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RIGHTS IN EXILE

THE INTERNATIONAL REFUGEE RIGHTS INITIATIVE'S REFUGEE LEGAL AID NEWSLETTER.

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THIS NEWSLETTER FOLLOWS RECENT DEVELOPMENTS IN THE INTERPRETATION OF REFUGEE LAW, CASE LAW PRECEDENTS FROM DIFFERENT CONSTITUENCIES, REPORTS AND HELPFUL RESOURCES FOR REFUGEE LEGAL AID PROVIDERS, AND STORIES OF STRUGGLE AND SUCCESS IN REFUGEE LEGAL AID WORK. IT IS A RESOURCE FOR LEGAL AID PROVIDERS PRIMARILY IN THE GLOBAL SOUTH WHERE LAW JOURNALS AND OTHER RESOURCES ARE DIFFICULT TO ACCESS.

1ST SEP 2017 | 1 NOTE

PALESTINIAN REFUGEES AND THE (MIS-)INTERPRETATION OF ARTICLE 1D OF THE 1951 REFUGEE CONVENTION

Contributed by Maja Zarkovic.

Introduction

Article 1D of the 1951 Refugee Convention was not meant to weaken Palestinian refugee protections, but instead, strengthen them (Brynen, 2014). Thus, this paper will argue that Article 1D is not an exclusion clause but, instead, a deferred inclusion clause consisting of certain preconditions that need to be satisfied before Palestinian refugees are automatically afforded the full benefits under Articles 2 to 34 of the 1951 Refugee Convention. This interpretation ensures that Palestinian refugees qua refugees will be given the heightened level of protection they were intended to receive under the separate special protection regime set out for them which set them apart from all other refugees. This paper will first explain the various conflicting (mis)interpretations of Article 1D, including through inconsistent case law, which prevent Palestinian refugees from receiving the protections they were entitled to under

the current regime. It will also use the appropriate canons of treaty construction set out in the 1969 Vienna Convention on the Law of Treaties. Taking into account the plain language of the clause or the ordinary meaning of the words in their context and in light of the object and purpose while also turning to the travaux preparatoires to resolve and confirm the interpretation being argued for here, this paper hopes to conclude what the correct, single interpretation of Article 1D should be.

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The Special Protection

Due to the international communities recognition of the Palestinian refugee problem and the recognition that the United Nations body was partially responsible for denying Palestinian's their nationality and effectuating the expulsion of the Palestinian people from their place of origin after and during the creation of Israel, Palestinians are the only group effectively placed outside of the protection regime established by the UNHCR Statute and the 1951 Convention (Goodwin-Gill and M. Akram, 2000; Goodwin-Gill and McAdam, 2007). They are the only group of people to whom a separate analysis applies to determine their status under the 1951 Refugee Convention (Goodwin-Gill and Akram, 2000, p190).

Their status and the extent of the protections to which they are afforded are determined by the interrelationship of Article 1D of the 1951 Refugee Convention; Paragraph 7 of the Statute of the United Nations High Commissioner for Refugees (UNHCR Statute); and the refugee definition utilised by the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA Statute) (Goodwin-Gill and Akram, 2000). UNHCR's competence under paragraph 6 of its Statute was limited by paragraph 7(1), which provides that such competence shall not extend to a person, "who continues to receive from other organs or agencies of the United Nations protection or assistance" (Goodwin-Gill and McAdam, 2007). During the drafting process, this text was adopted by the GA together with the first sentence of Article 1D of the draft 1951 Convention by GA Res. 428 (V) (Qafisheh and Azarov, 2011). While the UNHCR Statute took effect directly upon its adoption by the GA in December 1950, the draft 1951 Convention was forwarded to the Conference of Plenipotentiaries for further discussion in July 1951 (Qafisheh and Azarov, 2011). The UNHCR Statute does not contain similar provisions to those of the second sentence of Article 1D of the 1951 Convention, since the latter provision was incorporated during the Conference of Plenipotentiaries (Qafisheh and Azarov, 2011).

At the 1951 Conference of Plenipotentiaries it was likewise decided to disqualify Palestinians from the application of the Convention, as "persons who are at present receiving from organs of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance" (Goodwin-Gill and McAdam, 2007). The second sentence was also adopted by the Conference of Plenipotentiaries on 28 November 1951 (Qafisheh and Azarov, 2011). While political reasons for this were involved, the issue this time was not that of inter-agency competence, but the continuity of rights and status (Goodwin-Gill and McAdam, 2007). Article 1D was therefore qualified in the following way:

> This convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance (Goodwin-Gill and Akram, 2000).
>
> When such protection or assistance has ceased for any reason, without the position

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the Convention regime on the continuing receipt of protection or assistance and so acts as an exclusion clause, on the other hand, it premises entitlement to the benefits of the Convention on the cessation ipso facto of protection or assistance, without the situation of such persons having been resolved, for example, through legal provision for and recognition of a separate nationality, and so, acts as an inclusion clause (Goodwin-Gill and McAdam, 2007). This ambiguity causes for the (mis)interpretation of the article at various points preventing Palestinian refugees from receiving the protection they are entitled to.

The Role of UNRWA

The "other agencies of the United Nations" to which above instruments refer is actually one agency- UNRWA which was established in 1949 by a UN General Assembly Resolution (Goodwin-Gill and M. Akram, 2000). UNRWA's mandate is to serve Palestine refugees in Lebanon, Syria, Jordan, Gaza strip, West Bank and, after the 1967 displacements, Egypt (Goodwin-Gill and Akram, 2000). Although initially viewed as a temporary agency with a three year mandate, there has been a repeated renewal of the mandate pending the just resolution of the question of the Palestine refugees (Qafisheh and Azarov, 2011). UNRWA provides aid to Palestinian refugees primarily in the areas of health, nutrition, education, and housing (Goodwin-Gill and Akram, 2000). This narrow relief is limited by UNRWA's definition of "refugees" eligible for aid (Qafisheh and Azarov, 2011). UNRWA eligibility is limited to persons:

1. Whose normal residence was Palestine during the period June 1, 1946 to May 15, 1948;
2. Who lost both their homes and means of livelihood as a result of the 1948 conflict;
3. Who took refuge in one of the countries or areas where UNRWA provides relief; and;
4. Who are direct descendants through the male line of persons fulfilling 1-3 above. This category of people are eligible to register as Palestine refugees with the UNRWA (Goodwin-Gill and Akram, 2000).

Further categories of Palestinian's are eligible to receive UNRWA services without being registered (Bolbol v. Hungary, [2010]). These include those displaced as a result of the 1967 war and subsequent hostilities (UNHCR, 2009).

The narrow assistance provided by UNRWA greatly contrasts with the protection provided under the UNHCR Statute and the 1951 Refugee Convention (Goodwin-Gill and Akram, 2000). The assistance function of UNRWA only provides for the Palestinian refugees' basic quotidian needs (UNHCR, 2009). The 1951 Refugee Convention and the UNHCR Statute provide a more comprehensive scheme of protection for refugees that qualify under the instruments' respective definitional requirements (UNHCR, 2009). Rather than just basic necessities, the 1951 Refugee Convention guarantees refugees freedom of movement, access to courts, administrative assistance, rights regarding moveable and immovable property,

freedom of religion, and housing rights, among others (UNHCR, 2009). Unlike the UNRWA, the UNHCR Statute established its primary task as providing international protection (UNHCR, 2009). Due to the fact the UNRWA was authorized only to serve the assistance function, as the explicit terms of its mandate suggest, not the protective function given to the UNHCR, and since, at the time, the Palestinian refugee situation was considered of such import, a separate "protection agency" was established for the sole purpose of resolving the Palestinian refugee crisis (Goodwin-Gill and Akram, 2000).

The United Nations Conciliation Commission for Palestine was originally created and entrusted with protecting the refugees' most pressing concerns: repatriation and compensation (Goodwin-Gill and Akram, 2000). However, after numerous failed agreements regarding the peacekeeping effort, within four years of its formation, the UNCPP devolved from an agency charged with the protection of the rights, property and interests of the refugees, to just a symbol of UN concern for the unresolved aspects of the Arab-Israeli Conflict (Goodwin-Gill and Akram, 2000). After the UNCPP lost its protective function, the major vehicle entrusted with protecting the substantive rights of the Palestinian refugees dissolved, and Palestinian refugees were left only with whatever UNRWA could provide (Goodwin-Gill and Akram, 2000). However, Although UNRWA'S work was initially characterized as "assistance," today, some claim, that it can be termed as type of limited "international protection" despite the absence of the word "protection" from its mandate (Qafisheh and Azarov, 2011). In 1950, there were 914,000 refugees with the UNRWA and as of 2009, their number has grown more than 4.6 million (Qafisheh and Azarov, 2011).

Article 1D Para 1: Continuous versus Historically Bound Interpretation

For state parties to the 1951 Refugee Convention, the question arises whether Article 1D is limited to those Palestinian refugees who were receiving protection or assistance on 28 July 1951(the date on which the 1951 Convention was opened for signature), or some other contemporaneous date; or whether it also includes the descendants of such Palestinian refugees and Palestinians displaced by later events; and, if it does so apply, with what legal consequences (Goodwin-Gill and McAdam, 2007). This section will analyse the meaning of the words "who are at present receiving…"

Historically bound interpretation

Foster and Hathaway argue that when one considers the context of Article1D, and the interpretation of the phrase, "persons who are at present receiving" UN protection and assistance, the historically bounded interpretation is most appropriate. This means that the article applies only to Palestinian's eligible for UN protection or assistance on the date of the Convention's adoption, July, 28, 1951 (Hathaway and Foster, 2014). They reach this conclusion from the comparison with the simultaneously drafted Statute of the UNHCR which excludes any person "[w]ho continues to receive" relevant UN protection or assistance, arguably mandating exclusion under a continuative interpretation (Hathaway and Foster, 2014). Despite this, Hathaway and Foster (2014) claim that the drafters rejected this language for Article 1D of the Convention, choosing to exclude only those who "at present" received UN protection or assistance. The drafter's decision to not use the "[w]ho continues to receive" language argues against the continuative view (Hathaway and Foster, 2014). They argue that had the continuative meaning of the words been intended, no qualifier would have been required and it would have been sufficient to have excluded simply "persons who receive" protection or assistance (Hathaway and Foster, 2014).

Foster and Hathaway further argue that a continuative interpretation is questionable when the words “persons who are present receiving” are read together with the extraordinarily strong residual remedy set by the second paragraph- ipso facto which is the automatic entitlement to all Convention rights in the event of the ending of UN agency in situ (Hathaway and Foster, 2014). Agreeing with the English Court of Appeal in El-Ali, they state that such a robust and unconditional guarantee would not likely have been made to other than a narrowly defined class of known size (Hathaway and Foster, 2014).

In practice, Article 1D gives rise to problems of interpretation and application, particularly at the individual case level, when Palestinian’s seek refuge outside the UNRWA’s operational area; these are well illustrated by the judgment of the United Kingdom Court of appeal in El-Ali and Daraz v Secretary of State for the Home Department (Goodwin-Gill and McAdam, 2007). Because of the way in which UK immigration and refugee law is structured, the case came before the court as an appeal against refusal to asylum (Goodwin-Gill and McAdam, 2007). Therefore, the Court proceeded on the assumption that what was being argued was that Article 1D, properly applied, entitled an individual ‘to enter and remain in the United Kingdom as a refugee (Goodwin-Gill and McAdam, 2007). This is not what the Convention requires, but it may explain in part why a restrictive approach to the interpretation of Article 1D has been adopted in this and other cases (Goodwin-Gill and McAdam, 2007). The Court focused its attention on the words and organization of the article (Goodwin-Gill and McAdam, 2007). With regard to the meaning of the words ‘at present’, Laws L.J. rejected the case for ‘continuing’ effect, and the argument that Article 1D applied both to Palestinian’s receiving protection or assistance in 1951, and to Palestinian’s who have become the concern of UNRWA, thereafter, either by birth or subsequent events and decisions of competent bodies, such as the UN General Assembly (Goodwin-Gill and McAdam, 2007). He stated that to interpret Article 1D as applying also to Palestinian refugees who began to receive protection or assistance after 28 July 1951, would be a ‘a very considerable distortion’ of the language; he rejected UNHCR’s submission that the words should be read to include ‘persons who were and/or are now receiving’ protection or assistance which, he said, would ‘substitute what is really an entirely different provision’ (Goodwin-Gill and McAdam, 2007). Referring to the historical goals of the clause, Lord Philips stated that the drafters of the Article could not have intended for the words ‘at present’ to include Palestinian’s other than those receiving protection or assistance in 1951 because “they did not anticipate that, half a century later, there would be second or third generations of Palestinian Arabs, living outside the territories from which their parents or grandparents had been displaced, and enjoying the assistance of the UNRWA” (Hathaway and Foster, 2014). He added, “nor did they anticipate that there would be further [Palestinians] displaced as a result of the war in June 1967 and subsequent hostilities” (El-Ali v. Secretary of State for the Home Department, [2002]). He concludes that he does not accept that, “had the parties to the Convention envisaged what was to come, they would have agreed that the regime provided for by Article 1D would apply indefinitely to all displaced or stateless Palestinian Arabs who might themselves be receiving assistance from UNRWA” (Hathaway and Foster, 2014).

Foster and Hathaway promote that the remarks made by Lord Philips above suggest a significant fourth reason to adopt a historically bounded interpretation of the words “at present receiving,” because the approach ensures that Article 1 D is a minimally intrusive deviation from the normal regime of providing protection without reference to ethnicity or place of origin(Hathaway and Foster, 2014). Adoption of the historically bounded interpretation of “at present” is in line with the duty to interpret this “exclusion clause”

restrictively, since fewer persons able to meet the Convention's usual inclusion criteria will be denied protection (Hathaway and Foster, 2014). It, consequently, results in an interpretation of the Article that excludes only a clearly circumscribed class of people, the size of which decreases each year and will eventually cease to exist (Hathaway and Foster, 2014). Therefore, Foster and Hathaway argue for the eventual disappearance of Article 1D since they believe it to be not only a legally correct result but also deeply principled since it will restore Palestinian's to the position of all other groups who are entitled to protection as refugees as long as they fulfil the requirements of the refugee definition (Hathaway and Foster, 2014).

Continuous Interpretations

Adopting a largely literal approach, the CJEU in Bolbol reached the conclusion that "who are at present receiving" does not just refer to the original group of Palestinian's known to the drafters (Hathaway and Foster, 2014). The Court stated that based on the "amendment" of the Convention from its original 1951 version by the Protocol on the Status of Refugees of 1967 specifically in order to allow the interpretation of that Convention to adapt and to allow account to be taken of new categories of refugees, other than those who became refugees as a result of events occurring before 1 January 1951, it cannot be ruled out that persons displaced as the result of the 1967 conflict are also excluded under Article 1D (Hathaway and Foster, 2014). Furthermore, Article 1D, to which Article 12 (1) (a) of the Directive 2004/83 refers, in its first sentence, merely excluded from the scope of the Convention those persons who were "at present receiving" protection or assistance from a UN agency other than the UNHCR (Bolbol v. Hungary, [2010]). The Court stated that it followed from the clear wording of Article 1D that only those persons who had actually availed themselves of the assistance provided by UNRWA came within the clause excluding refugee status set out therein, which had to be construed narrowly in order to ensure that there is minimally intrusive deviation from the norm and could not, therefore, also cover persons who were or had been eligible to receive protection or assistance from that agency (Bolbol v. Hungary, [2010]). The Court also said that it is clear from UNRWA's "Consolidated Eligibility and Registration Instructions" that while the term "Palestine Refugee" applies for UNRWA purposes to "persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both homes and means of livelihood as a result of the 1948 conflict," other persons are also eligible to receive protection or assistance from UNRWA. They include "non –registered persons displaced as a result of the 1967 and subsequent hostilities" (Bolbol v. Hungary, [2010]). On this matter the Court concluded that while registration with UNRWA is sufficient proof of actually receiving assistance from it, such assistance can be provided even in the absence of such registration, in which case the beneficiary must be permitted to give evidence of that assistance by other means (Bolbol v. Hungary, [2010]). Therefore, the Court ruled that for the purposes of the first sentence of Article 12 1(a) of the Directive 2004/84, a person received protection or assistance from a UN agency other than UNHCR when he had actually availed himself of that protection or assistance whether they are registered or not (Bolbol v. Hungary, [2010]).

Goodwin-Gill states that the Court's ruling in El-Ali does not take sufficient account of the historical context and the intent of States, or of the consequences in fact and in law of the alternative approach (Goodwin-Gill and McAdam, 2007). By giving the words 'at present' the meaning above, the court effectively defeats the object and purpose of the provision (Goodwin-Gill and McAdam, 2007). This is because firstly, the extent of UNRWA's mandate is central to understanding the scope of Article 1D (Goodwin-Gill and McAdam, 2007). The

extension of the UNRWA mandate actively by the UN General Assembly over the years has involved all the Member States of the United Nations and the States party to the 1951 Convention (Goodwin-Gill and McAdam, 2007). The relevant General Assembly resolutions are evidence of a policy and practice indicating, on the part of Member States, how the notion of Palestinian refugee and the scope of UNRWA's mandate are to be understood (Goodwin-Gill and McAdam, 2007). In fact, on any interpretation, it would not be possible to ascertain the meaning of Article 1D without examining the practice of UNRWA in general and in specific instances, such as registration (Goodwin-Gill and McAdam, 2007). Secondly, while the historical background discussed above as well as the object and purpose of the 1951 Convention in its application to Palestinian refugees, require that the phrase "at present receiving" be interpreted in historical context and, so, with due regard to the fact that States in 1951 did not anticipate a protracted refugee situation, it also requires that an interpretation must be adopted which is most likely to result in effective protection for the one group of refugees which the United Nations and its Member States have consistently recognized over time as their special responsibility (Goodwin-Gill and McAdam, 2007). In fact, the travaux preparatoires of paragraph 7© of the UNHCR Statute and Article 1D of the 1951 Convention confirm the agreement of participating States that the Palestine refugees were in need of international protection, and that there was no intention to exclude them from the regime of international protection (Goodwin-Gill and McAdam, 2007). What was important was continuity of protection; the non-applicability exclusion of the 1951 Convention was only intended to be temporary, postponing the incorporation of Palestine refugees until certain conditions were satisfied (Goodwin-Gill and McAdam, 2007).

Furthermore, the date on which the Convention was opened for signature (28 July 1951) is not mentioned in the Convention for the purpose for delimiting its scope (Goodwin-Gill and McAdam, 2007). Using this date for this purpose will lead to the consequence which the drafters sought to avoid which is the denial of the special character and status of Palestinian refugees as a group, and the submerging of individual Palestinian refugees in the general problem (Goodwin-Gill and McAdam, 2007). Furthermore, dangers of inconsistency become especially apparent when considering the variety of other potential cut-off dates potentially applicable to Palestinian's (Goodwin-Gill and McAdam, 2007). Adopting such an approach, instead of an interpretation that focuses on object and purpose, means that the category of person's receiving protection or assistance from organizations other than the UNHCR" will vary according to the instrument in question, and that the same individual may receive different outcomes, depending on the arbitrarily selected date, rather than on whether he or she is in fact a Palestinian refugee (Goodwin-Gill and McAdam, 2007).

Goodwin-Gill concludes that the words "persons at present receiving" should be interpreted to mean persons who were and/or are now receiving protection or assistance (Goodwin-Gill and McAdam, 2007). This is a descriptive rather than definitive interpretation which effectively reconciles any apparent discrepancy between the first and second paragraphs of article 1D, minimizes ambiguity, avoids arbitrary distinctions, and is most consistent with the original intentions of States and with General Assembly resolutions (Goodwin-Gill and McAdam, 2007). The adoption of such an approach would ensure that a person's status would not be arbitrarily determined on the basis of a variety of cut –off dates (Qafisheh and Azarov, 2011).

Article 1D Para 2: Cessation

Class-based approach

This section will analyze how the words “ceased for any reason” should be interpreted and when protection or assistance of UNRWA should cease in order for the ipso facto term to apply.

When it comes to cessation, Foster and Hathaway argue for a class based approach, claiming that a particularized approach runs roughshed over the object and purpose of Article 1D, its clear text, and a contextually informed understanding of the clause(Hathaway and Foster, 2014). They claim that Article .D should be understood to exclude a class of persons and that cessation must cease for the entire class of persons in order to truly end and for ipso facto entitlement to the Convention to apply (Hathaway and Foster, 2014). Unlike the class based approach, the particularized approach suggests that persons who did seek and receive such protection or assistance may avoid exclusion by showing that the UN protection or assistance “has ceased” for them personally, either because there has been a particularized instance in which protection or assistance was lacking, or because an individual Palestinian has chosen to leave the area of UN operations (Hathaway and Foster, 2014). Foster and Hathaway argue that the particularized approach is problematic because it treats Article 1D not as an exclusion provision aimed at a class of persons, but rather as an exclusion clause that can be avoided by personal decisions or circumstances (Hathaway and Foster, 2014). They claim that the notion that an individual Palestinian might avoid Article 1(D) and cause for cessation to end by deciding to decline an offer of UN protection or assistance is at odds with the purposes of the exclusion clause (Hathaway and Foster, 2014). They argue that if a given Palestinian could simply choose not to be part of the excluded class, both the Arab states goal of avoiding a diaspora that would threaten the cause of Palestinian self-determination and the desire of Europeans to avoid the onward migration of Palestinian’s towards Europe, would be undermined (Hathaway and Foster, 2014). Thus, according to them, the drafting history supports the view that the phrase “persons…receiving… [UN] protection or assistance” was a neutrally framed means of excluding the Palestinian’s-the only such group in receipt of relevant protection or assistance in 1951.(Hathaway and Foster, 2014). Siding with the English Court of Appeal in El-Ali, Foster and Hathaway claim that the Court was right to conclude that the drafters “did not intend that Article 1D would apply piecemeal and haphazardly, its scope marked off by reference to the persons who at any given moment were or were not within the UNRWA territories receiving assistance” (Hathaway and Foster, 2014).

Foster and Hathaway also agree with the Australian Full Federal Court in Mima v WABQ where similar conclusions were reached as those in Eli-Ali and it was stated:

The second paragraph [of Art 1(D)] is concerned not with individuals, but with the class of individuals. This is important because a construction which required the question of cessation of protection or assistance to be tested on an individual to individual basis would permit the argument to be made that the benefits of the Convention would become available to an individual once that individual moved from the area of operations or the relevant United Nations agency” (Minister for Immigration and Multicultural Affairs v WABQ, [2002]).

Consequently, Foster and Hathaway stress the collective wording of Article 1D, and conclude that it would be unreasonable to read that language away in order to ascribe an individuated optic to Article 1D (Hathaway and Foster, 2014). Again, they argue that the collectively framed language of Article 1D was intentional since the simultaneously drafted Statue of the UNHCR excludes only “a person”, not “persons” who continues to receive other organs or agencies of the United Nations protection or assistance and that the General Assembly opted specifically

to delete the individuated language in favour of the collective terminology now found in Article 1D (Hathaway and Foster, 2014). Thus, Foster and Hathaway claim that even though the UNHCR mandate includes “a person” who no longer “continues to receive” regional UN protection or assistance because she has chosen to leave the region, the language of the Convention does not (Hathaway and Foster, 2014). However, as will be further discussed below in the analysis of the travaux preparatoires, the UNHCR statute should be read in conjunction with Article1D in its entirety as it was the intention of the drafters for both provisions to achieve the same result (Qafisheh and Azarov, 2011).

In Eli-Ali, the Court of Appeal, supporting Foster and Hathaway’s approach held that the words, ‘such protection or assistance has ceased for any reason,’ could only mean ‘the cessation of UNRWA assistance’ overall (Goodwin-Gill and McAdam, 2007). Thus, cessation of protection or assistance should be considered “institutionally”, in the sense of UNRWA or another competent agency ceasing to exist, and this certainly has some support in the travaux preparatoires (Goodwin-Gill and McAdam, 2007). Nevertheless, the words ‘for any reason’ can also be interpreted in a different manner, and there are many other relevant reasons why protection or assistance can come to an end, as events have shown (Goodwin-Gill and McAdam, 2007). These have included military occupation of the territory in which the UNRWA operates and the interruption of its programs, or further flight because of well-founded fear of persecution, violation of human rights, or violence (Goodwin-Gill and McAdam, 2007). Still, the Court did not include the cessation or assistance dependent on a Palestinian refugee simply leaving a territory in which he or she is registered and receiving assistance, except in an ‘exceptional circumstance,’ for example, where the refugee is actually prevented from returning there by the relevant authorities (Goodwin-Gill and McAdam, 2007).

Particularized approach

However, the CJEU’s judgement in El-Kott takes the interpretation that cessation of protection and assistance can occur because of particularized instance when protection needs are not in fact met (El Kott, Radi, and Ismail v. Hungary, [2012]). The CJEU was interpreting the second sentence of Article 12 1(a) of Directive 2004/83 which refers to Article 1D and which must be interpreted in light of and in a manner consistent with the Geneva Convention (El Kott, Radi, and Ismail v. Hungary, [2012]). The CJEU stated that it is apparent from the words “when such protection or assistance has ceased” that it is primarily the actual assistance provided by UNRWA and not the existence of that agency itself which must cease in order for the ground for exclusion from refugee status no longer to be applicable (El Kott, Radi, and Ismail v. Hungary, [2012]). However, the Court also said that “mere absence” or a situation where the individual has chosen to voluntarily leave UNRWA area of operations and is still able or not prevented from receiving actual assistance from UNRWA, cannot be regarded as cessation of assistance (El Kott, Radi, and Ismail v. Hungary, [2012]). Consequently, the CJEU decided that the cessation of protection or assistance “for any reason” includes the situation in which a person who, after actually availing herself of such protection or assistance, ceases to receive it for a reason beyond her control and independent of her volition (El Kott, Radi, and Ismail v. Hungary, [2012]). In order to ascertain whether the reason is in fact beyond her control and independent of her volition, it is up the competent authorities of the member state responsible for examining the asylum application made by such person to decide, by carrying out and assessment of the application on an individual basis, whether that person

was forced to leave the area of operations of such an organ or agency, which will include the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that her living conditions in that area would be commensurate with the mission entrusted to that organ or agency (El Kott, Radi, and Ismail v. Hungary, [2012]).

According to Goodwin-Gill, cessation of protection or assistance can occur under Article 1(D) on departure from the area of operations of UNRWA by an Individual (Goodwin-Gill and Akram, 2000). Grahl- Madsen supports this argument and also suggests that the cessation of protection or assistance may result from the simple departure from UNRWA's area of operations (Goodwin-Gill and McAdam, 2007).

Takkenberg states that interpreting Article 1D in a way which allows protection or assistance to cease only when UNRWA's operations come to an end without the Palestinian refugee question being finally resolved is too restrictive, and so, he does not seem to support the class-based or institutionalized approach outlined above. However, he makes the argument that "for any reason" does not include the situation where a Palestinian refugee has left an UNRWA-mandate area and is able to return there legally (Goodwin-Gill and Akram, 2000). According to Takkenberg, what counts is whether the individual in question is a Palestinian refugee falling under the mandate of UNRWA and whether he or she is able to return to UNRWA's area of operations in a legal manner (Takkenberg, 1998). If so, then protection or assistance does not cease. Goodwin-Gill makes no distinction between the reasons mentioned by Takkenberg or any other reasons for which assistance or protection may have ceased which entitles the individuals to ipso facto recognition as a refugee, stating that the "for any reasons" language should be interpreted to literally mean for any reason and, thus, includes individual Palestinian's leaving UNRWA area of operations whether they can return here legally or not (Goodwin-Gill and Akram, 2000).

Article 1D Para 2: Ipso Facto Entitlement

When interpreting the words "these persons shall ipso facto be entitled to the benefits of the Convention," the question that must be asked is whether they should be interpreted in a way that allows the persons to automatically claim the protection due refugees under Arts. 2-34 of the Convention or whether it means that a refugee status determination must take place.

Automatic entitlement

Goodwin-Gill and Jane McAdam state that ipso facto entitlement means that Palestinian refugees may automatically claim the protection due to refugees under Arts. 2-34 of the Convention and that a refugee status determination is not necessary. In fact, according to Goodwin-Gill, Palestinian refugees who simply leave the UNRWA's area of operations, being without protection and no longer in receipt of assistance, would fall by that fact alone within the Convention, irrespective of any determination that they qualify independently as refugees with a well-founded fear of persecution (Goodwin-Gill and McAdam, 2007). Goodwin-Gill concludes that Article 1D should not be seen as an 'exclusion' clause, but as a contingent inclusion clause; it recognizes the refugee character of Palestinian's as a group, but makes their inclusion within the Convention regime as contingent upon certain events and ensures that such protection or assistance will continue automatically (Goodwin-Gill and McAdam, 2007).

It is suggested in CJEU's judgment in El Kott, that once the second sentence is triggered by the cessation of protection or assistance, the meaning of ipso facto entitlement is that Palestinian refugees can automatically claim the protection due refugees under Arts. 2-34 of the Convention and so, refugee status determination should not take place (El Kott, Radi, and Ismail v. Hungary, [2012]). The case was about whether the applicants of Palestinian origin have a right to be recognized as refugees on the basis of again, Council Directive (EC) 2004/83 (El Kott, Radi, and Ismail v. Hungary, [2012]). The court stated that the second sentence of article 12(1) (a) was based on article 1D of the Geneva Convention and that the Directive must be interpreted in light of that provision (El Kott, Radi, and Ismail v. Hungary, [2012]). The second sentence of art 12 (1)(a) of Directive 2004/83 provides that, if the requirements laid down in that provision are satisfied, the persons concerned "shall ipso facto be entitled to the benefits of [the] Directive.' The second paragraph of article 1D of the Geneva Convention provides that, in such a situation, the persons concerned "shall ipso facto be entitled to the benefits of the Convention" (El Kott, Radi, and Ismail v. Hungary, [2012]). The court asked whether the second sentence of Article 12(1) (a) of Directive 2004/83 must be interpreted as meaning that the fact that a person may "be entitled to the benefits of [the] Directive" means that the person concerned is automatically entitled to refugee status or that the persons "falls within the scope ratione personae" which would require determination of refugee status (El Kott, Radi, and Ismail v. Hungary, [2012]). The CJEU concluded that the words "shall ipso facto be entitled to the benefits of [the] Directive" must be interpreted in a manner which is consistent with the second paragraph of Article `1D of the Geneva Convention, namely as permitting the persons concerned to benefit "as of right" from the regime of the Convention and the "benefits conferred it" (El Kott, Radi, and Ismail v. Hungary, [2012]). The CJEU also stated that it cannot be said that the only right available for the person concerned where UNRWA assistance has ceased is that of just being able to apply for refugee status on the basis of Article 2© of Directive 2004/83 (refugee status determination), since that option is already available to any third country national or a stateless person in the territory of one of the member states (El Kott, Radi, and Ismail v. Hungary, [2012]). Indirectly stressing the significance and object of Article 1D as offering a heightened level of protection for Palestinian refugees, the court pointed out that the term ipso facto would be superfluous and ineffective if its only purpose was to point out that the persons who are no longer excluded from refugee status by virtue of the first sentence of the provision may rely on the directive just to ensure that their application for refugee status will only be considered (El Kott, Radi, and Ismail v. Hungary, [2012]).

While Foster and Hathaway and Goodwin-Gill disagree about which events and circumstances trigger automatic entitlement to the benefits of the Convention, they, together with the judgment in El-Kott agree on the fact that once the second sentence bites, ipso facto entitlement confers on all its beneficiaries the substantive rights which the Convention guarantees automatically, with nothing else to be established (Hathaway and Foster, 2014). Foster and Hathaway state that if the historically-bound, class-based approach is used to interpret Article 1D first in order to define the excluded class, and if no solution exists when the UN in-region response ends, then members of the group excluded by Article. 1D may automatically claim in any state party the protections due refugees under Arts. 2-34 of the Convention and, so, are not required to still meet the usual inclusion criteria of the refugee definition (Hathaway and Foster, 2014).

Although Goodwin-Gill disagrees with the Courts interpretations of other points of article 1D in El-Ali, both he and Foster and Hathaway state that the English Court of Appeal correctly

interpreted the meaning and effect of the second sentence of article 1D: ipso facto entitlement amounts in effect to the automatic entitlement of Palestinian refugees to be treated in accordance with the 1951 Convention (Goodwin-Gill and McAdam, 2007). He states that "automatic entitlement" does not mean that the individual Palestinian refugee arriving in a Contracting State is thereupon entitled to asylum and residence (Goodwin-Gill and McAdam, 2007). It does mean, however, that he or she should be treated as a refugee, and that the State is required to seek an appropriate solution in light of that status, and in cooperation with UNHCR and UNRWA (Goodwin-Gill and McAdam, 2007). However, although Laws L.J agreed that the effect of the phrase, "these persons shall ipso facto be entitled to the benefits of the Convention", is automatic, he still thought that "so great a parcel of rights would not likely be conferred…unless the class of its recipients were clear and certain" (Goodwin-Gill and McAdam, 2007).

Refugee Status Determination must take place

Consequently, in practice, many states have resisted providing automatic Convention protection and consider that the key issue is not so much the status of Palestinian's as refugees but whether they are able to return to their (former) State of residence, or are, as stateless persons, claiming to be refugees as against that country (Goodwin-Gill and McAdam, 2007). Thus, most countries have dealt with asylum claims from Palestinian refugees in the same way as those from any other country, applying the normal analysis of Article 1A (2) to these claims (Goodwin-Gill and Akram, 2000). These states either do not apply Article 1D at all; or, as will be concluded below, misinterpret the time that Article 1D second sentence triggers; or misinterpret Article 1D entirely by assuming it means Palestinian claims are to be adjudicated in the same manner as other refugees under the 1951 Refugee Convention (Goodwin-Gill and Akram). Consequently, in Sahtout v Minister for Immigration and Multicultural Affairs, the Federal Court of Australia, despite the fact that the Counsel for the Minister pointed out that the words " ipso facto" suggest that no new screening is required for the persons concerned to become entitled to the benefits of the Convention, stated that "more recent writings have acknowledged that decided cases in Germany, Austria, Switzerland and the Netherlands, the United States, Canada, and Australia have not accepted this interpretation" (Sahtout v Minister for Immigration and Multicultural Affairs, [2002]). Instead, "these countries have required persons registered with UNRWA, who no longer receive UNRWA protection or assistance, to establish their refugee claim under Article 1A(2) (Sahtout v Minister for Immigration and Multicultural Affairs, [2002]). In this particular case, it was only considered whether the applicant, who was a Palestinian refugee from Syria, could prove a well-founded fear of persecution under Article 1A (2) (Sahtout v Minister for Immigration and Multicultural Affairs, [2002]). The United States, for example, has not incorporated Article 1D of the 1951 Refugee Convention into its refugee definition under the 1980 Refugee Act (Goodwin-Gill and Akram, 2000). Their statutory definition includes only the Article 1A (2) definition of refugee (Goodwin-Gill and Akram). Australia's Migration Act 1958 refers entirely to the 1951 Refugee Convention refugee definition and does not seem to apply Article 1D (Goodwin-Gill and Akram, 2000). The United Kingdom also incorporated the 1951 Refugee Convention, but appears to ignore the application of Article 1D (Goodwin-Gill and Akram).

The UNHCR handbook adds to this confusion by stating that a Palestinian refugee is outside of the UNRWA area "does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Refugee Convention (Goodwin-Gill and Akram). Goodwin- Gill and Susan Akram (2000) argue that the UNHCR's

suggestion that if a Palestinian is no longer receiving 'assistance' his claim can be considered for determination of his refugee status under the 1951 Refugee Convention criteria, is incorrect, as it eviscerates the meaning of the ipso facto clause.

The Vienna Convention on the Law of Treaties (VCLT) and the Correct Interpretation of Article 1D

The principles of treaty interpretation in Articles 31 and 32 VCLT are guidelines that are said to reflect the position of customary international law and that facilitate a court's duty to give effect to the expressed intention of the parties, that is, their intention as expressed in the words used by them in light of the surrounding circumstances (McAdam, 2011).

According to Art. 31 (1) the 1969 Vienna Convention on the Law of Treaties, "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose (Goodwin-Gill and Akram, 2000)". Article 31 VCLT sets out a single "rule" requiring the treaty's text, context, and its overall object and purpose be taken into account when interpreting the instrument (McAdam, 2011). James Hathaway, criticizing what he perceives to be "a long standing anachronistic fixation with literalism," points out that there is a clear duty to read the text in line with the context, object, and purpose of the treaty and, therefore, to read the text of treaties in consonance with their fundamental purposes (Hathaway, 2005). He states that particular reference to the travaux preparatoires and locating refugee law principles within a broader human rights context are useful tools in achieving the interpretation (McAdam, 2011). While Hathaway does not deny the centrality of the text and that text should be carefully considered in the interpretation of a treaty, he, together with Aust, cautions that its analysis must be synthesized with other considerations (Hathaway, 2005; McAdam, 2011). The interpretive approach which emerged after the Vienna Conference was one which employs good faith to link the text and its ordinary meaning to context and object and purpose (Goodwin-Gill, 2010). Good faith cuts both ways; where the language is clear, the interpreting judge is constrained to apply the text, and good faith determination permits no modification (Goodwin-Gill, 2010). But in a multilateral convention involving the protection of individual rights, rather than sovereignty, good faith may require a more nuanced approach, sometimes even a reasonable interpretation, or a response more particularly in harmony with changed circumstances and evolving understanding(Goodwin-Gill, 2010). This encompasses what the ECHR identifies as "effectiveness," which is a position of the Court that its approach must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (Goodwin-Gill, 2010).

Foster suggests that the 1951 Convention's focus as a whole is on the need for cooperation in order to adequately deal with the humanitarian problem (McAdam, 2011). Drawing on Klabber's view that if a treaty's substantive provisions deal with a particular topic, then it may be surmised that the topic is the treaty's object an purpose, Foster argues that the 1951 Convention's overwhelming purpose is a human rights one. In essence, the treaty provides for refugees rights and entitlements under international law (McAdam, 2011). The High Court of Australia has described the 1951 Conventions chief object as being to impose obligations on the signatories to the Convention to provide protection…for [those] who cannot obtain protection from their own countries (McAdam, 2011). With that in mind, this section will suggest the most appropriate interpretation given to Article 1D from the differing interpretations examined above and suggest the most appropriate interpretation according to

the Article 31(1) of the VCLT.

Article 32 of the Vienna Convention on the Law of Treaties provides that the preparatory work of treaty and the circumstances of its conclusion are a "supplementary means of interpretation" (Takkenberg, 1998). According to Article 32 of the 1951 Convention:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusions, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31:

1. leaves the meaning ambiguous or obscure; or
2. leads to a result which is manifestly absurd or unreasonable (McAdam, 2011).

The rationale for referring to the travaux is that they will shed light on the drafter's intentions and thereby assist in resolving the meaning of |Article 1D (McAdam, 2011). Aust also suggests that the travaux may be relied upon to correct the ordinary meaning or bring it in into line with the perceived intentions of the drafters, thereby observing the duty to interpret the treaty in good faith (McAdam, 2011). Considering the controversy and confusion caused by the language of Article 1D, the travaux preparatoires of the 1951 Convention and the UNHCR Statute will also be especially examined in order to confirm what the correct interpretation of Article 1D should be.

Plain Language of Article 1D of the 1951 Refugee Convention in its context and interpreted in light of its object and purpose

Article 1D of the 1951 Refugee Convention singled out Palestinian refugees as requiring special protection, on account of the extreme circumstances of their plight, under international refugee law which already requires the protection of the human rights of refugees (Goodwin-Gill and Akram, 2000). As mentioned above it can be said that the object and purpose of the protective scheme already established by the 1951 Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make it safeguards practical and effective by ensuring that they effectively deal with the humanitarian problem, that they provide for refugees rights and entitlements under international law, and that they create obligations on signatory states to provide protection for these refugees. (McAdam, 2011) It could be said then that in order for the special protective safeguards for Palestinians outlined in Article 1D to be practical and effective and to effectively deal with the Palestinian refugee crisis, the object and purpose of Article 1D itself must be to provide for an even higher level of protection for Palestinians than what the object and purpose of the protective scheme already established by the 1951 Refugee Convention requires for all other refugee groups (Goodwin-Gill and Akram, 2000). Thus, the plain language of the Palestinian clause reveals that Palestinian refugees were to receive a heightened level of protection (McAdam, 2011). However, the clause is made up of preconditions that must be fulfilled in order for it to apply (McAdam, 2011). Thus, Article 1D should not be understood as an exclusion clause for Palestinian refugees receiving aid from the UNRWA which would actually decrease the level of protection for their rights a refugees but as a deferred inclusion clause which merely regulates the moment at which full 1951 Refugee Convention benefits accrue to Palestinian refugees worldwide (McAdam, 2011).

The First Sentence: "This Convention Shall not Apply to Persons Who are at Present Receiving

from Organs or Agencies of the United Nations Other than the United Nations High Commissioner for Refugees Protection or Assistance."

For the purposes of this paper, the main question which needs to be answered in interpreting the phrase "who are at present receiving" is whether it refers to only to those Palestinian refugees registered with UNRWA by the date of entry into force of the 1951 Refugee Convention (Goodwin-Gill and Akram, 2000).

As explained above, the meaning of "who at present receiving" was considered by the UK Court of Appeal in Eli-Ali. Using a historically bound interpretation along with Foster and Hathaway, among others, the Court held that the term "at present" related to the date on which the 1951 Convention was signed, making Article 1D relevant only to a person who was receiving protection or assistance from the UNRWA on or before 28 July 1951 (Qafisheh and Azarov, 2011). The effect of this judgment is that very few Palestinian asylum claimants will be affected by Article 1D, and in fact, would be excluded from the scope of the 1951 Convention for as long as the UNRWA continues to operate (Qafisheh and Azarov, 2011). This interpretation undermines the object and purpose of Article 1D which is to offer Palestinian refugees more protection and also does not take into account that the 1951 Refugee Convention is a living instrument which must be interpreted in the light of present-day conditions, problems and changes in society which may not have been obvious to the delegates when the Convention was being framed, including the persistence and growth of the Palestinian refugee crisis (McAdam, 2011). Thus, the 1951 Convention must operate in the context of the problems of refugee displacement which means it must adapt to changing times and circumstances (McAdam, 2011). This is why the VCLT deliberately does not constrain the meaning of the terms in a treaty to their meaning at the time of the treaty's conclusions as it this would restrict the meaning of the law and that, in an event, the correct meaning of the provision would be derived from the interpretation of the term "in good faith" (McAdam, 2011). In this case, ensuring that the state which signed and made and agreement to give Palestinian refugees more protection in 1951 keep their promises to this day (McAdam, 2011). Furthermore, Grahl-Madsen suggests that the interpretation in Eli Ali cannot be the accurate:

There is reason to believe that Article 1D applies not only to those individuals who were actually receiving protection or assistance from UNRWA on 29 July 1951, but also to those individuals who became the concern of UNRWA at any later date, including those born after the signing of the Convention; or, in other words, that Article1D applies to persons within the mandate of UNRWA as a class or category, and not to individual persons. If this were not so, we would get a rather artificial distinction between those who became UNRWA refugees before or on 28 July 1951, and those who became UNRWA refugees after that date (Goodwin-Gill and Akram, 2000).

In addition since the Eli-Ali case, was decided, UNHCR has clarified its own position and described two groups who fall within the scope of article 1D (Goodwin-Gill and McAdam, 2007). These are, first:

Palestinian's who are "Palestine refugees" within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions, and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there (UNHCR, 2009).

These are generally known as the 1948 Palestinian refugees (Qafisheh and Azarov, 2011).

Secondly:

Palestinian's not falling within [the paragraph quoted above] who are "displaced persons" within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions, and who, as a result of The 1967 Arab-Israeli conflict, have been displaced from the Palestinian territory Occupied by Israel since 1967 and have been unable to return there (UNHCR, 2009).

These are generally known as the 1967 displaced Palestinian's (Qafisheh and Azarov, 2011).

In each case, the relevant group includes not only those who were displaced, but also their descendants revealing that UNHCR goes against the historically bound interpretation (Goodwin-Gill and McAdam, 2007). Notably, given its supervisory role in relation to the Convention, as well as a subsidiary organ of the UN General Assembly, this statement of position along with its following statements to be mentioned in this paper, need to be considered seriously and in good faith when interpreting and applying Article 1D (Goodwin-Gill and McAdam, 2007).

The German Federal Administrative Court came to the same conclusion in a decision of 4 June 1991:

With the words "at present," article 1D, first sentence, ties in with the specific category of Persons who at the time the 1951 Convention was adopted were already in receipt of protection or assistance from organs or agencies of the United Nations other than UNHCR, without excluding from its application persons who only at a later point in time were able to enjoy such protection or assistance. A different interpretation would lead to the inappropriate, apparently unintended result that persons enjoying protection or assistance after the set date, for example descendants born later, would be treated differently under the 1951 Convention, although they share the same refugee experience (Takkenberg, 1998).

This also implies that the words "receiving…protection or assistance," in the first sentence of Article 1D of the 1951 Convention, do not require that a person should receive for herself or her family actual support from the organization in question (Takkenberg, 1998). As Grahl-Madsen observes in the passage quoted above, it is sufficient that one falls under the mandate of that organization (Takkenberg, 1998). This seems to be the correct approach, recalling that the intention of the drafters was to exclude conditionally from its application all Palestinian refugees who were under the care of a special UN agency (Takkenberg, 1998). The incorporation of Article 1D in the text of the 1951 Convention followed the inclusion of the UNHCR Statue of para. 7©. The original draft of para. 7 © referred to "categories of refugees at present placed under the competence of other organs or agencies of the United Nations" (Takkenberg, 1998).

A related question is whether registration with UNRWA is a necessary prerequisite for the application of Article 1D (Takkenberg, 1998). Although registration with UNRWA provides decisive evidence that a certain person falls under UNRWA's mandate, part of the Palestinian population was never registered by UNRWA (Takkenberg, 1998). For many years, refugees who were not "in need" or who had not originally sought refuge within UNRWA's area of operations, were not eligible for registration and/or services (Takkenberg, 1998). Only several

years ago, the UNRWA rules in this respect were changed, allowing for registration of previously unregistered “Palestine refugees” (Takkenberg, 1998). Therefore, it should be concluded that registration with UNRWA is of declaratory nature, confirming rather than establishing that an individual falls under UNRWA’s mandate (Takkenberg, 1998).

Based on the analysis so far it can be concluded that the first sentence of Article 1D applies to Palestinian refugees falling under the mandate of UNRWA (Takkenberg, 1998). Because Article 1D, first sentence, applies to all Palestinian refugees falling under UNRWA’s mandate, it is irrelevant whether or not an individual is actually residing within UNRWA’s area of operations (Takkenberg, 1998). Thus, all refugees falling under UNRWA’s mandate are contingently removed from the application of the 1951 Refugee Convention unless the second sentence of Article 1D applies (Goodwin-Gill and Akram, 2000).

The UNHCR Handbook differs from this interpretation (Takkenberg, 1998). The UNHCR Handbook, thus, misses the point by stating that “a refugee from Palestine who finds himself outside [UNRWA’s area of operations] does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention” (Takkenberg, 1998). Whether or not a certain individual is personally receiving UNRWA assistance is irrelevant (Takkenberg, 1998). What counts is whether or not the individual concerned falls under UNRWA’s mandate, that is, that that individual has the possibility of requesting the services provided by that organization if so required and taking into consideration the applicable procedures and criteria (Takkenberg, 1998). This possibility not only exists for those who have left the area, as long as they are able to return (Takkenberg, 1998).

A number of states, applying the incorrect interpretation of UNHCR Handbook, hold the same view that, as UNRWA is only operational in certain areas of the Near East and only provides its assistance in these areas, it is only there that Article 1D, first sentence, is applicable (Takkenberg, 1998). As mentioned above, with this logic, they do not apply Article 1D at all and consider applications for determination of refugee status by Palestinian refugees under Article 1A (2) of the 1951 Convention, or under parallel provisions of their domestic law (Goodwin-Gill and Akram, 2000) When one takes into account the clearly expressed intentions of the 1951 Convention drafters, which was to separately provide for an entire category of refugees already receiving benefits from the UNRWA, it can be concluded that Article 1D was meant to cover all refugees falling under the mandate of UNRWA regardless of when, or if, they are actually registered with that agency, or are actually receiving assistance (Goodwin-Gill and Akram, 2000). The original language of Paragraph 7 © of the UNHCR Statute, stated above, reinforces this interpretation (Goodwin-Gill and Akram). Thus, the most appropriate interpretation which can be drawn from the first sentence of Article 1D and the words “who are at present receiving,” is that all refugees falling under the UNRWA’s mandate were to be provisionally excluded from the benefits of the 1951 refugee Convention (Goodwin-Gill and Akram). This is because another scheme was already present which gave Palestinian refugees heightened protection and assistance unless and until that alternate protection scheme failed, triggering the second sentence of Article 1D, fulfilling the purpose of ensuring Palestinian refugees with a higher level of protection (Goodwin-Gill and Akram).

The Second Sentence, First Clause: “When Such Protection or Assistance has ceased for any reason…”

Particular emphasis should be given to the words, “for any reason” in the context of the

sentence, while keeping in mind the object and purpose (Goodwin-Gill and Akram, 2000). As matter of plain language, the words clearly cover any circumstance which may cause for protection or assistance given to a "person" to end under the initial scheme (Goodwin-Gill and Akram). If the language was meant to be restricted to UNRWA's mandate ending, the drafters would not have used the words "for any reason (Goodwin-Gill and Akram)." The UNRWA ceasing to function without the resolution of the Palestinian refugee crisis could be just one of the reasons which would allow for cessation to end. In fact, it was this single possible reason which was foreseen and discussed by the drafters of the 1951 Convention (Goodwin-Gill and Akram). If the drafters had intended to limit the reason for cessation of protection or assistance to just the single one of UNRWA ceasing to function or any other particular reason, they would not have used the all- encompassing language of "for any reason" (Goodwin-Gill and Akram. Therefore, the words "for any reason" do not allow for the reasons of the cessation of assistance or protection to be limited to specific circumstances (Takkenberg, 1998). The German Federal Court in a landmark decision dealing with various aspects of article 1D, dated 4 June 1991, stated that the "wording excludes that the cessation of protection be limited to specific grounds" (Takkenberg, 1998).

This implies that Article 1D, second sentence, does not require that "protection or assistance has ceased" in respect of all Palestine refugees under UNRWA's mandate (Takkenberg, 1998). It is true that the only scenario taken into consideration by the drafters of article 1D was that UNRWA's operations could come to an end, a measure that would affect all refugees residing in its area of operations (Takkenberg, 1998). However, an interpretation only taking into consideration a possible cessation of UNRWA's mandate in respect of the group of Palestinian refugees as a whole is too restrictive (Takkenberg, 1998). This is clear from the fact that UNRWA as an inter-governmental agency depends on the cooperation of the governments of the countries where it operates, and it is up to these governments whether UNRWA is able to deliver its services (Takkenberg, 1998). In the case of UNRWA is prevented from continuing its operations in one of the host countries, its assistance ceases for the Palestinians living in that country, even if the agency is able to continue its activities elsewhere in the area of operations (Takkenberg, 1998). It is true that the eventuality that preoccupied the minds of the drafters of this provision was the end of UNRWA's mandate (Goodwin-Gill and Akram, 2000). However, the interpretation of Article 1D should not be limited only to circumstances foreseen by the drafters when the plain language "for any reason," coupled with the clear object and purpose of the provision, require that it be interpreted without such limitations (Goodwin-Gill and Akram).

However, as outlined above many countries and commentators have interpreted this phrase restrictively, only taking into consideration the reason originally foreseen by the drafters of the Convention, that is that UNRWA would cease to function without the Palestinian refugee question being finally resolved (Takkenberg, 1998). Restrictive judgments when it comes to cessation include the judgment outlined above by the Federal Court of Australia in Mima v WABQ as well as the judgment of the United Kingdom Court of Appeal in Eli-Ali. In addition, the Judicial Division of the Council of State of Netherlands, concluded that the second sentence of Article 1D was not triggered when a Palestinian refugee left the UNRWA's mandate area on her own, but only when UNRWA ceased to function (Goodwin-Gill and Akram, 2000). In this case, the UNHCR has submitted an opinion disagreeing with the Dutch court but the Court turned the opinion down on the interpretation of the drafting history of Article 1D (Goodwin-Gill and Akram, 2000). In Refugee Appeal No. 1/92 Re SA (30 April 1992), the refugee Status Appeals Authority in New Zealand applied the same logic: "[the

second sentence of Article 1D] addresses the situation where UNRWA ceases to operate at all" (Takkenberg, 1998).

However, since the words "for any reason" had clearly meant to encompass all turn of events, there is no reasonable ground to conclude that those words do not encompass and individual's own actions in removing herself from the UNRWA's area of operations (Qafisheh and Azarov, 2011). Consequently, the German Federal Administrative Court stated that the considerations regarding the Palestinian refugee crisis occurring at time when the 1951 Refugee Convention was drafted do not change the fact that Article 1D " in accordance with its terms and in light of its object and purpose, intends to assure any individual Palestinian refugee aid" "without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations" (Goodwin-Gill and Akram, 2000). Thus, the court concludes that keeping in mind "the humanitarian objective of the convention," cessation of protection or assistance can in occur "in respect of an individual" while the UNRWA continues "to provide protection or assistance to the category of persons to whom that individual belongs, either collectively or in the state of his former habitual residence" (Goodwin-Gill and Akram). In addition, Takkenberg concludes that the interpretation that Article 1D, second sentence, is not applicable where the Palestinian refugee concerned has voluntarily left UNRWA's area of operations is not supported by the wording as well as the object and purpose of that provision (Goodwin-Gill and Akram). Unlike in respect of article 1A (2), paragraph 2, for the application of Article 1D, second sentence, the intentions of the refugee irrelevant (Goodwin-Gill and Akram).

There is additional controversy about the effect on the triggering provision of Article 1D, second sentence, of a Palestinian who has left an UNRWA mandate area is unable to return there legally (Goodwin-Gill and Akram, 2000). Takkenberg argues that the words, "for any reason" do not include the situation where a Palestinian refugee has left an UNRWA-mandate area and is able to return there (Goodwin-Gill and Akram). Thus, only when a Palestinian refugee does not have the possibility of returning to the UNRWA mandate area legally will cessation end (Goodwin-Gill and Akram). However, this interpretation is incorrect and, again, too restrictive (Goodwin-Gill and Akram). This is because firstly it is inimical to the plain language of Article 1D because it ignores the provision that states that if protection or assistance from UNRWA ceases "for any reason," then the person is ipso facto entitled to the benefits of the 1951 Refugee Convention (Goodwin-Gill and Akram). The plain language of the clause shows no indication that the Palestinian refugee has to demonstrate a reason why he or she cannot return to an area of UNRWA operations (Goodwin-Gill and Akram. The additional language "whether she is able to return" has no basis in the 1951 Refugee Convention, jus cogens, or other binding international law (Goodwin-Gill and Akram).

Secondly, the argument that the ipso facto clause should not apply to a Palestinian refugee who can legally return to an UNRWA area because the Article 1D was never meant to give an individual Palestinian a choice between receiving assistance from the UNRWA or receiving the benefits of the 1951 Refugee Convention is weak (Goodwin-Gill and Akram, 2000). This is because even though UNRWA has the prime responsibility towards Palestinian refugees, the main point of the special protection regime set out for the Palestinian's was to offer them heightened protection (Goodwin-Gill and Akram). The scheme put in place under this special protection regime was one of both protection and assistance from UNRWA and UNCPP and the drafters did not envision the collapse of the UNCPP and, thus, a time when these refugees would not have access to either (Goodwin-Gill and Akram). Consequently, an interpretation

which suggests that refugees should not be given a choice between assistance or protection undermines the fact they were recognized by the drafters as deserving both (Goodwin-Gill and Akram). Third, this interpretation is usually based on an incorrect understanding of what states are required to provide under the second sentence of article 1D (Goodwin-Gill and Akram). By recognizing the ipso facto refugee status of Palestinian refugees, states are not obliged to grant them asylum but are only obliged, under article 33.1, to grant a status of *non-refoulement* that is manifested under international law (Goodwin-Gill and Akram). Their obligation of non-refoulement would cease together with the application of the second sentence of Article 1D, once a definitive settlement to the Palestinian problem was reached, according to the terms of the cessation clause of Article 1C (Goodwin-Gill and Akram).

Interpreting Article 1D as requiring the refugee to prove that he could not legally return to an UNRWA area of operations places an impossible burden on the refugee (Goodwin-Gill and Akram, 2000). This is because firstly, the refugee is usually incapable of proving whether he or she can legally return and secondly, requiring him or her to bare this burden defeats one of the purposes of the alternate scheme of Article 1D, which is to avoid a protracted process and so, a low level of protection for Palestinians (Goodwin-Gill and Akram). Both of these problems are revealed in many cases in which states have required the refugee to prove that he or she could not legally return to one of the host Arab states and, in most cases, this was the reason for denial of protection (Goodwin-Gill and Akram). Furthermore, the logical conclusion that can be reached from this false interpretation is that even if the Palestinian refugee had been residing in a non-UNRWA region for an extended period of time and had no ties to, or right of protection in, an UNRWA area, he could still be denied asylum if he could somehow "return" to an UNRWA area (Goodwin-Gill and Akram). Thus, the interpretation leads to an absurd result which completely undermines the drafter's intentions while also having no textual basis whatsoever (Goodwin-Gill and Akram).

Thus, the generally accepted position, confirmed also by the UNHCR's Statement on Article 1D is that the all -encompassing expression "for any reason" clearly suggests that reasons other than cessation of UNRWA's operations are valid (Qafisheh and Azarov, 2011). This is further supported by the recent revised interpretation of Article 1D by the UNHCR where it is stated that there is a possibility to return to UNRWA area of operations after the cessation of protection and assistance has occurred, for an individual Palestinian or "person" who is then outside UNRWA's area of operations and, as a result has automatically receiving benefits of the 1951 Convention (UNHCR, 2009). Thus the note states that:

If the person returns to UNRWA's area of operations, he or she remains entitled to the benefits of the 1951 Convention until such return takes place. Upon return, he or she no longer falls within paragraph 2 of Article 1D but falls instead within paragraph 1 of that Article, meaning that he or she loses his or her entitlement to the benefits of the 1951 Convention even though he or she maintains his or her refugee character (UNHCR, 2009).

In fact, it does not matter why such protection or assistance has ceased (Goodwin-Gill and Akram, 2000). If it has stopped "for any reason," the Palestinian is not covered by Article 1D (Goodwin-Gill and Akram, 2000). It can be concluded that the ordinary meaning of "for any reason" would include any reason for cessation including an individual's own actions in leaving the UNRWA's area of operations, or the winding up of UNRWA, or interference by the State with the provision of protection or assistance by UNRWA (Goodwin-Gill and Akram, 2000).

The Second Sentence, Third Clause of Article 1D: "…without the Position of Such Persons Being Definitively Settled in Accordance with the Relevant Resolutions Adopted by the General Assembly of the United Nations, these Persons Shall Ipso Facto be Entitled to the Benefits of this Convention."

The UNHCR Handbook interpretation of ipso facto entitlement suggests that the cessation of UNRWA protection or assistance merely entitles the Palestinian refugee to merely be "considered for determination of his refugee status under the criteria of the 1951 Refugee Convention" or in other words, under the terms of Article 1A (2) (Goodwin-Gill and Akram, 2000). The most common interpretation used by states as well is that these de facto refugees should be eligible for consideration under the general definition of 1A(2), where they would be required to meet the nexus requirement of a well-founded fear based on the enumerated grounds (Goodwin-Gill and Akram).

It can be concluded that the interpretation mentioned above fails to conform to the appropriate 1951 Refugee Convention analysis required by Article 1D (Goodwin-Gill and Akram, 2000). It is not the correct interpretation of Article 1D as read in light of its history and protection purpose (Qafisheh and Azarov, 2011). Thus, by not applying Article 1D to Palestinian refugees, or failing to apply it properly by turning to Article 1A(2) for refugee status determination, these states are subverting the intention of the 1951 Refugee Convention drafters, and have breached their obligations under that instrument (Goodwin-Gill and Akram, 2000). The interpretation defies the plain language of the clause (Goodwin-Gill and Akram). The clause states that Palestinian refugees who are not covered by 1D are not merely eligible for consideration under 1A (2) definition, but instead, they "shall ipso facto be entitled to the benefits of this convention (Goodwin-Gill and Akram)." This automatic entitlement mandated by the ordinary meaning of ipso facto is distinct from just being "eligible for consideration" for such benefits (Goodwin-Gill and Akram). Thus, the interpretation used by UNHCR Handbook disregards the plain meaning of ipso facto which means that once this one condition is satisfied, the refugee does not need to be assessed by any other criteria because once that condition is fulfilled they can already be considered as a de jure refugee under the 1951 Refugee Convention (Goodwin-Gill and Akram).

In contrast to the UNHCR Handbook, The UNHCR agrees with the above point in its Revised Note on Article 1D:

In the case of persons falling within paragraph 2 of Article 1D, no separate determination is necessary of well-founded fear under Article 1A (2) of the 1951 Convention is required to establish that such persons are entitled to the benefits of the Convention (UNHCR, 2009).

The UNHCR also states that "benefits of the 1951 Convention" means Articles 2 to 34 of the Convention and so, also "refers to the standard of treatment that States Parties to the 1951 Convention are required to accord to refugees" (Goodwin-Gill and Akram, 2000).

Grahl Madsen agrees with this point and suggests that the words 'ipso facto' in Article 1D imply that " no new screening is required for the person's concerned to become entitled to the benefits of the Convention" and upon protection and assistance ceasing, the Palestinian refugee automatically becomes a statutory refugee entitled to the benefits of the Convention (Goodwin-Gill and Akram, 2000). Statutory refugees are already within the scope of Article 1A(1), as they have already qualified as or were de facto recognized as refugees under earlier treaties and arrangements prior to the 1951 Refugee Convention and, thus, are recognized as

such a group without further determination of whether they meet the 1951 Refugee Convention definition of Article 1A(2) (Goodwin-Gill and Akram, 2000). It can be concluded that the ipso facto status of Palestinian's and, so, the treatment of Palestinian refugees under Article 1D is quite similar to the status and treatment of other refugees categorized under Article 1A(1) of the 1951 Refuge Convention as statutory refugees or persons recognized as refugees per se (Goodwin-Gill and Akram).

As mentioned in the El- Kott case, the type of interpretation suggested by the UNHCR would make the term "ipso facto" redundant (Goodwin-Gill and Akram, 2000). The interpretation ignores the drafter's intention of creating a corresponding protective scheme for Palestinians who are already qualify as refugees when their alternate protection scheme comes to an end (Goodwin-Gill and Akram). It is clear from the drafting history that what was intended to be the very point of Article 1D was to prevent Palestinian refugees from being submerged with all other categories of refugees (Goodwin-Gill and Akram). In addition, if the United Nations community truly thought that there was no permanent solution to the Palestinian refugee crisis, they would not have allowed for a temporary, contingent absorption scheme within the Arab states. Instead, the Arab states and the UNHCR would have discussed their obligations for permanently absorbing the Palestinian refugees (Goodwin-Gill and Akram). The fact that there was no such discussion reveals that the United Nations members states intended that in the case of Israel not allowing the refugees to repatriate, the Palestinian refugees would still be protected by the ipso facto clause in all 1951 Refugee Convention states (Goodwin-Gill and Akram, 2000).

Thus, the words ipso facto in the second sentence of Article 1D mean that once protection or assistance of UNRWA ceases for the Palestinian refugee(s) , they automatically come within the scope of the Convention without having to satisfy the requirements of Article 1A (2) (Takkenberg, 1998). In other words, the meaning of ipso facto entitlement is that Palestinian refugees may automatically claim the protection due to refugees under Arts. 2-34 of the Convention without any refugee status determination or consideration as to whether they also meet the criteria of any of the other inclusion clauses (Takkenberg, 1998).

The Drafters' Intentions

The travaux preparatoires of the 1951 Refugee Convention and the UNHCR Statute further confirms that Article 1D was intended to stand as a deferred inclusion clause and that the drafters never intended to exclude Palestinian's from the 1951 Refugee Convention but instead intended to offer them a heightened level of protection and the continuity of rights and status (Goodwin-Gill and Akram, 2000). The 1951 Refugee Convention and the UNHCR Statute were adopted within six months of each other and were drafted somewhat simultaneously(Goodwin-Gill and Akram). During the drafting process, the content of the provision that subsequently became Art.1D was considered on three occasions (Qafisheh and Azarov, 2011). During the three main drafting stages, Palestinian refugees were explicitly discussed (Goodwin-Gill and Akram).

The first time the issue was raised was in the Ad Hoc Committee on Statelessness and Related Problems which produced a Draft Convention Relating to the Status of Refugees (Goodwin-Gill and Akram, 2000). The Committee discussed the problem of the definition of the term "refugee" (Takkenberg, 1998). The United States' delegate proposed that the Committee's definition of "refugee" should explicitly exclude Palestinian's (Goodwin-Gill and Akram). This appeared to have been primarily motivated by the desire to know in advance the extent of the

financial responsibility with regard to refugees placed under the protection of the United Nations (Goodwin-Gill and Akram). After criticism from France, the U.S. delegate announced that his government was prepared to eliminate from the definition all exceptions save those concerning persons of German ethnic origin residing in Germany (Goodwin-Gill and Akram). The draft definition did not exclude Palestinian's (Goodwin-Gill and Akram).

The Report of the Ad Hoc Committee on Statelessness and Related Problems was considered by ECOSOC during its eleventh session (Takkenberg, 1998). Since the problem of the definition of the term "refugee" to be applied by UNHCR and that of the definition to be inserted in the draft convention were linked by the Economic and Social Council, the Third Committee of the General Assembly, to whom the item was referred for the second stage of the drafting process, decided to discuss the two definitions in conjunction (Takkenberg, 1998). The French representative supported the definition adopted by ECOSOC. That definition was restricted to persons who had become refugees "as a result of events in Europe before 1 January 1951" (Goodwin-Gill and Akram, 2000). In an attempt to justify why, in his view, the High Commissioner should not automatically be involved in dealing with categories of refugees from outside Europe, the French representative referred to the Palestinian refugees and stated that the General Assembly had already extended its protection to them by delegating certain of its powers, with regard to organs other than the High Commissioner Office (UNRWA and UNCPP) (Goodwin-Gill and Akram). Several days later, the representative of Egypt introduced an amendment submitted jointly by the delegations of Egypt, Lebanon and Saudi Arabia that proposed adding to section C of the draft statute, dealing with the competence of the High Commissioner for Refugees, the following paragraph:

The mandate of the High Commissioner's Office shall not extend to categories of refugees at present placed under the competence of other organs or agencies of the United Nations (Takkenberg, 1998).

The Lebanese representative explained the purpose of the amendment:

The delegations concerned were thinking of the Palestine refugees, who differed from all other refugees. In all other cases, persons had become refugees as a result of action taken contrary to the principles of the United Nations and the obligation of the Organization toward them was a moral one only. The existence of Palestine refugees…was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestinian refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility. Furthermore, the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return (Goodwin-Gill and Akram, 2000).

The representative of Saudi Arabia added that:

If the General Assembly were to include the Palestine refugees in a general definition of refugees, they would become submerged and would be relegated to a position of minor importance. The Arab states desired that those refugees should be aided pending their repatriation…..the only real solution of their problem. To accept a general definition without the clause proposed by the delegation of Egypt and Lebanon, as well as his own, would be to renounce insistence on repatriation… pending a proper settlement of [the Arab-Israeli Conflict] , the Palestine refugees should continue to be granted a separate and special status

(Goodwin-Gill and Akram, 2000).

The amendment proposed by the three Arab states met with general approval from the drafters of the statute (Goodwin-Gill and Akram, 2000). An informal working group was formed which took into consideration the various amendments concerning the definition of the term “refugee” (Goodwin-Gill and Akram). The one for the statute of the UNHCR and the other for the draft convention (Goodwin-Gill and Akram). The definition for the statute was consequently adopted by the Third Committee of the General Assembly in an amended form, containing a clause in line with the amendment of the Arab states (The present paragraph 7© of the UNHCR Statute) (Goodwin-Gill and Akram). The UNHCR Statute as a whole was adopted by the General Assembly on December 14, 1950 (Goodwin-Gill and Akram). The Third Committee had also included a clause similar to paragraph 7© of the UNHCR Statute, in the definition for the draft convention (Goodwin-Gill and Akram). It was decided that the text of the definition for the draft convention should be recommended for consideration to the Conference of Plenipotentiaries, which the General Assembly had agreed to convene to complete the drafting process (Goodwin-Gill and Akram).

The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons met in Geneva from July 2 to July 25, 1951 (Goodwin-Gill and Akram, 2000). During the three weeks of intensive debate, the most controversial issue was again the definition of the term “refugee” (Goodwin-Gill and Akram). The Egyptian delegate brought up the Palestinian refugee question. He stated that Article 1C of the draft convention, corresponding to the present Article 1D of the 1951 Refugee Convention, provided a temporary exclusion only: once the United Nations assistance ceased, the Palestinian refugees should automatically enjoy the benefits of the 1951 Refugee Convention (Goodwin-Gill and Akram). In order “to avoid any misunderstanding as to the interpretation of paragraph C,” the representative of Egypt introduced another amendment, the text of which is almost identical to the second sentence of the present Article 1D of the 1951 Convention (Goodwin-Gill and Akram). According to the Egyptian representative, the object of his amendment “was to make sure that Arab refugees from Palestine, who were still refugees when the organs or agencies of the United Nations at present providing them with protection or assistance ceased to function, would automatically come within the scope of the Convention (Goodwin-Gill and Akram). The representative of Iraq added “that the amendment represented an agreed proposal on the apart of all Arab States.... it was obvious that, if the Egyptian amendment was rejected, the refugees it was designed to protect might eventually find themselves deprived of nay status whatsoever (Goodwin-Gill and Akram). The delegations agreed to this interpretation and the Egyptian amendment was adopted (Goodwin-Gill and Akram).

Thus, the travaux preparatoires of paragraph 7© of the UNHCR Statute and Article 1D of the 1951 Refugee Convention, shed light on the drafters intentions since from them, it is clear that amongst the respective drafters, and there was an agreement that the Palestinian refugees were genuine refugees in need of protection (Goodwin-Gill and Akram, 2000). In fact, it was the idea of Arab delegation to insert the exclusion clause not because they thought that Palestinians were not refugees per se but because they believed that they deserved a higher level of specialized attention than what the general definition of the 1951 Refugee Convention would provide (Goodwin-Gill and Akram). This concern was based on more political than legal considerations because the Arab states believed that if the Palestinian refugees were included under the UNHCR statute they would be submerged with all other refugees“ and would be relegated to a position of minor importance” while the possibility of their repatriation would

be prevented (Goodwin-Gill and Akram).

The travaux preparatoires also reveals that provision 7© of the UNHCR Statute should be read in conjunction with Article 1D in its entirety (Qafisheh and Azarov, 2011). Both provisions were proposed by the same States, and both were discussed in the context of Palestinian refugees (Qafisheh and Azarov, 2011). The text of provision 7© of UNHCR Statute was adopted by the GA together with the first sentence of Article 1D of the draft 1951 Convention by the same GA Res. 428 (V) and both the draft 1951 Convention and the draft UNHCR Statute were prepared by the GA's Third Committee (Qafisheh and Azarov, 2011). Thus, the discussion that took place with regard to the first sentence of Article 1D of the 1951 Convention pertains also to provision 7© of UNHCR Statute (Qafisheh and Azarov, 2011). The only reason that the UNHCR Statute does not contain similar provisions to those of the second sentence of Article 1D of the 1951 Convention is because the latter provision was incorporated during the Conference of Plenipotentiaries whereas the UNHCR Statute took effect directly upon it'd adoption by the GA in December 1950 (Qafisheh and Azarov, 2011). Thus, in contrast to Foster and Hathaway's arguments outline in the previous sections claiming that the two provisions mean different things, it imparts that the intention of the drafters of the two provisions intended to achieve the same result; namely, excluding Palestinian refugees temporarily from the scope of the 1951 Convention and as a result from the competence from the UNHCR mandate for as long as these refugees continue to receive protection or assistance from other UN bodies (Qafisheh and Azarov, 2011). Thus, the travaux preparatoires demonstrate that the international community has no intention of excluding Palestinian's from the general legal regime for the protection of refugees (Goodwin-Gill and Akram, 2000). The insertion of the second sentence in Article 1D intended to eliminate any doubts with regard to the first sentence, i.e. whether the exclusion of Palestinian refugees from the 1951 Convention would be permanent or temporary (Qafisheh and Azarov, 2011). Since the wording of the second sentence of article 1D removed the possibility of an interpretation which excludes Palestinian refugees, by the same token the same result implicitly applies to provision 7 (c) of UNHCR Statute (Qafisheh and Azarov, 2011). Accordingly, Provision 7 © UNHCR Statute makes the exclusion of Palestinian refugees from the competence of the UNHCR temporary, and, thereby, once the protection or assistance of other UN bodies have ceased, these refugees would automatically be subjected to the UNHCR mandate (Qafisheh and Azarov, 2011).

Therefore, the travaux preparatoires show that Article 1D was not intended to be an exclusion clause at all (Goodwin-Gill and Akram, 2000). The French and Arab delegates proposed the amendment of the initial draft of Article 1D with the expressed intent of ensuring that Palestinian persons who were still de facto refugees when they no longer received protection or assistance from UNRWA, or, when it ceased to function altogether, received automatic de jure recognition under Article 1A (Qafisheh and Azarov, 2011). In fact, the French and Egyptian delegates explained themselves that Article 1D was meant to be a contingent inclusion clause that was supposed to postpone the inclusion of Palestinian refugees until the preconditions were satisfied (Qafisheh and Azarov, 2011). Stating that the Egyptian interpretation was correct, the French delegate confirmed that the text provided for "deferred inclusion" rather than the exclusion of these refugees (Qafisheh and Azarov, 2011). By the time the delegates started to doubt whether the text properly reflected the intention of the Arab states, due to time constraints, the Egyptian amendment was introduced creating the second sentence of what is now Article 1D (Qafisheh and Azarov, 2011). This amendment is what places Palestinian refugees in a position similar to statutory refugees mentioned in Article 1A

(2) of the 1951 Refugee Convention (Qafisheh and Azarov, 2011). While it is strange to include the whole category of refugees conditionally through an exception to an exclusion clause, this is precisely what the drafters did (Qafisheh and Azarov, 2011).

Conclusion

Ever since the creation of Israel and the realization that the United Nations itself was partially responsible for their expulsion, the international community has recognized the need for Palestinian refugees to be singled out for special treatment on account of their plight. This recognition is continually revealed in countless General Assembly Resolutions and was manifested in the creation of two separate agencies created specifically to deal with the crisis, the UNRWA and the UNCPP. Most importantly, Palestinian refugees are singled out for special treatment in Article 1D of the 1951 Refugee Convention, the Statute for UNHCR, and the regulations governing the mandate of UNRWA. Since the problems which originally mobilized the international community to create a special protection regime for Palestinians still exists to this day, it is clear that the significance and need of the regime still currently stands. Unfortunately, due to the various (mis)interpretations of Article 1D at several points in the clause, the rights of Palestinian refugees as refugees per se have been restricted in comparison to the rights guaranteed to all other refugees. However, when one takes into account the appropriate tools of treaty interpretation set out in the 1969 Vienna Convention on the Law of Treaties it is clear that an interpretation which ensures that Palestinian refugees are to receive the heightened level of protection intended is the most appropriate. Thus, the single most appropriate interpretation that is most consistent with the special protection regime envisioned for Palestinian refugees is that Article 1D acts as a conditional inclusion clause rather than an exclusion clause for all Palestinian refugees under the mandate of the UNRWA. As soon as the aid that UNRWA provides to these Palestinian refugees ceases "for any reason," including the Palestinian individual voluntarily leaving the UNRWA area of operations or any other reason, they are "ipso facto entitled" and are to be automatically afforded the full benefits of the 1951 Refugee Convention in Articles 2-34 without having to prove refugee status determination under 1(A) (2) of the 1951 Refugee Convention.

Bibliography

Bolbol v. Hungary, [2010] C-31/09, ECR I-05572 (CJEU).

Brynen, R. (2014). UNRWA as avatar: current debates on the agency and their implications. In: S. Hanafi, L. Hilal and L. Takkenberg, ed., UNRWA and Palestinian Refugees: From Relief and Works to Human Development, 1st ed. [online] New York: Routledge, p.265. Available at: https://books.google.gr/books?id=ARBxAwAAQBAJ&pg=PA263&lpg=PA263&dq=Rex+Brynen,+"UNRWA+as+avatar:+curre LrSK9KsZgPo&hl=en&sa=X&ved=0ahUKEwiVrMP6iobUAhUGWRQKHeBeBuAQ6AEIKTAC# [Accessed 23 May 2017].

El Kott, Radi, and Ismail v. Hungary [2012] C-364/11 (CJEU).

El-Ali v. Secretary of State for the Home Department [2002] 1WLR 95 (UK - Court of Appeal).

Goodwin-Gill, G. and M. Akram, S. (2000). FOREWORD TO AMICUS BRIEF ON THE STATUS OF PALESTINIAN REFUGEES UNDER INTERNATIONAL REFUGEE LAW. The Palestine Yearbook of International Law Online, [online] 11(1), p.202. Available at: http://www.brill.com/palestine-yearbook-international-law-volume-11-2000-2001#TOC_1.

Goodwin-Gill, G. (2010). The search for the one true meaning. In: G. Goodwin-Gill and H. Lamber, ed., The Limits of Transnational Law, 1st ed. Cambridge [England]: Cambridge University Press, p.216.

Goodwin-Gill, G. and McAdam, J. (2007). The refugee in international law. 4th ed. Oxford: Oxford University Press, p.152.

Hathaway, J. (2005). The rights of refugees under international law. 1st ed. Cambridge [England]: Cambridge University Press, p.49.

Hathaway, J. and Foster, M. (2014). The law of refugee status. 1st ed. Cambridge: Cambridge University Press, p.514.

McAdam, J. (2011). Interpretation of the 1951 Convention. In: A. Zimmerman, J. Dörschner and F. Machts, ed., The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary, 1st ed. [online] Oxford: Oxford University Press. Available at: https://books.google.gr/books/about/The_1951_Convention_Relating_to_the_Stat.html?id=jAegkL7nHioC&redir_esc=y [Accessed 23 May 2017].

Minister for Immigration and Multicultural Affairs v WABQ [2002] 121 FCR 251, FCAFC 329 (Federal Court Of Australia).

Qafisheh, M. and Azarov, V. (2011). Article 1D of the 1951 Convention. In: A. Zimmermann, J. Dörschner and F. Machts, ed., The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary, 1st ed. [online] Oxford: Oxford University Press, p.547. Available at: https://global.oup.com/academic/product/the-1951-convention-relating-to-the-status-of-refugees-and-its-1967-protocol-9780199542512?cc=gr&lang=en& [Accessed 23 May 2017].

Sahtout v Minister for Immigration and Multicultural Affairs [2002] FCA 114 (FEDERAL COURT OF AUSTRALIA).

Takkenberg, L. (1998). The Status of Palestinian refugees in international law. 1st ed. Oxford: Clarendon Press.

UNHCR (2009). Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees. [online] UNHCR. Available at: http://www.refworld.org/pdfid/4add77d42.pdf [Accessed 23 May 2017].

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