Palestinian factions to cease rocket attacks on Israel and restricts Israel from deploying ground troops or targeting militant leaders in Gaza.⁹⁶

Resolution 67/19 is from the 44st plenary meeting of 67th session of the UNGA on 29 November 2012, and the resolution came into force on 4 December 2012. Resolution 67/19 recalls relevant resolutions, peace treaties and events during the past 64 years concerning the conflict. The resolution promotes a two states solution,⁹⁷ and reaffirms PLO as the representative for the Palestinian people.⁹⁸

The resolution calls for a “Just resolution of the problem of the Palestine refugees in conformity with resolution 194 (III) of 11 December 1948”⁹⁹, and this is the only time the Palestine refugees are mentioned. What the resolution means by *Just* or *Resolution* is not specified.

The resolution is more focused on the Palestinian people. This is shown in the resolutions first article:

1. Reaffirms the right of the Palestinian people to self-determination and to independence in their state of Palestine in the Palestinian territory occupied since 1967.
¹⁰⁰

This might, or can, be interpreted as that the refugees from 1948 will not have the right of return to their homes in what is now Israel.

The sixth article of the resolution brings up an interesting point:

(http://www.washingtonpost.com/world/middle_east/clinton-arrives-in-middle-east-as-prospects-of-gaza-cease-fire-look-uncertain/2012/11/20/02f8be9c-3397-11e2-bfd5-e202b6d7b501_story.html), Accessed 28 may 2013

⁹⁵ Lappin, Yaakov, “IAF strike kills Hamas military chief Jabari”, *Jerusalem Post*, Last updated November 14, 2012 (<http://www.jpost.com/Defense/IAF-strike-kills-Hamas-military-chief-Jabari>) Accessed 28 may 2013

⁹⁶ Londoño, Ernesto and Michael Birnbaum, “After Israel, Hamas reach Gaza cease-fire, both sides claim victory”, 2012

⁹⁷ UNGA Resolution 67/19 preamble, p. 2-3

⁹⁸ UNGA Resolution 67/19 preamble, p. 3

⁹⁹ UNGA Resolution 67/19 preamble, p. 2

¹⁰⁰ UNGA Resolution 67/19 article 1

6. Urges all States and the specialized *agencies and organizations* of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination, independence and freedom.¹⁰¹

What the resolution means by *agencies and organizations* is not completely clear, but one might assume that UNRWA is one of them.

3.3 The United Nations Relief and Works Agency for Palestine Refugees in the Near East

The UNRWA was established by resolution 302(IV). The resolution was accepted by a vote of 48-0-6. All of the Arab governments and Israel voted in support of the resolution, only five communist governments and South Africa abstained.¹⁰² UNRWA replaced the United Nations Relief for Palestine refugees.¹⁰³ Since the Agency began to operate in May 1950 it provides education, health care, social services, shelter, micro-credit loans and emergency aid to Palestine refugees.¹⁰⁴

UNRWA is one of two UN organs that rapport direct to GA¹⁰⁵ and as such UNGA has to approve the Agency's budget¹⁰⁶. It was not expected to be long lived¹⁰⁷ and is still considered a temporary organ. As such it has to have its mandate renewed.¹⁰⁸ The Resolutions under the title Assistance to the Palestine refugees extend the UNRWA mandate.¹⁰⁹ The Agency's mandate does not extend to find a solution of the Israeli-Palestinian conflict.¹¹⁰ UNRWA is mainly financed by voluntary contribution from governments. Only five percent of the UNRWA is funded by the UN in New York.¹¹¹ UNRWA has to have the approval of the Host Countries and is dependent on their goodwill.¹¹² UNRWA operates in Jordan, Lebanon, Syria, The Gaza Strip and the West Bank.¹¹³

¹⁰¹ UNGA Resolution 67/19 article 6

¹⁰² Takkenberg. 2010, 255

¹⁰³ UNGA Resolution 302 (IV), 1949, article 12

¹⁰⁴ UNRWA, 2007, p. 4

¹⁰⁵ Bartholomeusz, 2010, p. 454

¹⁰⁶ Bartholomeusz, 2010, p. 455

¹⁰⁷ UNRWA, 2007, p. 4

¹⁰⁸ Bartholomeusz, 2010, p. 454

¹⁰⁹ Bartholomeusz, 2010, p. 455

¹¹⁰ UNRWA, 2007, p. 5

¹¹¹ UNRWA, 2007, p. 7

¹¹² Bartholomeusz, 2010, p. 460

¹¹³ UNRWA, 2007, p. 4

The UN has a permanent responsibility for the Palestine refugees in a satisfying manner.¹¹⁴ As the UNRWA put in the Consolidated Eligibility and Registration Instructions:

UNRWA's mandate is to provide relief, humanitarian, human development and protection services to Palestine Refugees and other persons of concern in its Area of Operations.¹¹⁵

The other persons are “non-registered persons displaced as a result of the 1967 and subsequent hostilities”, “non-registered persons identified by the Commissioners-General as eligible to receive UNRWA services”¹¹⁶, “non-registered persons who exceptionally receive UNRWA assistance and services as beneficiaries under the Agency’s Emergency Programmes in the occupied Palestinian territory”, “non-registered persons who avail themselves of services provided under the Agency’s Microfinance and Microenterprise Department (MMD)”, “UNRWA Staff Members and their Family members may have access to Agency services in accordance with section V of these instructions as well as instructions issued by each of UNRWA’s programmes”, and “non-registered persons who live in refugee camps and communities”.¹¹⁷

The work of the agency has changed during these past 65 years from emergency relief to social development.¹¹⁸ In the mid-1980s the Palestine refugees gained some increased self-sufficiency, and after that could the UNRWA focus on families in hardship.¹¹⁹ UNRWA recognizes that the Agency has to be ready to changes in the political and economic context.¹²⁰ The refugees have been able to call upon UNRWA when crisis strikes.¹²¹ During the first intifada it provided a limited form of protection for the Palestine refugees against occupation forces.¹²²

In 2007 it was only about one-third of the registered Palestine refugees who live in the refugee camp. The other two-third lived in cities, towns and villages throughout UNRWA’s

¹¹⁴ Bartholomeusz, 2010, p. 472

¹¹⁵ UNRWA, 2010, p. 1

¹¹⁶ UNRWA, 2010, p. 7

¹¹⁷ UNRWA, 2010, p. 8

¹¹⁸ Takkenberg, 2010, p. 255

¹¹⁹ Takkenberg, 2010, p. 256

¹²⁰ Takkenberg, 2010, p. 259

¹²¹ Takkenberg, 2010, p. 257

¹²² Goodwin-Gill, Guy S. Jane McAdam, 2007, p. 438

area of operations. The services of UNRWA are however available to all registered Palestine refugees whether they live in camps or not.¹²³

3.3.1 Consolidated Eligibility and Registration Instructions

In the document Consolidated Eligibility and Registration Instructions, the UNRWA formulates these main criteria a person needs to meet for being eligible for registration with the UNRWA:

1. Persons who meet UNRWA's Palestine Refugee criteria: These are persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services.¹²⁴

These criteria are all quite specific, and it might be reasonable to question it from a human rights perspective. If someone wish to be registered with the UNRWA today the person would have to prove that his or hers grandfather, or great grandfather lived in Palestine during the period between the 1st of June 1946 to the 15th of May 1948, and that he lost his home and means of livelihood as a result of the conflict.¹²⁵ This may be problematic, and it might be reasonable to question.

¹²³ UNRWA, 2007, p. 6

¹²⁴ UNRWA, 2010, p. 3

¹²⁵ UNRWA, 2010, p. 3

4. Analysis

In this analysis I use a conceptual analysis on certain key concepts used in the resolutions. These are *responsibility*, *refugee*, *people*, *rights* and *claim*. I examine the meaning of the key concepts, the context of the concepts and if there is any connection between certain concepts.

4.1 Responsibility

Susan James argues that three conditions of enforceability are required for a right to be claimable. These are institutions, agents who fulfill obligations and agents who claim rights.¹²⁶ The question of responsibility is relevant here. Do all of these have a responsibility? One of the main problems with the UNGA resolutions is that they are expressed in a vague manner which gives room for interpretation. For the Palestine refugees this problem with vague resolution is relevant since they do not specify whose responsibility the human rights of the Palestine refugees are. This can be seen in all the resolutions and the problem with this is that it is easy for states or the UN to make excuses for not taking their responsibility.

A problem with the Palestine refugees might be how there is no common idea of where the responsibility of the issue belongs. What can be seen from the resolutions is how reluctant every involved party wants to place the responsibility. UNRWA has a strict mandate and no real power to solve the problem, but it remains the actor who is seen as the main actor to aid the Palestine refugees. Since no actor, apart from the UNRWA, has any mandate of responsibility for the Palestine refugees, it is hard to see any other possible institution to enforce the Human Rights of the Palestine refugees, apart from the UNRWA. It can be argued that the UNRWA has the role of the institution, as well as the agent who fulfill obligations, while the Palestine refugees are the agent who should claim the rights. The question is then if the UNRWA is able to fulfill their responsibility in a satisfying manner. They are limited in resources, authority and mandate, and do not have all the qualities a sovereign state do. It is therefore questionable if they can be the only one responsible for Human Rights of the Palestine Refugees.

Since Palestine via resolution 67/19 gained a non-member observer status as a state in the UNGA, it could be argued that they have a responsibility as a state for the Palestine refugees. The problem is that they are not able to enforce all the claims of the Palestine refugees. By applying James model of the conditions needed to have enforceable claims it shows that the State of Palestine, and the PA, as the institution, with the Palestine refugees as the agents who

¹²⁶ James, 2003, p. 141

claim the rights, and Palestinians within the system of the PA and the State of Palestine as the agents who fulfill the obligations. On this level, the model work, since each part is filled. It has, however, some significant flaws when it comes to the four circumstances which are needed for the condition to happen. These circumstances are, as mention previously, an effective source of political authority and accepted jurisdiction, the power in society needs to be distributed fairly even,¹²⁷ the people in the society must share the values embodied in the obligations, and the institution need to have resources and be able to distribute them to be able to generate rights.¹²⁸ Even though one might argue that the Palestinian society share the same values, and that these are to correlated with the rights the Palestinian state should enforce, they do not have an effective source of political authority and accepted jurisdiction, the power in society is not distributed fairly evenly, their resources are scares and they have limited ability to distribute them.

Another problem is how the Palestine refugees are portrayed in the resolutions. They are never seen as actors, only as subjects. The resolutions concern their rights and their future, but since they are not represented in the General Assembly by a government, the only actor who might represent the Palestine refugees are the UNRWA with their reports, and they are not from the perspective of the refugees. If the Palestine refugees were represented as actors in the resolutions the problems would still be there, but since they are not represented it is really questionable if they can be charged with responsibility for their human rights situation and whether or not they can take their role as actors who claim their rights.

The paradox is the responsibility that is thrust upon the Palestine refugees. How much are they supposed to claim their rights? According to James the actors who claim the rights are a vital part of the conditions for enforcing rights, but their capability to claim their rights depends on a wide range of institutions and cultural practices, such as “access to money, information about procedures and entitlements, sufficient authority to lodge and negotiate her claim, and access to specialists of various kind.”¹²⁹ Therefore it is questionable, whether if the Palestine refugees truly have the proper institution to claim their right to.

According to James theory, there has to be an effective source of political authority and accepted jurisdiction. Without this the institutions may be competing authorities who are likely to disturb one another and there may be problems to operate effectively. This can be

¹²⁷ James, 2003, p. 142

¹²⁸ James, 2003, p. 143

¹²⁹ James, 2003, p. 141

seen in the problems with the Palestine refugees. No actor, apart from the UNRWA, claims the responsibility, but actors such as the PA and the Hosting countries all have Palestine refugees within their institutions, some of them are de facto under their responsibility. The problem is how the different institutions take different parts in the issue with the Palestine refugees, but they all do this without taking any responsibility.

4.2 Refugees and People

The Resolutions 66/72 and 67/114 deals with the Palestine refugees, but in resolution 67/19 the refugees only play a minor part. The major focus is instead on the Palestinian people. The lack of focus on the refugee issue has been brought up as one of the main reasons for the failure of the peace talks of the past 30 years.

The fact that there is a division between the Palestine refugees and the Palestinian People is a cause for discussion. All Palestine refugees are a part of the Palestinian People, but not all of the Palestinian people are considered Palestine refugees. This division has been posed by the UN and the question is if it might create a problem in the future. Since there is a shifting focus on whose rights should be emphasized, it could possibly be the cause of fraction within the Palestinian community. While applying James circumstances on this issue, there might be a problem if this creates an uneven distribution of the power and resources between the people and the refugees, and if the values embodied in the obligations are not shared within the Palestinian society.

It is also interesting to see who is eligible to aid from UNRWA. As the Consolidated Eligibility and Registration Instructions states:

These are persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine Refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services.¹³⁰

The problem with this definition is, in contrary to the vast majority of UN documents, how exclusive it is. People who do not fulfill all of these criteria find themselves without the legal status of being a Palestine refugee and as such the rights in the resolutions does not apply to them. The fact that it is on the male descendant line that the right to be registered as a Palestine refugee is in itself problematic and a cause for discussion concerning the human rights of the Palestine refugees. A big part of the Palestine refugees is in the identity. The UNRWA or the resolutions do not mention what happens to those who identify themselves as

¹³⁰ UNRWA, 2010, p. 3

Palestine refugees, but cannot prove that their father, or his father, had Palestine as his normal place of residence during the period 1 June 1946 to 15 May 1948, and lost both home and means of livelihood. The notion that this should be determined on the male side is itself a cause for examination under article 2 in the Universal Declaration of Human rights. The article states that

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...¹³¹

This means that since it is a criterion to be a descendant of males Palestine refugee, the resolution may in itself be a human rights violation, due to the gender discrimination.

A major problem with the human rights of the Palestine refugees and UNRWA is how the refugees are forced to be registered in order to be considered the responsibility of the UNRWA. This might seem as technicality, but what it means is that for the refugees to get their human rights protected, respected and fulfilled by the UNRWA, they need to prove themselves eligible for registration. James theory of enforceable claims becomes useless in the context of when there are Palestine refugees who do not match the criteria. This makes the notion, that human rights are universal, highly questionable.

4.3 Rights and Claims

One important right for the Palestine refugees is the right of return, and the question of the refugee property is one of the main issues concerning the Israel-Palestine conflict.¹³² The one main right the resolutions assure the Palestine refugees is the right of return, but during the past 65 years it has not yet been enforced and a reason for this could be explained by the fact that the institution to which the agents, i.e. the Palestine refugees should claim the right to, is not clearly defined. When they claim this right there is a big problem concerning towards which institution it is that they should claim the right to. If, or when, the Palestine gains a status as a full worthy membership of the UN and becomes a sovereign state, the Palestine refugees will want to return. The places where the Palestine refugees should, according to article 11 in Resolution 194(III), have the right of return to, is now a part of Israel. This creates a problem on several levels. Should the Palestine refugees claim their right of return towards the Israeli government, towards a future Palestinian government or should it be dealt with by the international community? This makes the right of return very problematic to

¹³¹ UNGA Resolution 217(III), 1948, article 2

¹³² Fischbach,2006, p.9

enforce. If we apply James theory, her circumstances and views Israel as the institution, what happens then? The enforceability of the rights becomes much stronger, since Israel is a functioning sovereign state. It has all the conditions needed to enforce the right. When it comes to the circumstances all would be there, except the shared values, and this is the main issue. Without this specific circumstance, it does not matter that Israel is capable of enforcing the human rights of the Palestine refugees, since they lack the will to do so. It is also highly questionable if the Palestine refugees would agree to have Israel as the institution with the responsibility to enforce their rights, since it would mean that the Palestine refugees would have to be citizens of the Israeli nation.

According to James there has to be institution with resources in order to enforce human rights. A problem with this is that she does not specify what type of institutions is has to be. In the case of the Palestine refugees it is important to discuss whether or not the UNRWA is, according to James, a sufficient institution or if the Palestine refugees need a state in order to have enforceable claims. If there were to be a sovereign state of Palestine they would most likely have limited resources to ensure the refugees rights. It might be easier with the refugees who live in the West Bank and in the Gaza Strip, but the refugees who live in the UNRWA refugee camps in Jordan, Lebanon and Syria would also want to return. The problem for the future Palestinian state is that for a new state to take in all these refugees would be a strain on the economy, and it is questionable if the state could take its role as the actor the refugees should claim their rights to. Therefore it might be a contradiction between the right of return and Rights as enforceable claims.

UNRWA functions as a state in many ways. It has a mandate to provide the Palestine refugees with education, health, relief and social services and ongoing work in the areas of camp infrastructure, microfinance, protection and emergency assistance, but it does not have all the resources a state does. UNRWA has worked as the main institution to receive the claims of the Palestine refugees for their rights. Their mandate and budget is quite limited, but they have assured several rights to the Palestine refugees. The right to education, article 26 in the Universal Declaration of Human rights has UNRWA taken care of for the past 65 years. The Agency does not have any legal mandate or jurisdiction and has to work within states sovereign territories, due to this they have to abide to the laws within the hosting states. Therefore, it is problematic to charge the UNRWA with the responsibilities of a state.

A problem that might arise when examining how to enforce the human rights of the Palestine refugees, concerns James' circumstances. She argues that all the power in society needs to be distributed fairly evenly, it has to be an effective source of political authority and accepted jurisdiction,¹³³ the people in the society in question must share the values embodied in the obligations, and finally the institution need to have resources in order to be able to generate rights.¹³⁴ In the case of the Palestine refugees, the UNRWA and the hosting countries, these circumstances are depended on more actors than in the usual. It is not just one state and their citizen who the circumstances are depended on, i.e. it is not just institutions, agents who fulfill obligations and agents who claim rights. In this case it is two forms of institutions, agents who fulfill obligations and agents who claim rights and there is a clear division between the hosting countries and the UNRWA. Since it is the UNRWA who is responsible for the Palestine refugees, but they exist in the context of the hosting countries sovereignty, the circumstances are dependent on both the hosting countries and the UNRWA.

¹³³ James, 2003, p. 142

¹³⁴ James, 2003, p. 143

5. Discussion

A big problem with James theory is that there is no real definition what she means by institutions. She does not explicitly say that it has to be a state, but the question is if a non-state institution can fulfill her circumstances. Her theory has proved to be useful to analyze how the UN views the responsibility for the human rights of the Palestine refugees, but the theory would need to be more specified to get a deeper analysis of the issue. It is questionable if the political authority should be within the institution, or if it could be by an outside actor. This development of the theory could open up to a new analysis of the human rights situation for the Palestine refugees.

One of the big issues with the Palestine refugees is how it continues to be dealt with as if it is only a temporary problem. Everyone wants to find a solution to the problem, and sooner rather than later, but 65 years on, the issue is as complex as it has ever been. This is very problematic, since the conflict only increase in complexity as the years go by, and the longer it takes to solve the problem, the harder it is to find a just resolution to the situation for the Palestine refugees.

The thing about the Palestine refugees which is somewhat confusing is their unique legal status. Considering the fact that the temporary status is more and more permanent, it would not be strange to wonder whether or not it might be cause to question the Palestine refugees unique status. There might be a possible solution if they fall under the usual status of refugees, this would, however, need to be examined in a separate essay.

Something that would be interesting to further discuss is the question of who is to blame for the failure with the Palestine refugees. It is not an easy question to answer and it would require more room than is possible in the scope of a thesis essay. It would nevertheless be very interesting, and I believe that Susan James theory would be useful in such a research.

There is also the question of their representative, the PLO, are able to represent the Palestine refugees in a proper manner. It is problematic that the UN continues to establish the PLO as the representatives for the Palestine refugee, since the relation between the PLO and the Palestine refugees are not the same today, as it was during the Oslo process. To examine this could give an interesting perspective on question of the responsibility for human rights of the Palestine refugees. I do, however believe that for this to be done, the focus may need to be on the PLO, and not the UN.

6. Conclusions

The issue with the responsibility for human rights of the Palestine refugees is not easy to answer. It is part of the complex context of the Israel-Palestine conflict and what these past 65 years have shown, is that there is no quick fix to the problem. In this essay I have used these research questions to examine the responsibility for the human rights of the Palestine refugees are: Which actors bear the responsibility for the human rights of the Palestine refugees according UNGA resolutions and the UNRWA document? Based on Susan James theory on enforceable claims, how important is the state's role in the enforcement of the human rights of the Palestine refugees? How does the role of the UNRWA fit into Susan James theory and what is their part in enforcing the human rights of the Palestine refugees?

This study has shown that the question of the responsibility of the human rights of the Palestine refugees is vague in the resolutions. No actor is named as the one responsible, and the human rights of the Palestine refugees are not explicitly mentioned. The study shows that the UNRWA is charged the primary responsibility for the Palestine refugees, but that the human rights of the Palestine refugees are not discussed. Other actors are left out of the context, and while the UNRWA has the responsibility for some parts which are recognized as human rights, they do not have the formulated human rights responsibility. The UNRWA fills many of the functions a state institution do, but what this essay has shown is that even though the UNRWA have some state like attribute, it falls short as an institution within James theory, and do not have the ability to fully fulfill the human rights of the Palestine refugees. This failure can be seen as a reasonable ramification of the fact that it is a UN organ, not a state, which is charged with the responsibility for the Palestine refugees, as well as a failure from the international community to place the responsibility. The lack of a state, charged with the responsibility for the Palestine refugees, and the absence of actors, willing to take a responsibility for the human rights of the Palestine refugees is crucial for how the situation is allowed to continue. The question of where the responsibility for the human rights of the Palestine refugees should be, remain unanswered, but Susan James theory of enforceable rights shows that there is more than one actor who could be charged with the responsibility to enforce.

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