UNRWA not immune from lawsuits in US, DoJ says, arguing Oct. 7 victims’ suit can go ahead

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In a reversal of a previous stance, the US Department of Justice has said that the contentious UN agency for Palestinian refugees and their descendants, UNRWA, is not entitled to immunity from lawsuits in the United States, according to a court document circulated online late Thursday by lawyers, and subsequently by pro-Israel activists.

The Department of Justice’s opinion was submitted as part of an [ongoing lawsuit](https://www.timesofisrael.com/october-7-victims-sue-unrwa-for-1-billion-claiming-it-aided-and-abetted-hamas/) in which the families of more than 100 victims of the October 7, 2023, Hamas-led terror assault are claiming $1 billion in damages from UNRWA, asserting that the UN agency aided and abetted the terror group’s attack.

The [lawsuit](https://unwatch.org/wp-content/uploads/2024/06/001-UNRWAComplaint.pdf) was filed last June in the Southern District of New York. It alleges that UNRWA, which coordinates nearly all aid to Gaza, let Hamas use its facilities for weapons storage, allowed tunnels and command centers to be built under its sites, and funneled cash into the terror group’s coffers by insisting on paying employees in US dollars.

In September, the Department of Justice, then under the administration of former president Joe Biden, asserted that the UN had not waived its immunity in US courts, and as such UNRWA was exempt from prosecution and the lawsuit could not proceed.

Now, in the latest court filing, the department acknowledged that ‘previously, the Government expressed the view that certain immunities shielded UNRWA from having to answer’ to allegations regarding its role in the ‘heinous offenses’ of October 7, but says it has ‘since reevaluated that position, and now concludes UNRWA is not immune from this litigation.’

Presenting its position, the department stated that while the UN in and of itself enjoys immunity in US courts, its ‘subsidiary organs,’ such as UNRWA, do not.

‘The UN Charter provides that the UN ‘shall enjoy in the territory of each of its Members such privileges and immunities as necessary for the fulfillment of its purposes,'‘ the document stated. ‘But the Charter does not specify whether ‘The Organization’ that ‘shall enjoy’ immunity includes the system’s principal bodies, its subsidiary bodies, its specialized agencies, or all three.’

As such, it said the Charter ‘does not create any binding obligations under federal law.’

Furthermore, the document argued that UNRWA cannot even be considered a ‘subsidiary organ’ of the UN, as it was not designated under the International Organizations Immunities Act.

‘It is the present view of the United States that UNRWA is not’ part of the United Nations, and ‘instead, it is a mere ‘affiliate or instrumentality’ of the UN, analogous to the specialized agencies referenced in the UN Charter.’

‘As a result, UNRWA is not subject to the General Convention, and is not immune from suit and that treaty or current US law,’ the court filing stated.

While the position of the Biden administration was that UNRWA, in its capacity as a UN agency, was effectively immune to legal action within the US, the new position by the department under President Donald Trump opens the door for the agency to be liable in the suit against them.

UNRWA, formally titled the United Nations Relief and Works Agency for Palestine Refugees in the Near East, was established in 1949 following the 1948 War of Independence with Arab armies that accompanied the creation of the modern State of Israel. It provides aid, health and education to millions of Palestinians in Gaza, the West Bank, and neighboring Arab countries — Syria, Lebanon, and Jordan.

Some 5.9 million people are registered as Palestinian refugees by UNRWA, because they are descended from Arabs displaced in the war surrounding Israel’s creation in 1948.

Israel has long argued that UNRWA perpetuates the Israeli-Palestinian conflict by using this definition of refugee, the only case globally in which the status is passed down generationally. The rest of the world’s refugees are under a different UN agency that doesn’t enable passing down the status to offspring who themselves haven’t been displaced.

An[Israeli ban](https://www.timesofisrael.com/israel-cuts-ties-with-unrwa-over-links-with-terror-groups-as-ban-comes-into-effect/) on the agency was passed by the Knesset in November with a large majority that included the support of opposition parties, amid a series of revelations about employees of the agency who were actively involved in terror groups in the Gaza Strip, participation of some of its staff in the October 7 Hamas invasion and slaughter, and repeated use of UNRWA infrastructure for terror activities.

Israel has also provided evidence that the agency’s schools incited hatred of Israel and glorification of attacks against Israelis.

The ban went into effect earlier this year, but [The Times of Israel reported](https://www.timesofisrael.com/despite-laws-banning-it-unrwa-continues-to-operate-almost-as-usual-in-east-jerusalem/) earlier this month that the agency is operating at near-normal capacity in East Jerusalem despite the ban.