

**The Status of Palestinian Refugees in International
Law: The issue of interpretation and implementation
of Article 1D of the 1951 Convention Relating to the
Status of Refugees in Europe.**

By

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Abstract

To date, Palestinians represent one of the biggest groups of asylum seekers in the world. However, in many countries they do not enjoy even minimal international protection obtainable for all other refugees. Even though political aspect is among the main reasons for such a protection gap with regard to Palestinians, the problem is also a result of legal inconsistency and discrepancy. In many States, including European ones, the issue has to do with the fact that Palestinians, in many cases, are not granted refugee status and, consequently, excluded from the international protection regime established for refugees.

This thesis demonstrates that non-recognition of Palestinians as refugees and beneficiaries of the 1951 Refugee Convention stem from the erroneous understanding of Article 1D of the Convention. The thesis argues that in accordance with the results of analysis of ordinary meaning and purpose of the Convention, and real intent of its drafters, Palestinian refugees, residing outside of UNRWA area, must be *automatically* granted a refugee status, under the condition that Article 1C, 1F and 1E of the Convention do not apply. The conclusion of this thesis is that State Parties to the Convention, in order to fulfill their international obligations and contribute to the protection and support of Palestinians, should adopt correct interpretation of Article 1D, recommended by UNHCR, legal scholars and author of the present thesis.

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Introduction

Japanese city Kyoto is famous for its rock garden called Ryoanji. At first sight it seems to be nothing special- simply fifteen stones of different sizes placed disorderly on the white sand. But what is interesting about that garden is that one can see only fourteen of these stones from whichever angle he/she looks at it. The rocks are placed in such a way that a person is always not able to see one of the stones and sees other fourteen of them depending on his/her position.¹

There are various philosophical understandings of the garden's design. According to one of the interpretations, the author's idea was to draw attention of the visitors to the fact that very often people see same things differently. Moreover, each of us usually sees one particular (apparently the most interesting or visible) aspect of the matter, not knowing or forgetting about the other sides of the issue. As they say about the garden, "Everyone sees his own fourteen stones."²

Israeli-Palestinian conflict is unquestionably among the most widely-discussed issues nowadays. However, most works and articles dedicated to the problem are focused on its political side. "Much has been written about the Palestine question, including its legal aspects. On the other hand, there is relatively little legal literature that deals specifically with the human dimension of the conflict, that is the refugee issue."³

As a result of conversations with Palestinian friends who studied with me at Central European University I realized that there is an aspect of modern Israeli-Palestinian conflict that hardly deserves less attention of the international community than the conflict itself- that

¹ Владимир Цветов, "Пятнадцатый камень сада Рёандзё", Политиздат, Москва, 1986, с.1,(Vladimir Tsvetov, "The fifteenth stone of Ryoanji garden", Politizdat, 1986, p.1)

² Ibid, c.1-4

³ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.5-6

is millions of refugees all of the world. Since the issue is, to some extent, similar to the current problem of Azerbaijanian refugees from Nagorno-Karabakh, I was inspired to write this thesis. S. Akram's articles on the status and rights of Palestinians, that I came across later, motivated me even more, and, besides that, helped me to comprehend that the situation of Palestinian refugees-as I will argue- is exceptional.

"Although as its core a political problem, the Palestinian refugee crises is also a problem of legal distortion."⁴ "For historical, legal and political reasons, Palestinian refugee...have been effectively denied many of the minimal legal protections available to other refugees under the 1951 Refugee Convention regime"⁵ Therefore, this group of refugees lacks "both national and international protection."⁶ Explanation of some reasons and causes of such a "protection gap" with regard to Palestinians will be discussed later in this work.

In many countries, including European ones, Palestinians are not even recognized as refugees, although, "unlike citizens of the host country, their flight makes them refugees for the second - or sometimes third - time and after having arrived in a new country of refuge they should not have to prove what they already are: internationally recognized refugees."⁷ However, many Palestinians "remain in Western States without recognized legal status, without work permits, and without the basic essentials to live in freedom and dignity."⁸

⁴ Susan M. Akram, "Palestinian refugees and their legal status: rights, politics and implications for a just solution", *Journal of Palestine Studies*, Vol.31, No3, Spring, 2002, p. 36

⁵ Susan M. Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees", *Boston University International Law Journal*, Vol.22, No.1 (Spring 2004), p.1

⁶ *Ibid*, p.11

⁷ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.118

⁸ Susan M. Akram and Terry Rempel, "Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees", *Boston University International Law Journal*, Vol.22, No.1 (Spring 2004), p.14

Therefore, “the assumption that European countries are opening their welcoming arms to Palestinian refugees is a mere fantasy that has no base in reality.”⁹

In this thesis, I will argue that situation of Palestinian refugees briefly discussed above is the result of misinterpretation of the provisions of the 1951 Refugee Convention, in particular, Article 1D of the Convention. “Most countries in which Palestinians seek protection outside their place of origin interpret the relevant provisions in a manner that fails to grant them adequate protection- although the precise interpretations differ from state to state.”¹⁰

Therefore, the aim of this thesis is to demonstrate that for many years Article 1D of the 1951 Refugee Convention was interpreted erroneously. In the subsequent chapters I will try to prove that namely misinterpretation of some phrases and terms used in the provision led to the current situation of Palestinians when many of them are not granted refugee status and not recognized as beneficiaries of the Convention outside of UNRWA territory.

By the end of this thesis I will come up with the interpretation of Article 1D that can be regarded as a correct one. “Proper interpretation and application of Article 1D requires that states recognize the refugee status of Palestinian refugee, providing that Article 1C, 1E and 1F do not apply. No additional assessment under Article 1A (2) is required.”¹¹ It will be shown that this is actually the only possible interpretation of the provision based on “Article 1D’s plain language, drafting history, and applicable canons of treaty construction.”¹²

⁹ Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, *Refugee and Diaspora Studies*, No.2, 2005, p.14

¹⁰ Susan M. Akram and Terry Rempel, “Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees”, *Boston University International Law Journal*, Vol.22, No.1 (Spring 2004), p.14

¹¹ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.336

¹² Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church,

Furthermore, I will perform a comparison analysis of different erroneous interpretations of Article 1D adopted in particular European States and European Union in general. The conclusion of this thesis will contain some recommendations that are necessary for protection of the rights of Palestinians refugees.

For the purposes described above, in the first chapter of the thesis I will shortly describe the history of Palestine and causes for the displacement of millions of Palestinians. For a better understanding of the issue, in the second and third chapters I will give brief theoretical and legal frameworks. First of all, I will show how Palestinian refugees differ from all other refugees based on the definition and a durable solution suitable for them. Then, I will shed the light on the reasons for the establishment of separate regime for Palestinian refugees and remind the drafting history of Article 1D. In the fourth chapter I will try to define a correct interpretation of Article 1D based on the analysis of *Travaux Préparatoires*, plain language, ordinary meaning of the Convention and current opinion among scholars and practitioners. In the last, fifth chapter, I will compare different European jurisdictions and show some common errors in the interpretation of the Article that entail problems of Palestinian refugees.

Chapter 1. Historical Background

The history of Palestine is very rich and complicated. But I am sure it is worth considering in this thesis, at least briefly, the main historical landmarks in the events starting from seventh century, as it is almost impossible to understand the problem of Palestinian refugees today without knowledge about its roots.

The aim of this thesis is not to go so far as to discuss causes and possible solutions to the current Israeli- Palestinian conflict but rather to analyze a purely legal issue of status of Palestinians in European states. For this reason, in this chapter I will merely describe some historical events that caused the displacement of Palestinians without any assessment of them. Moreover, in order to be objective, I will try to present alternative visions of the same historical facts.

1.1. A brief history of Palestine

Palestine was under the regulation of Arabs from 626AD to 1099. During that period the territory was divided into two military zones: Falastin (Roman name for which was Palestine) and Urdun (which is an Arabic version of Jordan). In 1099 the Crusaders invaded the territory and established their own rules. Later, in XIII century, Palestine became a part of the empire of Egyptian Mamluks. Moreover, Palestinian people had to live through several Mongol invasions and the conquest of Seljuk Turks. The situation did not change until the Ottoman Turks took over in 1516 and Palestine became a part of the Empire for the subsequent four centuries.¹³

¹³ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.8

From 1880 the Ottoman Turks changed their strict policy with regard to immigrants and became tolerant toward the arrival of a small number of Jewish people in the territory of Palestine. In fact, the number of Jewish immigrants at that time was trivial, and newcomers did not demand any political rights. As a result, resentment among local population toward new settlers was on a very low level. In 1918, when Palestine was occupied by the British army with the help of Arab troops led by Emir Hussein of Mecca, the number of Jews living there was 56,000 out of the entire population of 680,000.¹⁴

A big wave of Jewish people moved to Palestine after the establishment of British Mandate. At the beginning military troops of Great Britain were accepted in a friendly way as being helpful in getting liberty, but the Arabs' attitude changed after the Zionist Committee's relocation to the country.¹⁵ The increase of Jewish population in Palestine led to resistance between two communities. Arabs became afraid and suspicious of "influx of Russian- and Yiddish-speaking foreigners" with distinct culture, religion and life style.¹⁶

"It is noted that during the Ottoman rule, the government did not object to the dwelling of the Jews on the territories, but they objected to their migration from other countries to their regions, and heading specifically to Palestine."¹⁷ "What has occurred following the arrival of the Zionist Committee is considered a matter hard to believe, which was the establishment of a national country to the Jews in a country with more than 92 % of its population of Palestinian Arabs."¹⁸

On the other hand, Jewish people look at the history differently.

¹⁴ Ibid.

¹⁵ Fawzy Al-Ghadiry, "The History of Palestine" (Chapter three in "Connecting Voices" by Fawzy Al-Ghadiry), 2007, p.32

¹⁶ Benny Morris, "The Birth of the Palestinian refugee problem revisited", Cambridge, 2004, p.9

¹⁷ Fawzy Al-Ghadiry, "The History of Palestine" (Chapter three in "Connecting Voices" by Fawzy Al-Ghadiry), 2007, p.31

¹⁸ Ibid, p.32

Palestine was said to be the “Promised land” for the Hebrews who were liberated from there thralldom under the Pharoahs of Egypt by Prophet Moses took his people to Palestine by crossing the Red Sea. Thus Palestine has become the holy land for the Hebrews. King David for the Hebrews established a kingdom of Palestine with Jerusalem as its capital in 1000 B.C¹⁹

In 63.B.C. Palestine was occupied by the Romans who treated the local Jews harshly and eventually destroyed the whole country in 70 B.C. The Jews were forced to migrate to different countries of the World like nomads. “Thus the Jews were expelled from their original habitat Palestine.”²⁰ Since then the country was populated and ruled by Muslims till the First World War.²¹

1.2. Zionism

“The Jews who were living in different parts of the world were living with the hope that one day or other they would return to their native land.”²² Different organizations and societies of Jewish people were established in many countries. The biggest movement of the Jews that aimed to recover their motherland was called “Zionism”. The word “Zion” referred to another name of Jerusalem.²³

“Modern Zionism began with the prophetic-programmatic writings of Moses Hess, Judah Alkalai, Zvi Hirsch Kalischer and Theodor Herzl and the immigration of Jews from Russia to Ottoman-ruled Palestine in the 1880s, dedicated to rebuilding a national home for

¹⁹ N. Jayapalan, “Modern Asia since 1900”, Atlantic Publishers and Distributors, 1999, p.103

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

the Jewish people on their ancient land, the Land of Israel, in Zionist parlance.”²⁴ A main change in the ideas and ambitions of Zionists happened in 1897 when Theodor Herzl founded the World Zionist Organization in Basle with the main goal to create a Jewish state. Arabs did not consider all of these aspirations of Jewish people as dangerous almost till the collapse of the Ottoman Empire. However, this approach changed after famous A. J. Balfour’s declaration²⁵ to Lord Rothschild²⁶ in which he made it clear that Great Britain would support the creation of “national home for Jewish people” in Palestine. The same declaration was taken as one of the principles by the newly established League of Nations and the text was included in the Palestinian Mandate Agreement of 1920.²⁷

Interestingly enough, most indigenous Jews living in Palestine were against the main goal of Zionists to create a separate Jewish state.²⁸ The reason was that “for many centuries Arabs and Jews lived together in relative peace and harmony.”²⁹ Moreover, “the great majority of European Jewry also did not view Zionism as an answer to their systematic persecution”³⁰. Only about 1 % of the Jews who lived in Eastern Europe at the end of the 19th and beginning of 20th century moved to Palestine.³¹

Nevertheless, in the 1930s Palestine became almost the only place for refuge for thousands of Jews. Rise of Nazism and anti-Semitism in Eastern Europe entailed massive new immigrations.³² The tension produced by migration caused rebellions, manifestations and the rise of the Palestinian national movement in 1936-1939. However, all the attempts had

²⁴ Benny Morris, “The Birth of the Palestinian refugee problem revisited”, Cambridge, 2004, p.9

²⁵ He was then a Foreign Secretary in the British wartime cabinet

²⁶ The British Jewish Leader

²⁷ Lex Takkenberg, “The Status of Palestinian Refugees in International Law, Oxford”, 1998, p.8-9

²⁸ Table III, Jewish Land Ownership in Palestine, Walter Lehn with Uri Davis, “The Jewish National Fund”, London: Kegan Paul International, 1988, p74

²⁹ Fred John Khouri, “The Arab-Israeli Dilemma”, Syracuse University Press, New York, 1985, p 353

³⁰ Survey of Palestinian Refugees and Internally Displaced Persons, , Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.6

³¹ As’ad Ghanem, “The Palestinian –Arab Minority in Israel, 1948-2000”, State University of New York Press, 2001, p.13

³² Benny Morris, “The Birth of the Palestinian refugee problem revisited”, Cambridge, 2004, p.10-11

unsatisfactory effect for Palestinians, particularly after the intervention of Arab States with the aim to stop disorders in the country. The intrusion of Arab states led to the “Arabization” of the problem and played a major role in the later development of the conflict.³³

1.3. The Displacement of Palestinians

1.3.1. Five waves of the displacement from Palestine

As it was noted above, at the beginning of the 20th century Palestinian Arabs represented the majority of the population of the territory that includes the contemporary State of Israel and Occupied Palestinian Territory (OPT). Therefore, the largest number of Palestinians, who are mostly refugees or stateless persons today, lived in that period within the borders of Palestine. Moreover, they were owners and users of roughly 90% of the land in the country. Five major waves of violent displacement converted Palestinians to the biggest group of refugees in all over the World. They lost around 82 % of the land.³⁴

The first main episode of displacement of Palestinians took place between 1922 and 1948 in the period of the British Mandate. “The British government had secretly come to terms with France and Tsarist Russia in the Sykes-Picot Agreement of 1916, determining that parts of Palestine would fall beneath its sphere of influence with the anticipated decline of the Ottoman Empire.”³⁵ At that time only 8% of population was represented by Jews.³⁶

³³ As'ad Ghanem, “The Palestinian –Arab Minority in Israel, 1948-2000”, State University of New York Press, 2001,p.13

³⁴ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol. VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.2

³⁵ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol. VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights p.4

³⁶ Table 2.2, Population of Palestine in 1918, Projected back from 1922 Census Figures, as corrected, McCarthy, Justin, “The Population Of Palestine: Population Statistics of the Late Ottoman Period”, New York: Columbia University Press, 1990,p. 26

According to the decision of the League of Nations, Palestine was granted “Class A” Mandate³⁷, which is a type of administration closest to an independent state. However, one of the real purposes of the Mandate was to colonize the country with the help of Jewish settlements and to establish later a Jewish state on its territory. All the Jews received full political rights according to the Mandate, while Palestinian Arabs obtained only some basic and civil rights.³⁸ Therefore, the British Mandate had two aims that, to some extent, contradicted each other: to create an independent Palestinian state and to establish a “national home” for the Jews.³⁹

Approximately 150,000 Palestinians were relocated during the period of the British Mandate. Moreover, a large number of Palestinians were denationalized under the Palestine Citizenship Order of 1925.⁴⁰ The Order allowed the Jews from abroad to acquire Palestinian citizenship. At the same time, it deprived of the same citizenship thousands of Arabs. For example, only 100 applications out of 9,000 from Palestinians not living within the country were approved.⁴¹

Other reasons for Palestinians to flee the country were: “Great Revolt” in the 1930s resulted in displacement of about 5,000 Palestinians; destruction of Palestinians’ houses,⁴² disappearance of some 70 Palestinian villages⁴³.⁴⁴

³⁷ The Mandate of Palestine, 24 July, 1922, in Survey of Palestine, Vol. I. Washington, DC: Institute for Palestine studies, 1991, p 4-11.

³⁸ Survey of Palestinian Refugees and Internally Displaced Persons, Vol. VI, 2008-2009, Edit Ingrid Jaradat Gassner, BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 6

³⁹ Ibid.

⁴⁰ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.2

⁴¹ Palestine Royal Commission Report, Cmt. 5479. London: HMSO, 1937, p.331

⁴² Kamen, Charels, “Little Common Ground: Arab Agriculture and Jewish Settlement in Palestine 1920-1948”, Pittsburg: University of Pittsburg Press, 1991, p.191.

⁴³ Kanaana, Sharif, “Still on Vocation, Jerusalem International Center for Palestinian Studies”, 1992, p.96

⁴⁴ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.34

The second colossal wave of displacement of Palestinians happened between 1947 and 1949, the episode known in the literature as *Nakba* (Arab word for *Catastrophe*). *Nakba* is now an international expression for what happened to Palestine after the UN's decision to hand over Palestinian territory to Israel. The same event was regarded and named as the Independence War by Israel. Although, the real War began, in fact, earlier than the establishment of the Israeli State. It started with the "Diplomatic Battle", which refers to the UN discussions in February 1948- May 1948.⁴⁵

The issue of Palestine and its territory was assigned to the already two-years-old United Nations Organization. Four key powers at that time– USSR, USA, Britain and France- were concentrated on the more important issue- the future of Germany. By May 1947 the UN political Committee created the United Nations Special Committee on Palestine (UNSCOP), the main object of which was to launch an inquiry about the situation in the country and come up with the recommendation.⁴⁶

UNCSOP consisted of eleven members. "The special session of the Political committee lasted two weeks, from 29 April to 15 May 1947, and was entirely devoted to the question of the composition of the inquiry commission- there was obviously a need for fair representation of Soviet and American interests, as well as those of Britain as an ex- mandatory power."⁴⁷

Members of the Committee represented different continents and cultures: Sweden and Netherlands from West Europe, Czechoslovakia and Yugoslavia from Eastern Europe, India and Iran as delegates from both Asia and Muslim countries, Guatemala, Peru and Uruguay from Latin America, and Australia and Canada- agents of the British Commonwealth. As one

⁴⁵ Ilan Pappé, "The making of Arab- Israeli Conflict", 1947-1951, I.B. Tauris, 2006, p.16

⁴⁶ Ibid.

⁴⁷ Ibid, p.17

may notice, none of the five permanent members of the Security Council was represented in the Committee. According to a Czech delegate, the simple reason for that was not to be responsible for such a complicated issue as the one in Palestine. There are also other points of view. Garcia Granados, who represented the Guatemalan government in the Committee, believes that it was America who tried to keep the USSR away from the settling of the issue, since the Soviet Union's choice could be decisive, because most of the other permanent members of Council tended to support it.⁴⁸

UNSCOP finished its work on 31 August, 1947. All eleven members were divided into two blocks with alternative solutions for Palestine. The Majority of the members recommended portioning of Palestine into two states- Jewish and Arab- with Jerusalem being *corpus separatum* under the executive ruling of the UN. Only three states- Yugoslavia, India and Iran - voted for the creation of one federation consisting of two states. The Australian delegate abstained from voting considering the question beyond the authority of the Committee.⁴⁹

Finally, on 29 November, 1947 the UN General Assembly adopted the famous Resolution 181(II), which led to the separation of Palestine into two independent states. "The result was war"⁵⁰ and second big displacement of Palestinians known, as it was mentioned above, as *Nakba*. Approximately 750,000-900,000 Palestinians fled to the closest territories of the Gaza strip, the West Bank, Jordan, Syria and Lebanon. Most of the refugees at that time truly believed that they would soon return.⁵¹

⁴⁸ Ibid.

⁴⁹ Lex Takkenberg, *The Status of Palestinian Refugees in International Law*, Oxford, 1998, p.11

⁵⁰ Michael Gorkin, "Days of Honey, Days of Onion: The story of Palestinian family in Israel", University of California Press, 1993, p.10

⁵¹ "Closing protection gap", *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.3

The next movement of Palestinians happened between 1949 and 1967, when approximately 30,000 Palestinians were expelled from the villages on the northern border of the country including Nagev (Naqab) and “ Little Triangle” (“an area cede to Israel under the armistice agreement with Jordan”⁵²). Those Palestinians encompassed about fifteen percent of all Palestinians of the established state of Israel with the temporary military government.⁵³

Moreover, some Palestinians became refugees and stateless persons as a result of the 1952 Citizenship Law, which caused their denationalization.⁵⁴

The fourth big displacement of Palestinians occurred in 1967, as a result of the second Arab-Israeli war. The result of the war was that the West Bank, Eastern Jerusalem, the Gaza strip, Egyptian Sinai and the Syrian Golan Heights were occupied by Israel. Some of the “1967- displaced persons” became refugees the second time, since those were the territories where they fled and found refuge the first time. After this occasion most of the Palestinians chose Jordan, Syria, Lebanon or Egypt as their host country. Approximately 350,000-400,000 Palestinians were displaced and about 60,000 of those who were abroad during the war did not have a chance to return.⁵⁵

Many Palestinians were removed from their homes by military forces; some of them were required to sign the document proving that they departed voluntarily.⁵⁶ There are two controversial opinions about these events. While some people believe that Palestinians migrated of their own free will, others believe that it was the other way round. According to

⁵² Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.13

⁵³ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.3

⁵⁴ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.15

⁵⁵ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.3

⁵⁶ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.15

one of the Israeli officers, Masalha Nur, for example, future refugees were forced to sign the documents. "... I have no doubt that tens of thousands of men were removed against their will."⁵⁷

The last fifth wave of displacement of Palestinians started after 1967 and continuous till now. There have been more than 800,000 Palestinians displaced during these years, including those who became refugees after the building of separation Wall in the West Bank.⁵⁸ Occupation, together with apartheid and colonization which are, in fact, the elements of the first, according to John Dugard, are the main reasons that cause the recent displacement.⁵⁹ Some other reasons for current dislocation are deportation, detention and torture; home demolition and forced evictions; attacks and harassment by non-state actors; closure and segregation (including segregation in education, work, and health care); confiscation and discriminatory distribution of land.⁶⁰ One of the most common causes for today is the revocation of residency rights as a result of a long stay abroad and the subsequent failure to renew Israeli re-entry visa.⁶¹ Moreover, many Palestinians left the country voluntarily since their non-resident spouses and children have been rejected reunification.⁶²

Since the aim of this paper is not to analyze the political aspect of the Arab-Israeli War but rather to draw the attention of readers to the issue of the status of Palestinians out of the borders of Israel and OPT, it would be fair to mention alternative point of view on the events described above.

⁵⁷ Masalha Nur, "The Politics of Denial, Israel and the Palestinian Refugee Problem", London: Pluto books, 2003, p.203

⁵⁸ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.3

⁵⁹ Report of the Special Representative on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard Implementation of General Assembly Resolution 60/251 of 15 March 2006", A/HRC/4/17, 29 January 2007.

⁶⁰ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, pp.19-27

⁶¹ Ibid, p.24

⁶² Ibid.

According to B. Morris, one of the features of the success story of Israel is that it is the only democracy in the region. Therefore, “It may still lord it over hundreds of thousands of occupied, stateless, and right-less Palestinians in the West Bank. But its close to 5 million Jewish and million or so Arab citizens by and large enjoy the full panoply of civil and human rights enjoyed by citizens of Western democracies”.⁶³

1.3.2. The secondary displacement of Palestinians

Five big waves of refugee movements from Palestine are not the only occasions of forced displacement of Palestinians. This vulnerable group of people faced the secondary displacement in the host countries where they tried to find an asylum. The main reasons for that are political and social shakiness and crisis that leads to the armed conflicts and absence of protection in those countries.⁶⁴ An additional cause is that the right to nationality, identity and travel documents of those who fled from Israel were denied and they became not only refugees but also stateless persons with no state to return to.⁶⁵

The first deportation of Palestinians from the host Arab states happened in the 1950s in Kuwait, Iraq, Libya and Saudi Arabia when Palestinian workers of oil companies organized several strikes protesting against the work conditions which led to their exclusion.⁶⁶

⁶³ Morris, Benny, “Looking Back: A Personal Assessment of the Zionist Experience”, 1998, Tikkun, 13(2):40.

⁶⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.3

⁶⁵ Survey of Palestinian Refugees and Internally Displaced Persons, , Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009 BADIL Resource Center for Palestinian Residency and Refugee Rights, p.30

⁶⁶ Laurie A. Brand, “Palestinians in the Arab World: Institution Building and Search for a State”, New York: Columbia University Press, 1988, pp.126-127

Later, in 1970, after the event known as “Black September”, a large number of Palestinians were forced to leave Jordan. It happened as a part of eviction of resistant movements and the Palestinian Liberation Organization (PLO) from the country.⁶⁷

Relations between the Jordanian government and the PLO were unsatisfactory from the very beginning when the PLO was established in 1964. The organization tried to obtain a dominant role both in the West Bank and Jordan. The situation became particularly difficult after 1964, 2nd of June when Ahmad Shukeiri published his article in which he claimed that the whole territory of Jordan used to be a part of “Great Palestine”.⁶⁸

Despite the tensions in the country, Jordan supported the PLO for a long time, since most of the population of the country consisted of Palestinians. But attempts of the PLO to urge people to rise up against Jordanian King Hussein and hijacking of four planes resulted in expulsion of Palestinians from the country as well as relocation of the PLO to Lebanon.⁶⁹

More than 100,000 Palestinians as well as a large number of Lebanese became refugees as a result of the Civil War in Lebanon between 1976 and 1991.⁷⁰ An even higher number of Palestinians estimated as 400,000 people were expelled from Kuwait during the Gulf War in 1990-1991.⁷¹ That was a “collective punishment” for the PLO` support of Iraq.⁷²

Furthermore, in 1994 Libya forced some 35,000 Palestinians to leave the country as a response to the Oslo peace process which was unsatisfactory for the country. It was mainly

⁶⁷ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.4

⁶⁸ Александр Брасс, “Палестинские истоки” (Терроризм: история и современность), ООО ИД «Русь»-«Олимп», 2004, с.28-29, (Aleksandr Brass, “ Palestinian sources” (Terrorism: history and contemporaneity), ООО ID “Rus”-“Olimp”, 2004, p.28-29)

⁶⁹ Ibid, c.29

⁷⁰ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.18

⁷¹ Ibid.

⁷² Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.31

done by means of denial to renew residency permit or termination of valid ones for Palestinians.⁷³

The most recent occasion of forced displacement of Palestinians took place as an outcome of the US invasion to Iraq. “Palestinian refugees are not only victims of the general violence, but are also persecuted on grounds of nationality”. Several thousand persons left the country.⁷⁴

Forcible displacement of Palestinians continuous till now if one takes into account the recent destruction of camps and villages of Palestinians lightened in MEDIA.⁷⁵ In addition to this, there is a voluntary refugee movement that takes place among Palestinians. “Many Palestinian refugees, mainly young males, have left their homes and families in the first country of refuge in search for better education and employment opportunities elsewhere.”⁷⁶

Today Palestinians are seeking for refuge everywhere. Having found it to be difficult to establish a stable life in Arab countries they started to move to European and other Western countries including the US.⁷⁷ It is very common to see a Palestinian family separated from each other because of the circumstances described above.

“...One of my sons is in Italy. Another in Germany and Majed is now in Dubai.

This is life for Palestinians here. They will be fine.”⁷⁸

⁷³Ibid, p.32

⁷⁴Ibid, p.32-33

⁷⁵ See also Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in The Palestine Yearbook of International Law 2000-2001, Vol.XI, Kluwer Law International, 2000/2001, p. 227-229

⁷⁶ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.4

⁷⁷ Ibid.

⁷⁸ Al-Awda News, 27 January 2004, written by Kamal, a Palestinian refugee in Lebanon, republished in “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.4

Therefore, as a result of different historical events millions of Palestinians either were forced to displace or emigrated voluntarily, and live today all over the World. However, this has not become a successful solution for many of them who continue to face difficulties in host countries. One of the main issues to date is the status of Palestinians and their eligibility to be recognized as refugees in host countries. This is what will be discussed in the following chapters.

Chapter 2.Theoretical framework

The purpose of this thesis is to shed the light on the issue of granting a refugee status for Palestinians residing in European Union. But it is impossible to understand the roots of the legal problem without knowing some essential concepts of International Refugee Law or having some basic information concerning the special international regime for Palestinians. For this reason, in this chapter I will briefly explain some important notions such as “refugee” and “durable solution” for refugees. Moreover, I will try to demonstrate how Palestinians differ from all other refugees in several ways: they have a separate definition; their issue is regulated by the special regime; and it is almost impossible to find one single durable solution for them. Therefore, this chapter will serve as a theoretical framework that is necessary for the understanding of the subsequent chapters.

2.1. The refugee in international law

“The definition of “refugee” appears to be central to any discussion of “refugee rights and realities”, but it is, at the same time, one of the most awkward aspects of such debate.”⁷⁹

There is a difference when the term “refugee” is used in its ordinary sense or within the framework of international law. According to Guy s. Goodwin-Gill, ordinary meaning of the term “refugee” is broader than it is in international law. ”Refugee” in common understanding is someone who escaped from conditions and circumstances he or she could not bear any more. Reasons for the flight can vary from different world catastrophes to mere fear of poverty or death. Which country will become the host state also does not play a role.

⁷⁹ Jerzy Sztucki ,”Who is a refugee? The Convention definition: universal or obsolete?,” in “Refugee Rights and Realities. Evolving International Concepts and Regimes”, edt.by Frances Nicholson and Patrick Twomey, Cambridge University press,1999, p. 55

The main point is that refugee is a person who is seeking protection and help in relation to the circumstances he ran from.⁸⁰

According to the same author, the scope of the term “refugee” in international law is narrower. For instance, “economic refugees” do not fall within the notion “refugee” under international law. The rationale behind this is as follows: the main problem of this group is mostly financial support and development rather than asylum.⁸¹

“The point of departure for interpretation of the refugee definition, in international and many domestic legal systems is the “ordinary” or “plain” meaning of its terms.”⁸² But everything is not as simple as it could seem at first sight. The definition of a refugee has been a topic for controversial discussions and disagreements for centuries. “Several attempts to define the term “refugee” have been made in the course of the twentieth century.”⁸³ Still, even now, there is no one single concept of refugee. One of the reasons for verities of definitions is that the notion can be considered from different aspects.

“A refugee can be defined in three ways: legally (as stipulated in national or international law); politically (as interpreted to political exigencies); and sociologically (as reflecting an empirical reality).”⁸⁴ Each approach dominated in different time periods.⁸⁵ However, for the purposes of this paper we are more interested in legal concept of a refugee.

One of the first attempts to adopt more or less universal refugee definition was done by the League of Nations. According to the League of Nations’ approach those who were outside of the country of their origin and did not enjoy the protection of that state were

⁸⁰ Guy S. Goodwin-Gill, *The Refugee in International Law*, 2nd edition, Clarendon Press, Oxford, 1996, p.3

⁸¹ Ibid.

⁸² Daniel J. Steinbock, “The refugee definition as law: issues of interpretation”, in “Refugee Rights and Realities. Evolving International Concepts and Regimes”, ed. By Frances Nicholson and Patrick Twomey, Cambridge University Press, 1999, p. 15

⁸³ “International Refugee Law”, A Reader, ed. by B.S. Chimni, Sage Publications, 2000, p. 1

⁸⁴ Astri Suhrke, “Global Refugee Movements and Strategies of Response” in “US Immigration and Refugee Policy: Global and Domestic Issues”, ed. M. Kritz, 1983, p. 157-62

⁸⁵ James C. Hathaway, “The Law of Refugee status”, Butterworths, Toronto, 1991, p.2

considered refugees. Person of Russian origin who did not enjoy the protection of USSR government was demonstrated as an example of refugee under that definition in the Arrangement relating to the Issue of Identity Certificates to Russian and Armenian Refugees.⁸⁶ The Arrangement did not specify on a requirement that a person must be abroad in order to be recognized as refugee, although it was clear based on the aims of the Arrangement.⁸⁷ .

The most widely accepted definition of “refugee” today is the one that is contained in the 1951 Refugee Convention (UN Convention Relating to the Status of Refugees, 189 United Nations Treaty Series (UNTS) 137, 28 July 1951).⁸⁸ “The Convention refugee definition is of singular importance because it has been subscribed to by more than one hundred nations in the only refugee accords of global scope. Many nations have also chosen to import this standard into their domestic immigration legislation as the basis upon which asylum and other protection decisions are made.”⁸⁹

In the Convention a refugee is defined as person "owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

A "well founded fear of persecution" is apparently one of the most important parts for the government officials, whereas social scientists would rather point to the termination of

⁸⁶ Arrangement relating to the Issue of Identity Certificates to Russian and Armenian refugees.,12 May, 1926:84 LNTS No. 2204

⁸⁷ Guy S. Goodwin-Gill, *The Refugee in International Law*, 2nd edition, Clarendon Press, Oxford, 1996, p.4

⁸⁸ “International Refugee Law”, A Reader, ed. by B.S.Chimni, Sage Publications, 2000, p.2

⁸⁹ James C. Hathaway, “The Law of Refugee status” , Butterworths, Toronto, 1991, p.v

the ties between the state and a person. Those who cross the border become refugees and those who move within the country are called Internally Displaced People (IDP).⁹⁰

According to S.M. Akram, the Refugee Convention resulted in three main changes in understanding of the notion. First of all, it was the international adoption of an individualized definition. Moreover, it brought about a significant shift from refugees' right to return to principle of *non-refoulement* (non-return). Finally, the Convention started to view not only the State but the whole world community responsible for the issue.⁹¹

Individualized approach to refugee definition was very revolutionary. It has totally changed the understanding of refugees as a group of sufferers who have their problems due to the same particular reason. Now, according to this perspective, refugee is the one who flights from injustice and intolerance toward him or her individually. Refugee is a person who is seeking opportunities to create a new, better life in a state of asylum. This approach has changed the whole determination procedure for asylum-seekers. Now the decision whether the person is a refugee or not is determined based on the individual case. Therefore, there is no group-belonged notion anymore. Moreover, a person cannot be defined as refugee based on solely social and political aspects. The latter criterions must be taken into consideration in conjunction with the individual conditions.⁹²

Initially the new approach was not accepted by many people and, in fact, entailed big debates. The incompatibility of the individualist perspective was mostly argued by the advocates of political concept of refugee. But Western alliance which supported a new

⁹⁰ Jeremy Hein, "Refugees, Immigrants, and the State", Annual Review of Sociology, Vol. 19, 1993, p.44

⁹¹ Susan M. Akram, "Palestinian refugees and their legal status: rights, politics and implications for a just solution", Journal of Palestine Studies, Vol.31, No3, Spring, 2002, p.36

⁹² James C. Hathaway, "The Law of Refugee status", Butterworths, Toronto, 1991, p.5-6

refugee definition appeared to outweigh. Eventually, an individualized approach is the one which is developing in contemporary international refugee law.⁹³

The definition of refugee was further elaborated in the regional instruments. Organization of African Union (OAU) Convention⁹⁴, for example, has partially accepted the definition given in the 1951 Convention, but elaborated and expanded it. The Convention moved away from a strict “well-founded fear of persecution” standard, having added to refugees even those who were compelled to leave the country of their origin or nationality owing to external aggression, occupation, foreign domination or events seriously disturbing public order.⁹⁵ Thus, OAU broadened a refugee notion given in the 1951 Convention. However, the only universally accepted definition of refugee to date is the one stipulated in Article 1A (2) of the 1951 Convention, even though one may find it no more “moral” in compare with the definitions developed in regional instruments.⁹⁶

Besides the 1951 Refugee Convention, the international regime for refugee protection is represented in two more instruments: the 1967 Refugee Protocol⁹⁷ and the Statute of United Nations High Commissioner for Refugees (UNHCR)⁹⁸. Together with national laws of each country these three main documents are considered to be a basis for regulation of refugee problem and defining their status.⁹⁹ It is important to note here that all legal provisions and activities of the UN agencies dealing specifically with Palestinian refugees must be based on these three main instruments¹⁰⁰.

⁹³Ibid, ,p.6

⁹⁴ Convention Governing the Specific aspects of refugee problems in Africa, Addis Ababa, September, 10,1969

⁹⁵ Convention Governing the Specific aspects of refugee problems in Africa, Addis Ababa, September, 10, 1969, Art.1.2

⁹⁶ “International Refugee Law”, A Reader, edit. by B.S.Chimni, Sage Publications, 2000, pp 8-9

⁹⁷ Protocol Relating to the Status of Refugees, 606 UNTS 267,31 January 1967

⁹⁸ Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly (UNGA) Resolution 428 (V), UN General Assembly Official Reports (GAOR), 5th Sess., UN Doc.A/1775, 1950

⁹⁹ Международное частное право, под ред.Н.И Марышева, «WoltersKluwer», 2010,с.146,(International private law, ed.N.I.Marishev,”WoltersKluwer”,2010,p.146)

¹⁰⁰ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, Journal of Palestine Studies, Vol.31,No3, Spring ,2002,p.36

Although it may be obvious, it is also important to mention, that besides particular international mechanisms regulating refugees' status and establishing their rights, most of the other Human Rights instruments also have some provisions applicable to refugees. As an example it is enough to mention only Article 14 of Universal Declaration of Human Rights, Article 12 or 13 of International Covenant on Civil and Political Rights or Article 22 of Convention on the Right so f the Child. In this regard, it is hard to say better than it has already been said:” International Human Rights law has developed with little direct regard for forced migrants, including refugees and other involuntarily displaced, yet it is clear and necessarily relevant, in regard to both causes and solutions.”¹⁰¹

2.2. The Palestinian refugees

“Palestinians are a unique people under the international refugee regime established by the 1951 Convention Relating to the Status of Refugees...and related instruments.”¹⁰² They constitute the only group of people for whom a separate and special analysis is necessary in order to determine their status under the 1951 Refugee Convention. “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 utilized by the United Nations Relief and Works Agency for Palestine Refugees (UNRWA Statute).”¹⁰³

¹⁰¹ Guy S. Goodwin-Gill and Cathleen Newland, Forced Migration and International Law in “Migration and International Legal Norms” T. Alexander Aleinikoff & Vincent Chetail eds., The Hague: T.M.C. Asser 2003, p.127

¹⁰² Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in The Palestine Yearbook of International Law 2000-2001, Vol.XI, Kluwer Law International, 2000/2001, p.190

¹⁰³ Ibid.

Contrary to all other refugees whose protection is covered by United Nations High Commissioner for Refugees (UNHCR) mandate, the issue of most Palestinian refugees is governed by a separate regime. It encompasses two UN agencies established specifically for protection and assistance of Palestinian refugees- the United Nations Conciliation Commission on Palestine (UNCCP) and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). Both UN organizations had already existed when the Refugee Convention was adopted in 1951.¹⁰⁴

2.2.1. Special regime for Palestinians refugees: UNCCP and UNRWA

The process of the establishment of a special regime for Palestinian refugees started with the creation of the UNCCP in 1948.¹⁰⁵ By that year the problem of Palestinian refugees had already been considered by four main organs of the United Nations- the Security Council, the General Assembly, the Trusteeship Council and the Economic and Social Council.¹⁰⁶ “No other political question has ever received such elaborate attention by international organization in so short a space of time.”¹⁰⁷ As a result of discussions, the recommendation given by the United Nation Mediator on Palestine, Count Folke Bernadette, within his report, was reflected in the United Nations General Assembly (UNGA) Resolution 194 (III), paragraph 2, which stipulated the establishment of the UNCCP.¹⁰⁸ The three Members of the organization were Turkey, United States and France.¹⁰⁹

¹⁰⁴ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, *Journal of Palestine Studies*, Vol.31, No3, Spring, 2002, p.38

¹⁰⁵ Ibid

¹⁰⁶ J. C. Hurewitz, “The United Nations Conciliation Commission for Palestine: Establishment and Definition of Functions”, *University of Wisconsin Press, International Organization*, Vol. 7, No. 4, Nov., 1953, p.483

¹⁰⁷ Ibid.

¹⁰⁸ See Progress Report of the United Nations Mediator on Palestine submitted to the Secretary General for Transition to the Members of the United Nations. *United Nations General Assembly Official Records*, third session, Suppl. No.11, UN Doc.A/ 648, 26 September 1948.

¹⁰⁹ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.43

The main purpose for the creation of the UNCCP was to “take steps to assist the Governments and authorities concerned to achieve a final settlement of all questions outstanding between them”¹¹⁰, i.e. to protect Palestinian refugees and to help the governments with finding a durable solution for them. Moreover, “the UNCCP was entrusted with protecting the refugees’ most pressing concerns: repatriation and compensation.”¹¹¹

In spite of very wide range of aims and functions, the Organization concentrated, in reality, merely on political intrusion with Israel and refugees’ right to return.¹¹² The result of this was that the UNGA passed several resolutions that significantly narrowed down the UNCCP’s mandate. By the mid-1950s the authorization was limited to gathering information with regard to property and documentation of Palestinians.¹¹³ The UNCCP continues to function even today; however, the main activity of the Organization is to collect information on Palestinian refugees’ property.¹¹⁴

UNRWA was established a year after the UNCCP, on 18 December 1949, with the aim to complement the UNCCP.¹¹⁵ Originally the Agency had two main duties: to provide relief and create “works program”.¹¹⁶ In contrast to UNCCP, “as the explicit term of mandates suggest, UNRWA’s mission was limited to merely an assistance function.”¹¹⁷

¹¹⁰ G.A.Res.194 (III) (6), U.N. Doc. A/810 at 21 (1948)

¹¹¹ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol.XI, Kluwer Law International, 2000/2001, p. 196

¹¹² David P.Forsythe, “United Nations Peacemaking: The Conciliation Commission for Palestine”, Baltimore: Jones Hopkins University Press, 1972, p.70

¹¹³ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.45

¹¹⁴ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, *Journal of Palestine Studies*, Vol.31, No3, Spring, 2002, p.41-42

¹¹⁵ Assistance to Palestine Refugees, UNGA, A/RES/302(IV), 8 December 1949, para7

¹¹⁶ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, *Journal of Palestine Studies*, Vol.31, No3, spring, 2002, p.38, see also UNGA Res. 302 (IV), GAOR, 4th Sess., UN Doc. A/1251 at 23, 1949

¹¹⁷ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church,

Currently, “The Agency’s services encompass education, health care, relief, camp infrastructure and improvement, community support, microfinance and emergency response, including in times of armed conflict.”¹¹⁸ However, UNRWA’s mandate over Palestinian refugees has a territorial limitation and includes only Lebanon, Syria, Jordan, the West Bank and the Gaza strip. Moreover, originally the Agency was empowered to assist only the 1948-Palestinian refugees. Later the mandate of the Agency was extended and now it comprises also Palestinians displaced during and after 1967 Arab-Israeli war.¹¹⁹

Interestingly enough, initially UNRWA had only a short-term mandate since there was a strong belief that a durable solution to the problem would be found very soon based on the UNGA Resolution 194 (III). Nevertheless, the difficulties with resolving the problem, which exists till now, led to the periodical extension of the mandate by the UN General Assembly. The current extension will last till 30 June 2011.¹²⁰

The main description of the Agency on its official web-site is as follows: “UNRWA provides assistance, protection and advocacy for some 4.7 million registered Palestine refugees in the Middle East.”¹²¹ However, UNRWA lacks explicit protection mandate. Such function as protection of refugees must incorporate the attempts to find a durable solution for them. The main service of the organization though is to provide health care, relief, education, microfinance, and social services rather than to ensure integration or resettlement of Palestinians.¹²² Concerning these substantially and geographically limited protection

Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol. XI, Kluwer Law International, 2000/2001, p. 196

¹¹⁸ See at www.unrwa.org –official site of UNRWA

¹¹⁹ *Survey of Palestinian Refugees and Internally Displaced Persons*, Edit Ingrid Jaradat Gassner, Vol. VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.119

¹²⁰ Ibid, see also at www.unrwa.org

¹²¹ See at www.unrwa.org

¹²² *Survey of Palestinian Refugees and Internally Displaced Persons*, Edit Ingrid Jaradat Gassner, Vol. VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.119

activities of the Agency, it is correct to say that “the only means at the disposal of [UNRWA] is...to report, to warn, and to make representations to authorities responsible.”¹²³

It is important to make it clear, that despite the belief of many powerful Western states, some scholars and politicians, that UNRWA’s economic development programs were aimed to entail gradual integration of refugees into Arab states communities which could be a possible solution for them, the Agency had never been mandated to find a durable solution.¹²⁴ That was left to the “parties of the conflict and other political actors”¹²⁵ The Agency itself believes that it’s part with regard to a durable solution is “to highlight the urgent need for that solution and to help ensure that in its elaboration the rights and interests of the refugees are safeguarded.”¹²⁶

2.2.2. The definition of Palestinian refugee

UNRWA has developed its own operational definition of Palestinian refugees. According to the Agency’s definition Palestinian refugees are people whose normal residence was in Palestine between 1 June 1946 and 15 May 1948 and who lost their homes and means of livelihood as a result of the 1948 war.¹²⁷ As it was already mentioned, Palestinians displaced as a result of 1967 Arab- Israeli war are also assisted by UNRWA. To date, individuals, who were never-before registered, may register with the Agency if they fall within the definition given above.¹²⁸

¹²³ UNRWA, “Report of the Commission General of the UNRWA, GA Official Records A/38/13 (Supp), 30 June 1983, para.7

¹²⁴ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol. VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.120

¹²⁵ URWA and UNHCR, “The UN and Palestinian Refugees”, January 2007, p.5

¹²⁶ UNRWA, “What Protection means for UNRWA in Concept and Practice” (Consultant’s Report), 31 March 2008.

¹²⁷ UNRWA Consolidated Eligibility and Registration Instructions, January 2002, para3.11, See also at www.unrwa.org

¹²⁸ Cervenak C. M., "Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status", 16 Human Rights Quarterly 300, 1994, p.313

“Although this is not explained in the instruction, the phrase whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948' at present refers to former 'mandate citizenship'.”¹²⁹ Initially, the requirement of two years of residency was also included in the definition in order to avoid the registration of non-Palestinians with the UNRWA. However, today a confirmation of former mandate citizenship is enough to establish a refugee status.¹³⁰

Concerning the phrase “who lost both home and means of livelihood” used in the definition, it is significant to note that “the 'economic refugees', who had lost their means of livelihood, but had not become refugees in the proper sense of the word as they never fled their homes, have been excluded from registration with UNRWA, although a significant number of such persons had been registered by the agency's predecessors.”¹³¹

The interpretation of the phrase “as a result of the 1948 conflict” is also very interesting. According to the wording of the definition, emigrants and those who left Palestine in order to live in another state earlier than 1948 conflict are not regarded as Palestinian refugees. Nonetheless, it is possible to have a situation when a person had left Palestine with the aim to study, work or any other purpose, prior to 1948, but was unable to return namely because of the conflict. In this case a person becomes a refugee “sur place”.¹³²

The descendants of Palestinian refugees are also eligible to be registered with UNRWA.¹³³ Moreover, descendants of fathers registered with UNRWA as “Gaza Poor” in Gaza, “Jerusalem Poor” in the West Bank, “Frontier Villagers” in the West Bank and in Jordan are also eligible for registration.¹³⁴ Interesting fact is that the children born to women

¹²⁹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.78

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid, p.78-79

¹³³ UNRWA Consolidated Eligibility and Registration Instructions, January 2002, para4.2.3

¹³⁴ Ibid, para4.2.4

who fulfill the conditions of Palestinian refugee but who are married to husbands who do not fulfill these conditions are not eligible for registration.¹³⁵ “On the other hand, registered men who marry non-registered women are entitled to register their children.”¹³⁶ This is an obvious gender-based discrimination, the origin and outcomes of which were discussed by Cervenak in her Article.¹³⁷

As it becomes clear, the definition of Palestinian refugee elaborated by UNRWA is not ideal:

*The UNRWA definition of a ' Palestine refugee' was developed to meet a condition, not to satisfy a theory. ... It should ...be stressed that the refugee concept, embodied in the UNRWA definition, does not necessarily coincide with the one generally employed in the context of international refugee law.*¹³⁸

It also worth to emphasize that all UNRWA- registered refugees, as it was already mentioned, are beneficiaries of basic humanitarian help: clothes, shelter and food. “The narrow assistance provided by UNRWA contrasts markedly with the protection provided under the UNHCR Statute and the 1951 Refugee Convention.”¹³⁹ Contrary to those who fall within the protection-related definition of refugees given in the 1951 Refugee Convention,

¹³⁵ Ibid, para4.2.6

¹³⁶ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.80

¹³⁷ Cervenak C. M., "Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status", 16 Human Rights Quarterly 300,1994

¹³⁸ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.83

¹³⁹ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia,1999, in The Palestine Yearbook of International Law 2000-2001, Vol.XI, Kluwer Law International, 2000/2001, p. 193

UNRWA- assisted refugees are not guaranteed most of the human rights and liberties enunciated in the Convention.¹⁴⁰

Therefore, Palestinian refugees have become in a way distinct from all other refugees. First of all, they are assisted by special UN organizations and mandate of United Nations High Commissioner for Refugees (UNHCR) serves for them as an alternative which is possible only when the assistance of UNCCP or UNRWA ceases¹⁴¹. Secondary, while the international status of all other refugees is defined in Article 1A of the 1951 Refugee Convention, Palestinian refugees fall within Article 1D, interpretation of which became crucial for them and will be discussed in the subsequent chapters.¹⁴² Moreover, the issue of Palestinians is so complicated that it seems to be unfeasible to find one single durable solutions for the whole group.

2.3. A Durable Solution for refugees

UNRWA recognizes that only “a just and durable solution is the key to the enjoyment of national protection and the realization of other rights.”¹⁴³ Between 1959 and 2000 the UNHCR adopted more than fifty resolutions encouraging the states to find a “durable solution” for the refugee situation.¹⁴⁴ The reason for this is that “international protection of refugees is never an aim in itself; the ultimate objective should always be to achieve durable solution restoring the refugee` s access to the protection of a state”¹⁴⁵. Moreover, a growing impatience of the States with regard to their obligation to merely

¹⁴⁰ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, *Journal of Palestine Studies*, Vol.31, No3, spring, 2002, p.39

¹⁴¹ Article 1D of United Nations Convention Relating to the Status of Refugees, 1951.

¹⁴² “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.42

¹⁴³ UNRWA, “What Protection means for UNRWA in Concept and Practice” (Consultant`s Report), 31 March 2008

¹⁴⁴ J. C. Hathaway, “The Rights of Refugees under International Law”, Cambridge University Press, 2005, p.913

¹⁴⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.319

respect refugees' rights leads usually to the consequence that the finding of so-called "durable solution" becomes of particular importance for them.

There are three possible solutions for any refugee: 1.voluntary repatriation 2.settlement in a host country or 3.resettlement in a third country. Each of the listed durable solutions requires an integration of a refugee- either reintegration into the community he/she fled from or integration in a new society. The international protection comes to an end when the refugee gets a permanent status of citizen or legal alien in the country he/she has chosen.¹⁴⁶

2.3.1. Return as a durable solution

When the refugee opts for the first possible solution and returns home, he/she simply exercises every human being's right to return.¹⁴⁷ The return should only be a personal choice of a refugee, although, unfortunately, this is not always a case.¹⁴⁸

It is important to see the difference between a return and repatriation. When refugee opts for the first alternative solution and returns, it does not necessary mean that the risk in the country of origin does not exist anymore. On the other hand, "repatriation" is not a term equal to a mere "return". The former refers, in addition to simple return, to an establishment of peace, rebuilding of economy and political settlement in a country where the person goes back.¹⁴⁹ In this sense, it was correctly mentioned in literature that "In many situations, "repatriation" is a wrong term, because there has been no restoration

¹⁴⁶ Barry N. Stein, The Nature of the Refugee problem in "Human Rights and the Protection of Refugees under international Law" edit. by Alan E. Nash, raport. John P. Humphrey, The Institute for Research in Public Policy, 1998,p.50

¹⁴⁷ Art.12 (4) of International Covenant on Civil and Political Rights, UNGA Resolution 2200A (XXI), adopted Dec.16 1966, entered into force Mar.23 1976.

¹⁴⁸ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.320-321

¹⁴⁹ Ibid, p.322

of the bond between citizen and fatherland. “Return” is a better term because it relates to the fact of going home without judging its content.”^{150 151}

Return to a motherland “in safety and dignity” is the best solution for most refugees¹⁵², as well as resettlement in a third country is potentially the most troublesome and disturbing one. Obviously, it is always easier to go back to the community when you already know its culture, language and tradition rather than to go through the painful process of assimilation or integration in a new one.¹⁵³ That is why great efforts of international community today are concentrated on verification and elimination of the roots of the persecution that leads to a well-founded fear of refugees and their subsequent flight. The removal of the reasons for a well-founded fear makes it possible for refugees to return home in safety. But there are some cases when such a removal (and, consequently a return of refugees) is not possible (at least temporary) due to objective circumstances. In such a situation integration to the host country becomes the second preferred solution. The best example of such a case could be the situation of Palestinian refugees.¹⁵⁴

Palestinian refugees, once again, constitute a group which is exceptional for “international refugee regime”.¹⁵⁵ Contrary to the most of the refugees who are usually, in fact, *able* to return but unwilling to do that due to a well- founded fear of persecution, Palestinians are mostly *unable* to go back to the country of their habitual residence as a

¹⁵⁰ B. Stein, “Policy Challenges Regarding Repatriation in the 1990s: Is 1992 a Year for Voluntary Repatriation?”, Paper presented at the Conference on Global Refugee Policy: An Agenda for the 1990s, At the Aspen Institute, February 1992, p. 2.

¹⁵¹ J. C. Hathaway, “The Rights of Refugees under International Law”, Cambridge University Press, 2005, p.918

¹⁵² Goodwin-Gill G.S., “International Law and the Movement of Persons between States”, Oxford, Clarendon Press, 1978, p.270

¹⁵³ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.320

¹⁵⁴ Robert Illingworth, “Durable Solutions: Refugee Status determination and the Framework of International Protection”, in “Refugees Convention 50 years on: globalization and international law”, edit. by Susan Kneebone, Ashgate, 2003, p.92

¹⁵⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.319

result of political situation. This significant fact must be always considered by the state authorities during the procedure for determination of the status of Palestinians.¹⁵⁶

Therefore, even though the right to return of Palestinian refugees as well as all other refugees was internationally recognized, they cannot exercise it because of the absence of peace in particular area.¹⁵⁷ Consequently, in most cases the first preferable solution for a refugee problem cannot be currently applied to Palestinian refugee.

2.3.2. Settlement and resettlement of a refugee in host countries

The second best solution, as it was already mentioned, is a settlement in a country of first refuge. There is a logical reason for this conclusion: the countries of first refuge are usually geographically closest to refugee's motherland (since the refugees could not escape too far) and share similar culture, religion, economic and political conditions with it.¹⁵⁸

In many cases the neighbor states allow the refugees to stay on their territory for an indefinite period, although there is no such a duty in international law.¹⁵⁹ Furthermore, sometimes states try to develop a program for an integration of refugees into their community. This usually entails naturalization or, at least, a grant of lawful permanent resident status and recognition of the rights of refugees.¹⁶⁰ Unfortunately, there are well known negative exceptions from this rule.

For Palestinian refugees Arab States, such as Lebanon, Jordan, Syria and Egypt, are among the main countries of the first refuge. Obviously, there are thousands of

¹⁵⁶ Ibid, p.59

¹⁵⁷ Ibid, p.326

¹⁵⁸ Forbes S. Martin, "Refugee Women", London, Zed Books Ltd., 1992, p.64

¹⁵⁹ Goodwin-Gill G.S, "The Refugee in International Law", Oxford, Clarendon Press, 1983, 222

¹⁶⁰ Ibid.

Palestinians in Europe, USA and even as far as in Brazil and Indonesia but mainly they are hosted by neighboring countries.¹⁶¹

Evidently, the host states' s grant of resident status and recognition of rights of a refugee is necessary for a successful local integration. Absence of those conditions and ignorance of refugees' rights lead to the situation when a refugee is unprotected in a host state. Therefore, "the security of individual is locked into an unbreakable paradox in which it is partly dependent on, and partly threatened by, the state."¹⁶² Some authors, including Hannah Arendt, see a state as a "major problem" for refugees, others, and Howard Adelman is among them, tend to consider state as "a major solution"¹⁶³. Both of the positions are correct depending on the situation of refugees in the country. In case of Palestinian refugees Arab states, as time has proved, are indeed not the major solution for them.

The process of integration arises usually a big contradiction between state interests and refugee rights. It is difficult to say better than Sir Guy Goodwin-Gill did it in his classic work:

The Refugee in International Law occupies a legal space characterized, on the one hand, by the principle of State sovereignty and the related principles of territorial supremacy and self-preservation; and, on the other hand, by competing

¹⁶¹ Andrzej Bolesta, "Socio- Economic Conditions of Palestinian Refugees in Jordan, Syria and Lebanon", Tiger Working Paper Series No.35, Warsaw, December 2002, p.3

¹⁶² Barry Buzan, "People, States and Fear" ,2nd edn, Harvester Wheatcheaf, London, ,199, pp.363-364

¹⁶³ Daniel Warner, "The refugee State and state protection, in "Refugee Rights and Realities. Evolving International Concepts and Regimes", ed.by Frances Nicholson and Patrick Twomey, Cambridge University press,1999, p.253

*humanitarian principles deriving from general international law...and from treaty.*¹⁶⁴

“The difficulty of lawyers and the practitioners is to locate the refugee in terms of some state or within some regime generated by general international law or treaty that is based on state compliance.” They try to include refugees in some regime in order to protect them, to find a solution for their problem.¹⁶⁵

Most countries today offer refugees a temporary protection instead of a durable solution, especially in case of mass influx. There are different types of temporary asylum: from the detention centers to the ordinary refugee camps. Clearly, all of them, by their very nature, suggest only provisional, short- or long- term shelter, without giving an opportunity to integrate into community. In these cases states of asylum are usually convinced that one day refugees will either return or move further to the third country.¹⁶⁶

Temporary protection is not the best solution for refugees. It leads to a state of uncertainty and “leaves refugees in long-term limbo”¹⁶⁷. When the protection is temporary the host states are usually not concerned by many of civil and socio-economic rights of refugees; education and employment are lacking. A denial of lawful status and basic civil rights of a refugee means not only non-recognition of birth, death and marriage, but also a lack of stability and confidence which are necessary in order to build a new life. Sometimes it can last for years or even decades.¹⁶⁸

¹⁶⁴ Guy Goodwin-Gill, *The Refugee in International Law*, 2nd edn, Clarendon Press, Oxford, 1996, p.v

¹⁶⁵ Daniel Warner, *The refugee State and state protection*, “Refugee Rights and Realities. Evolving International Concepts and Regimes”, ed. by Frances Nicholson and Patrick Twomey, Cambridge University press, 1999, p.262-263

¹⁶⁶ Barry N. Stein, *The Nature of the Refugee problem* in “Human Rights and the Protection of Refugees under international Law” edit. by Alan E. Nash, raport. John P. Humphrey, The Institute for Research in Public Policy, 1998, p.50-51

¹⁶⁷ Ibid, p.51

¹⁶⁸ Ibid.

However, there are many situations when outstanding authors and lawyers propose temporary protection as the best solution.¹⁶⁹ There are several reasons for that: it may be difficult for the community to absorb refugees if the number of them is big; a big group of naturalized refugees may pose a risk for the autonomy of the state; good conditions in the state may attract more refugees; and so on. The main concern of those who support temporary protection with regard to Palestinians, in my opinion, based on the assumption that permanent settlement of refugees may question their future return.

The current situation in the Middle East, however, leaves a lot to be desired and makes a settlement of Palestinians hardly possible. "...Most countries in the Middle East where large concentrations of Palestinian refugees reside are not bound by the Convention and/or the Protocol."¹⁷⁰ Moreover, "Palestinians' status as *ipso facto* refugees is understood by the lack of permanent status and lack of protection by third states in which they have found temporary refuge."¹⁷¹

The Arab States, "with the possible exception of Jordan", do not recognize many of civil and socio-economic rights of Palestinian refugees; most of the benefits that refugees have there are granted them as *privileges*.¹⁷² The latter, contrary to the recognized rights and liberties, can be easily revoked by wish of rulers anytime.¹⁷³ Moreover, most Palestinians do not have a permanent legal status in Arab states and, even more, their position often changes according to the policy and situation in the country.¹⁷⁴

¹⁶⁹ See, for example, Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003.

¹⁷⁰ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p. 89

¹⁷¹ Susan M. Akram and Guy Goodwin-Gill, "Brief Amicus Curiae" submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in The Palestine Yearbook of International Law 2000-2001, Vol. XI, Kluwer Law International, 2000/2001, p. 226

¹⁷² Susan M. Akram, "Palestinian refugees and their legal status: rights, politics and implications for a just solution," Journal of Palestine Studies, Vol. 31, No. 3, Spring, 2002, p. 44

¹⁷³ Ibid.

¹⁷⁴ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p. 149-169

As a result, although some scholars, including M. Efrat¹⁷⁵, believed that Palestinian refugees' issue will slowly but surely disappear in host countries, and, furthermore, others, such as H. Adelman argued that the original aim of UNRWA¹⁷⁶ was, in fact, to create conditions for integration of Palestinians into communities, the obvious state of affairs today demonstrates that the integration did not take place.¹⁷⁷

Therefore, the problem of Palestinian refugees is a very complicated one. On the one hand, their return today is an impossible solution for the majority of Palestinians due to political circumstances. On the other hand, in the host Arab states Palestinians enjoy a simple day-to-day protection and their settlement in these countries has become an unfeasible solution for most Palestinians.¹⁷⁸

It becomes more and more clear that the situation with Palestinian refugees is not typical, and usual solutions seem to be unsuitable for it. Professor of Michigan State University, Barry N. Stein, emphasizes the difficulty in finding a durable solution for Palestinian refugees and name it a "semi-permanent" part of problem.¹⁷⁹ But this is not the only case in the World. "What, for example, will happen to the displaced Muslims and Croats in Bosnia, whose lands and homes have been occupied by Serbs, or the ethnic Azeris from Nagorno- Karabakh, whose territory remains under Armenian

¹⁷⁵ M. Efrat, "Palestinian Refugees: The dynamics of Economic Integration in Their Host Countries", Paper delivered at the Center for International Relations, University of California, Los Angeles, Conference on Middle East Multilateral Talks, 5-8 June, 1993

¹⁷⁶ The United Nations Relief and Works Agency for Palestine Refugees in the Near East

¹⁷⁷ See H. Adelman, "Palestinian Refugees, Economic integration and durable solution" in "Refugees in the Age of total war", ed. Anna C. Bramwell, Unwin Hyman Ltd. for the Refugee Studies Programme, University of Oxford, 1998

¹⁷⁸ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p.14-15

¹⁷⁹ Barry N. Stein, "The Nature of the Refugee problem" in "Human Rights and the Protection of Refugees under international Law" edit. by Alan E. Nash, raport. John P. Humphrey, The Institute for Research in Public Policy, 1998, p.50

occupation?”¹⁸⁰ The complex nature of all of these cases is exceptional and demands, according to L. Takkenberg, a *combined* solution.¹⁸¹

The combined solution mentioned by Takkenberg is based on an individualized approach toward a refugee. It suggests an application of all three durable solutions to the particular group of refugees depending on the case of each person, instead of focusing on one solution for the whole group. Therefore, although a return and settlement in the countries of first refuge are the most preferable solutions for a refugee, “resettlement in third countries which have capacity and willingness to take in the refugee”¹⁸² should not be excluded from the list of possibilities.

Many Palestinians today try to find a refuge in Europe. The problem with it is even bigger than a non-integration of the refugees into society based on the policy of the countries. Although most of those European states basically have an ability to provide protection, they are not very enthusiastic with granting refugee status to Palestinians. In many cases Palestinians are simply not recognized as refugees. The fact of the matter is that in many European countries Palestinians must go through the long refugee recognition procedure together with all other candidates which is-as I will argue further in this thesis-a result of misinterpretation of Article 1D of the 1951 Refugee Convention.

To sum up, the case of Palestinian refugees is exceptional. The reason for such a conclusion is not only that they are defined and regulated separately, but also that their issue needs a combined solution, including the possibility for some of them to integrate into European society. The first step for such integration is to be recognized as a refugee

¹⁸⁰ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.326

¹⁸¹ Ibid, p.327

¹⁸² H. Adelman, “Palestinian Refugees, Economic integration and durable solution” in “Refugees in the Age of total war”, ed. Amma C. Bramwell, Unwin Hyman Ltd. for the Refugee Studies Programme, University of Oxford, 1998, p.295

and beneficiary of the 1951 Refugee Convention. In the subsequent chapters I will try to prove that in accordance with the wording of Article 1D, in case if a Palestinian who is eligible to UNRWA assistance resides in European country lawfully, he/she must be recognized as a refugee and beneficiary of the Convention automatically.

Chapter 3. The Legal framework for the status of Palestinian refugees in international law

As it was already mentioned, the issue of Palestinian refugees is regulated by special regime. This fact makes them different from all other refugees protected by international refugee law system. Although, the main purpose for such a separation was to ensure higher protection of Palestinians by international community, the set of special norms existing for them nowadays leads, to the contrary, to “the lack of both their national and international protection.”¹⁸³

Many scholars and practitioners today are referring to the term “protection gap” when talking about the problem of Palestinian refugees.¹⁸⁴ This issue has to do with different inconsistencies and misunderstandings both in policy of the states and in law. For the best understanding of some grounds and consequences of this “protection gap” one should start the analysis from the basis of the whole system, i.e. the main international instrument related to refugees-The 1951 Refugee Convention.¹⁸⁵

The universally-accepted definition of “refugee” is given in Article 1A (2) of the 1951 Refugee Convention.¹⁸⁶

...the term “refugee” shall apply to any person who... [As a result of events occurring before 1 January 1951 and] owing to well-founded

¹⁸³ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p. 11

¹⁸⁴ See, for example, Randa Farah “The Marginalization of Palestinian Refugees” or Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, Journal of Palestine Studies, Vol.31, No3, Spring, 2002

¹⁸⁵ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html> [accessed 21 October 2010]

¹⁸⁶ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p. 11

*fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*¹⁸⁷

Everyone who falls within this definition, i.e. meets all the criteria set in the provision, may enjoy full range of rights enunciated in the Convention.¹⁸⁸ Some of those specific rights which are necessary for a refugee today are: recognition of the law of personal status (article 12); the provision of administrative assistance (article 25); the issue of identity papers (article 27); the issue of travel documents (article 28); the grant of permission to transfer assets (article 30); exemption from penalties in respect of illegal entry or presence (article 31); limitations on the liability to expulsion (article 32); 4 and the facilitation of naturalization (article 34).¹⁸⁹ Moreover, the Convention clarifies the duties of the State parties with regard to recognized refugees (including the obligation not to expel the person, in accordance with the principle of *non-refoulement*¹⁹⁰), and establishes the rule of minimum standards of their treatment. The latter refers to the treatment of refugees no less than equal to the general regime established for aliens.¹⁹¹

¹⁸⁷ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Art. 1A (2)

¹⁸⁸ This is true under the condition that Article 1C, 1E and 1F of the Convention are not applicable.

¹⁸⁹ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.86-87

¹⁹⁰ Article 33 of the 1951 Refugee Convention : "*No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*"

¹⁹¹ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.86-87

It is important to mention that there are some conditions stipulated in Article 1C when the Convention ceases to apply.¹⁹² Moreover, there are several categories of persons who are not covered by the Convention. Those groups of people are named in so-called exclusion clauses- Article 1E and 1F of the Convention. According to these provisions, persons who are deemed not to be in need and those who do not deserve the protection are deprived of international protection.¹⁹³

In addition, there is one more group of people to whom the Convention “shall not apply.” This special category of refugees is mentioned in widely discussed Article 1D of the Convention. “Article 1D applies only to Palestinian refugees.”¹⁹⁴ The provision explicitly excludes from the benefits of the Convention the refugees who are protected or assisted by special UN organs or agencies. For this reason the Article (together with Articles 1E and 1F of the Convention) is usually called an “exclusion clause”, although many researchers and academics would disagree with this.

Many scholars believe that the drafters of the Convention had intent to exclude Palestinians from the list of beneficiaries of the Convention only temporary, until the solution

¹⁹² Article 1C of the 1951 Refugee Convention: “*This Convention shall cease to apply to any person falling under the terms of section A if: (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily re-acquired it, or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.*”

¹⁹³ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.93

¹⁹⁴ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law* 2000-2001, Vol. XI, Kluwer Law International, 2000/2001, p. 191

for their problem would be found.¹⁹⁵ It is significant to understand that the idea was not to exclude from the international protection regime, but rather to “establish a separate and special protection regime for them” “because their case was deemed unique and of...particular concern.”¹⁹⁶ To the opinion of those authors, the second sentence of Article 1D was added actually with the aim to avoid any potential misinterpretation.¹⁹⁷ Taking it all into account, Grahl-Madsen offers to consider Article 1D not an “exclusion clause” but rather a “suspensive clause.”¹⁹⁸ Susan M. Akram, on the other side, offers to identify it as “a contingent inclusion clause”¹⁹⁹

Since the first sentence of Article 1D excludes particular group of refugees from the international instrument and the second sentence-as I will argue-it in this thesis, sets the condition for their inclusion, I, personally, will agree with the suggestion given in BADIL’s Handbook to name the article an “exclusion-inclusion clause”²⁰⁰. The last term will be used further for the purpose of this thesis.

Whatever the name of the Article 1D may be, in any case it is crystal clear that Article 1D of the Convention was drafted for and is exclusively applicable to Palestinians.²⁰¹ For the better understanding of the purpose, objects and meaning of the Article, in this chapter, I will look at the language, ordinary meaning, and drafting history of the provision. The following

¹⁹⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.93

¹⁹⁶ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, *Journal of Palestine Studies*, Vol.31, No3, Spring, 2002, p.40

¹⁹⁷ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.93

¹⁹⁸ Grahl-Madsen A., “The Status of Refugees in International Law”, vol. i, *Refugee Character*, Leyden, Sijthoff, 1966, p.263

¹⁹⁹ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, *Journal of Palestine Studies*, Vol.31, No3, spring, 2002, p.39

²⁰⁰ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005

²⁰¹ Susan M. Akram and Terry Rempel, *Temporary Protection for Palestinian Refugees: A Proposal*, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p.12

two chapters will be dedicated to the issue of interpretation and implementation of the stipulation.

3.1. Article 1D of the 1951 Convention Relating to the Status of Refugees

Article 1D is comprised of two sentences. English:

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.

When such protection or assistance has ceased for any reason without the position of such persons being definitively settled in accordance with the relevant resolution adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

French:

Cette Convention ne sera pas applicable aux personnes qui bénéficient actuellement d'une protection ou d'une assistance de la part d'un organisme ou d'une institution des Nations Unies autre que le Haut Commissariat des Nations Unies pour les réfugiés.

Lorsque cette protection ou cette assistance aura cessé pour une raison quelconque, sans que le sort de ces personnes ait été définitivement réglé, conformément aux résolutions y relatives

*adoptées par l'Assemblée générale des Nations Unies, ces personnes
bénéficieront de plein droit du régime de cette Convention.*

Paragraph 1 of the Final Act of the United Nations Conference of Plenipotentiaries on Status of the Refugees and Stateless persons enunciates that both English and French versions of the provision are authentic. Therefore, according to Article 33(1) of Vienna Convention on the Law of Treaties²⁰², the text must be similarly respected in both languages:²⁰³

Obviously, UNCCP and UNRWA- the UN organs that were established specifically with the aim to assist and protect Palestinian refugees, as it was shown in the previous chapter- are those “other” UN agencies mentioned in this provision. Therefore, it is of crucial importance to understand that Palestinian refugees are excluded from the individualized definition of refugee given in Article 1A (2) and fall within the meaning of Article 1D. The same logic is stipulated in Paragraph 7c of UNHCR` Statute which states that “the competence of the High Commissioner...shall not extend to a person who continuous to receive from other organs or agencies of the United Nations protection or assistance.”²⁰⁴

At the time when the Convention and the Statute were adopted Palestinians had already have a distinct regime of international protection and assistance.²⁰⁵ The separate regime for them was the result of concerns of Arab states. They believed that the unique

²⁰² Vienna Convention on Law of Treaties, 22 May, 1969

²⁰³ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 76

²⁰⁴ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, Journal of Palestine Studies, Vol.31, No3, spring, 2002, p.39. See also Summary Record of the 29th Meeting at 6, 19 July 1951, UN Doc. A/CONF.2/SR.29; Lex Takkenberg and Christopher L.Tahbaz, “The collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees”, vol.3, Amsterdam: Dutch Refugee Council under the auspices of the European Legal Network on Asylum, 1990, p.489

²⁰⁵ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI,2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p. 104

situation of Palestinians “should not be subsumed and lost in the more general regime then being set up for refugees.”²⁰⁶

However, for a long time the provision mentioned above was interpreted as meaning only one thing—that Palestinians cannot enjoy full range of rights and protection under the 1951 Refugee Convention. Moreover, since it was also understood to mean that the UNHCR has no protection mandate in UNRWA area, the erroneous conclusion was that the UNHCR has a very limited protection mandate even over the Palestinians who lived outside of UNRWA zone.²⁰⁷

Nevertheless, the interpretation of Article 1D given above can significantly compromise the main intent of the drafters and the whole purpose of inclusion of the provision in the Convention. “That exclusion was not the intent of the UN delegates should be obvious from the second sentence of Article 1D...”²⁰⁸ The drafters truly believed that the problem would be resolved in accordance with paragraph 11 of UNGA Resolution 194(III), namely by means of repatriation and compensation and, therefore, there would be no need for further protection under the Convention. At the same time they predicted possible failure of the plan and added the second paragraph to the Article.²⁰⁹

To put it shorter,

*None of the participants in the drafting sessions then taking place
would likely have predicted that, over 50 years later, Palestinians*

²⁰⁶ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. vi

²⁰⁷ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, Journal of Palestine Studies, Vol.31, No3, spring, 2002, p.39

²⁰⁸ Ibid.

²⁰⁹ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.vii

*would still be without a solution, or that their entitlement to protection would continue to be disputed or a Handbook [meaning the one published by BADIL-added by the author]...would need to be published.*²¹⁰

There is no doubt that unsuccessfulness in finding the political solution and absence of Palestinian state are among the main reasons for the problem. But the issue of legal status and “protection gap” with regard to Palestinians exist also due to discrepancy in understanding, obscure academic reading and misinterpretation of the text of Convention.²¹¹

According to the general rule of interpretation, “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 the light of its object and purpose.”²¹² Concerning the legal provision on the status of Palestinians in international law, “indeed, a review of state practice today does not necessarily leave one with full confidence in the “good faith” interpretation and implementation of international obligations.”²¹³

For the situations as the one described above, when the real meaning of the provision is vague and ambiguous and can be misinterpreted, Vienna Convention on the Law of Treaties specifies supplementary methods of interpretation:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the

²¹⁰Ibid, p.vi

²¹¹ Ibid, p.vi

²¹² Article 31.1 of Vienna Convention on the Law of Treaties, 22 May, 1969

²¹³ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.vi

application of Article 31, or to determine the meaning when the interpretation according to Article 31:

- a) Leaves the meaning ambiguous or obscure or;*
- b) Leads to a result which is manifestly absurd or unreasonable²¹⁴*

Since there are different controversial readings of Article 1D both in academic literature and in case law, supplementary method of interpretation of this provision is necessary. For this reason before starting to discuss some alternative understandings of the Article, I will first briefly remind it's drafting history.

3.2. The Travaux Préparatoires of Article 1D

The history of the 1951 Refugee Convention started from the initiative of drawing up the draft of the Convention taken by the UN General Assembly in February of 1946, and the referral of the issue to the Economic and Social Council of the United Nations (ECOSOC).²¹⁵ The main recommendation given to ECOSOC was “to encourage and assist in every way possible” repatriation of displaced people.²¹⁶

Throughout the entire preparation period the drafters talked about Palestinian refugees on three occasions. Those were: the meeting of *Ad hoc* Committee on Statelessness and Related Problems, General Assembly's Third Committee meetings and final Conference of Plenipotentiaries.

²¹⁴ Article 32 of Vienna Convention on the Law of Treaties, 22 May, 1969

²¹⁵ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.77

²¹⁶ General Assembly Resolution 8(1) adopted during 13th Plenary meeting, 12 February 1946, para. c(iii); UN Doc A/64, p12. Published in Lex Takkenberg and Christopher C. Tahbaz, “The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees”, Amsterdam: Dutch Refugee Council under the auspices of the European Legal Network on Asylum, 1990

Speaking of the 1951 Refugee Convention, one should keep in mind that initially the term “refugee” used in this international instrument covered only certain, very limited categories of people. This may seem unbelievable, especially for the reason that today we consider Convention’s universal definition of “refugee” as one of the main achievements in the refugee law after the World War II. However, this is the fact.²¹⁷

First of all, the phrase “as a result of events occurring before 1 January 1951”, stated in the beginning of Article 1 A (2) as one of the criteria necessary for being recognized as refugee, clearly placed some time limitations. These boundaries were removed later by means of the Protocol Relating to the Status of Refugees in 1967.²¹⁸ Furthermore, some states wanted to limit the notion of refugee to only European Refugees from World War II, i.e. to the “victims of the Nazi regime in Germany or the Falangist regime in Spain and statutory refugees.”²¹⁹ The definition with such a territorial restriction was actually adopted by the Ad Hoc Committee in its final draft, although it was not reflected in the Convention itself.²²⁰ The compromise was found later in Article 1B of the Convention.²²¹

Therefore, the definition of a refugee was one of the main discussion topics during the meetings of the Ad Hoc Committee in January and February of 1950 at Lake Success in New York. The delegates from France and the United Kingdom together with other states’ representative supported a broad definition of a refugee (the one that includes not only European refugees), while the United States’ diplomat, Mr. Henkin, was for the

²¹⁷ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p. 54-55

²¹⁸ Ibid, p. 56

²¹⁹ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.78

²²⁰ Report of the first Ad Hoc Committee on Statelessness and related problems, UN Doc.E/1618 and Corr.1, 17 February 1950, Articles 1A (1)-1A(3)

²²¹ Art. 1 B (1):“For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.”

categorization of refugees as it was done in the Constitution of International Refugee Organization (IRO).²²²

In fact, Mr. Henkin was the person who explicitly proposed to single Palestinian refugees out of the Convention protection for the sake of legal certainty:

*Too vague definition...would not be sufficient...any unduly inexact definition would be likely to lead subsequently to disagreement between the governments concerned...The United States Government, therefore, did not consider that certain group should be included within the framework of the convention, such as approximately 600,000 Arab refugees for whom the United Nations had made special arrangements, nor the very numerous Kashmiri and Indian refugees.*²²³

The reason for such a position of the US was that by the drafting time, as it was mentioned above, a special regime for Palestinians had already existed and was realizing by UNRWA and UNCCP. So, the delegates believed that there was no need for mentioning Palestinians in the generally applied Convention. However, in any case, “the issue was not discussed further at this point.”²²⁴ The Committee accepted the narrow definition offered by the US and included it in the report to the ECOSOC.²²⁵

After considering the Report of Ad Hoc Committee, the ECOSOC decided to continue the work on revision of the draft in order to come up with the final version which would be

²²²Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p. 58, see also IRO Constitution annexed to UNGA res. 62(I), 15 Dec.1946.TEXT: 18 UNITS 3

²²³ Ad Hoc Committee on Statelessness and Related Problems, Summary record of third meeting, 26 January 1950, paras.37-38.UN Economic and Social Council, General E/AC.32/SR.3, p.9

²²⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.78

²²⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.60

“in the light of comments of Governments and of specialized agencies...”²²⁶ Both the draft Convention and the draft Statute of UNHCR, prepared by the same time, were submitted to the General Assembly. The General Assembly referred the matter to its Third Committee.²²⁷

The main debate during the meetings of the Third Committee was again about the definition of refugee. France which was one of the main advocates for the broad definition in Ad Hoc Committee changed its position to the opposite one, and was among the supporters of the draft submitted by the ECOSOC.²²⁸ This time the representatives of Arab States came up with the proposal to have a separate provision for Palestinian refugees. Egypt, together with Lebanon and Saudi Arabia, presented a joint amendment to the definition:

*The Mandate of 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.*²²⁹

The representative of Lebanon, Mr. Azkoul tried to give an explanation of their proposal. He stated that separate provision for Palestinians is necessary only in case if the broad definition of refugees is accepted by the Committee. Adoption of limited definition proposed by the ECOSOC would exclude such a need:

The delegations concerned were thinking about Palestinian refugees, who differed from all other refugees. In all cases, persons had become refugees as a result of action taken contrary to the

²²⁶ ECOSOC res. 319 (IX) B, 16 Aug. 1950, UN doc. E/1818; Lex Takkenberg and Tahbaz C. C. (eds.), *The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees*, 3 vols., Amsterdam, Dutch Refugee Council under the auspices of the European Legal Network on Asylum, 1989, vol. ii, p.20

²²⁷ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.78

²²⁸ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.61

²²⁹ United Nations General Assembly Official Records, 5th Session, Third Committee, 328th meeting, 27 November 1950, para.45

*principles of the United Nations, and the obligations of the Organization toward them was a moral one only. The existence of the Palestinian refugees, on the other hand, was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine 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...*²³⁰

It is important to note that there “was no doubt at all that such refugees [Palestinian refugees] came under the terms of Article 1”²³¹. The matter was that the delegates believed that Palestinians’ case was exceptional and unique and, hence, they did not want to adopt a definition that “would submerge in the general mass of refugees certain groups which were the particular concern of the General Assembly and the right of which to repatriation had been recognized by General Assembly resolution.”²³²

The delegate from Saudi Arabia argued along the same line stating that inclusion of Palestinian refugees in a general definition would lead to the result that they “would become submerged and would be relegated to a position of minor importance.”²³³

France also advocated for a separate provision for Palestinians but argued along the different line. The government’s representative was sure that the power with regard to Arab

²³⁰Ibid, para.46,47

²³¹ “Remarks of the Egyptian Delegate,” Summary Record of the 2nd Meeting, UN Doc.A/CONF.2/SR.2, at 22, Lex Takkenberg and Christopher L. Tahbaz “The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees”, Amsterdam: Dutch Refugee Council under the auspices of the European Legal Network on Asylum,1990, p.209

²³² United Nations General Assembly Official Records, 5th Session, Third Committee, 328th meeting, 27 November 1950, para.39

²³³Ibid, para.52

refugees delegated by the General Assembly to the special organs, meaning UNCCP and UNRWA, was enough and, therefore, the UNHCR could not be delegated the same power.²³⁴

By the end of the meetings of the Third Committee of the General Assembly all the participants, by and large, approved the need for special status of Palestinian Refugees. Therefore, when the draft Convention was referred to the Conference of Plenipotentiaries on the Status of Refugees and Stateless People, which took place from 2 to 25 July, 1951 in European Office of the United Nations in Geneva²³⁵, the only question was whether an exclusion of Palestinian refugees from the Conventional protection would be permanent or temporary. The Statute of UNCHR had already been adopted in a form as it was drafted by the Third Committee.²³⁶

Debates between those states which wanted the exclusion clause for Palestinians to be permanent, including the United Kingdom, and those which were against that, was resolved by another amendment suggested by the representative of Egypt, Mr. Mostafa. He proposed to add the second paragraph (which is now paragraph 2 of Article 1D) to the provision. The explanation was as follows:

The aim of his delegation at the present juncture was to grant to all refugees the status for which the Convention provided. To withhold the benefits of the Convention from certain categories of refugees would be to create a class of human beings who would enjoy no protection at all...From the Egyptian government's point of view it

²³⁴ United Nations General Assembly Official Records, 5th Session, Third Committee, 328th meeting, 27 November 1950, para.48, see also “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.80

²³⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.63

²³⁶ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.80

*was clear that so long as United Nations institutions and organs cared for such refugees their protection would be a matter for the United Nations alone. However, when that aid came to an end the question would arise of how their continued protection was to be ensured. It would only be natural to extend the benefits of the Convention to them; hence the introduction of the Egyptian amendment.*²³⁷

Consequently, the very aim of the introduced additional paragraph was “to ensure the continuity of the protection of Palestinian refugee.”²³⁸ Moreover, according to *Travaux Préparatoires*, intent of those who projected the amendment was to guarantee that in case when protection or assistance of other organs has ceased, Palestinian refugees would *automatically* be covered by the Convention:

*The object of the Egyptian 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.*²³⁹

The proposed provision was adopted by fourteen votes to two, with five abstentions.²⁴⁰ However, analogical provision was not added to paragraph 7 of UNHCR

²³⁷ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, nineteen meeting 13 July 1951; A/CONF:2/SR.19.26 November 1951, p.16

²³⁸ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.81

²³⁹ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, twenty- ninth meeting 19 July 1951; A/CONF:2/SR.29.28 November 1951, p.6, see also United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, second meeting 2 July 1951; A/CONF:2/SR.2.20 July 1951, p.22

²⁴⁰ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, twenty- ninth meeting 19 July 1951; A/CONF:2/SR.29.28 November 1951, p. 9

Statute, which is similar to Article 1D (1).²⁴¹ Article 1D was approved by sixteen votes to none, with three abstentions.²⁴²

It is important to make it clear that at the time of approval of the provision European States were not afraid of mass arrival of Palestinians to their territory.²⁴³ One of the reasons for this way of thinking was the very few numbers of possible transportations and the very high cost of those existed in 1950s. The delegate from Iraq, for instance, noted:

*When the assistance at present being given by the United Nations comes to an end, and the Convention accordingly became applicable to those refugees, it would not by any means follow that they would emigrate to France or other western European countries, if only for purely material reasons, The few persons who would be able to afford such a journey would definitely not become a burden on the government of the receiving countries, because their journey would not in itself be possible unless they possessed sufficient means to support themselves.*²⁴⁴

Finally it must be noted, that some important matters have never been discussed during the preparatory works. For example, the drafters never talked about the difference

²⁴¹ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.65

²⁴² United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, thirty-four meeting 25 July 1951; A/CONF:2/SR.34.30 November 1951, p.12

²⁴³ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.82

²⁴⁴ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, nineteen meeting 13 July 1951; A/CONF:2/SR.19.26 November 1951, p.17

between “protection” and “assistance”.²⁴⁵ This fact led to the emergence of so-called “protection gap” with regard to Palestinian refugees.

The issue was addressed only once by non-governmental organization called the Commission of the Churches on International Affairs. It’s representative mentioned that “Material assistance is not in itself a guarantee of protection.”²⁴⁶ That was the reason for Commission’s suggestion to amend the wording of provision to “assistance *and* protection” instead of “assistance *or* protection.” Unfortunately, the proposal has never been considered.²⁴⁷

The analysis of *Travaux Préparatoires* demonstrates that Palestinian refugees were excluded from the main international instruments on protection of refugees since their situation considered to be a unique one and because they had already have a separate regime established by the UN.²⁴⁸ On the other hand, the same Preparatory Works make it clear that the intention of Arab States who proposed a special provision for Palestinians was to exclude them temporary, with the aim of not making it possible for them to submerge with all other refugees and be “relegated to a position of minor importance”.²⁴⁹ “As the French representative put it, the proposed Article ensured a “deferred inclusion” rather than an

²⁴⁵ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.83

²⁴⁶ United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons; Observations concerning Article 1 of the draft Convention Relating to the Status of Refugees; A/CONF.2/NGO/10,6 July 1951

²⁴⁷ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.67

²⁴⁸ Susan M. Akram, “Palestinian refugees and their legal status: rights, politics and implications for a just solution”, Journal of Palestine Studies, Vol.31, No3, spring, 2002, p.40

²⁴⁹ United Nations General Assembly Official Records, 5th Session, Third Committee, 328th meeting, 27 November 1950, para.39

exclusion of these refugees.”²⁵⁰ In order to avoid any misinterpretation in continuity of protection, the second sentence of 1D was added by the drafters.²⁵¹

Consequently, one may argue that it is unfortunate and unfair that Article 1D is located among exclusion clauses of the Convention. In fact, some delegates drew the attention of the participants of the final session to the necessity to reorganize the consequence of some Articles but lack of time left the issue without any discussions.²⁵²

²⁵⁰ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.66-67, see also United Nations General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, third meeting 3 July 1951; A/CONF:2/SR.3, p. 10

²⁵¹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.67

²⁵² Ibid.

Chapter 4. Interpretation of Article 1D

The wording of both the first and the second sentences of Article 1D of the 1951 Refugee Convention leaves room for several possible interpretations. “There are numerous conflicting interpretations and application of Article 1D...”²⁵³ However, depending on how one interprets the provision, status and position of Palestinian refugees may considerably change. For this reason, each word of the Article must be read in accordance with the ordinary meaning and the object of the Convention, taking into account the drafters’ original intention and the situation at the moment when it was adopted. Nevertheless, Article 1D is one of the most controversial ones and even today it is understood differently by scholars and practitioners.

*Although it is a short provision, Article 1D is replete with unanswered questions. At least four broad areas of opacity can be distinguished- two arising from the first sentence and two from the second- that must be resolved in order to answer questions...*²⁵⁴

In this chapter, I will discuss some controversial interpretational questions that stem from the wording of Article 1D of the Convention. In support of my understanding of the provision, I will refer to the current opinions among scholars and the explanation given by UNHCR. At the end of the chapter, I will try to come up with the interpretation that reflects

²⁵³ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol. XI, Kluwer Law International, 2000/2001, p. 230

²⁵⁴ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para. 46, available at: <http://www.unhcr.org/refworld/docid/4c1f62d42.html> [accessed 30 August 2010]

general ideas of all scholars cited below and-as I argue- is a “correct interpretation” of Article 1D.

4.1. The First sentence of Article 1D

The first sentence of Article 1D enunciates that the 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*” Such a wording of the stipulation entails several questions.

First of all, it is clear from the provision that the Convention is not applicable to only those asylum seekers who are *receiving at present protection or assistance from UN organs* other than UNHCR. The question then arises what the term “at present” refers to. Is it the time when the Convention was signed or maybe ratified or even more, the time when it was applied in a particular case? There are different views on the issue in the literature.²⁵⁵

At the time of drafting the Convention there were only two UN agencies dealing with the issue of refugees, UNRWA and UNCCP, which apparently were meant by the drafters. However, according to the interpretation in the UNHCR Handbook, “There could be other similar situations in the future, that could lead to an exclusion of refugees under Article 1D.” Therefore, the conclusion that one may draw from the text of the Handbook is that the term “at present” refers to the time when the Convention is applied to a particular case.²⁵⁶

Contrary to the interpretation given in the Handbook, many scholars argue that having used the phrase “at present” drafters of the 1951 Refugee Convention meant the time when the Convention was signed. Thus, Grahl- Madsen believes, that if the words “at present”

²⁵⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.96

²⁵⁶ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, reedited, Geneva, January 1992, para.142

meant something else than the time of signature it would be reflected in Article 10 (“date of entry into force of this Convention”) and Article 7(3) (“date of entry into force of this Convention for that State”). Thus, only organs and agencies of UN existing on 28 July 1951, and their potential successor bodies, are meant by the wording of Article 1D.²⁵⁷

Hathaway has the view that assistance and protection of only agencies that existed at the time the Convention entered into force are meant by the term “at present”. As a supporting argument, he refers to the speech of Mr. Hoare, the representative of United Kingdom during the preparatory works.²⁵⁸

Lex Takkenberg agrees with Hathaway and Grahl- Madsen in their interpretation of the wording of Article 1D (1). He noted that it becomes clear from the drafting history of the Convention that Article 1D was “intended for an existing category of refugees in respect of which the General Assembly had already taken certain action.” Moreover, this interpretation is the only possible one in accordance with the rule of restrictive reading of exclusion clauses.²⁵⁹

Interestingly enough, the 2002 UNHCR Note on the Applicability of Article 1D, revised in 2009, supports the interpretation given by scholars cited above and, consequently, contradicts the UNHCR Handbook in this aspect. According to the 2002 Note, the first sentence of Article 1D “excludes from the benefits of the 1951 Convention those Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who are receiving protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”).”²⁶⁰

²⁵⁷ Atle Grahl- Madsen, “The Status of Refugees in International Law”, Leyden: A.W. Sijthoff, 1966, p. 264

²⁵⁸ Hathaway J. C., “The Law of Refugee Status”, Toronto, Vancouver, Butterworths, 1991, p.208, n 117

²⁵⁹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.97

²⁶⁰ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.1

Therefore, “only organs or agencies of the United Nations in existence on the entry into force date of 28 July 1951 are covered by Article 1D.”²⁶¹ Consequently, the phrase “organs or agencies of the United Nations” in Article 1D implies only two UN agencies, UNCCP and UNRWA, including their possible successors.²⁶² Moreover, one should keep in mind that, in fact, UNCCP is not functioning any more, as it was already noted in the previous chapter. Although the UNHCR Handbook refers also to the United Nations Korean Reconstruction Agency (UNKRA) as “another UN Agency”, Grahl- Madsen and Hathaway absolutely correctly noticed that the refugees of war were regarded as citizens in South Korea and this fact leaves them out of the scope of the Convention.²⁶³

Additionally to “limitation in time” discussed above, the exclusion clause of Article 1D also deals with a “limitation of place”. Obviously, a person may obtain assistance or protection of any organ only at the place where such protection or assistance is actually available. In respect to UNRWA assistance, it is accessible only in the UNRWA area. Accordingly, “as UNHCR has stated, for present purposes a person will only come within the first sentence of Article 1D when he resides in the UNRWA zone.”²⁶⁴

Although the Belgian government suggested both of the sentences of Article 1D to be limited to persons resided within the UNRWA area, the 2002 UNHCR Note stipulates:

If... the person is outside UNRWA's area of operations, he or she is not “at present receiving from organs or agencies other than

available at: <http://www.unhcr.org/refworld/docid/4add77d42.html> [accessed 9 October 2010]

²⁶¹ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol. XI, Kluwer Law International, 2000/2001, p. 232

²⁶² Atle Grahl- Madsen, “The Status of Refugees in International Law”, Leyden: A.W. Sijthoff, 1966, p. 264

²⁶³ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p. 97

²⁶⁴ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para. 59; See also UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para. 7.

[UNHCR] protection and assistance” within the meaning of paragraph 1 of Article 1D, and therefore “such protection or assistance has ceased” within the meaning of paragraph 2 of Article 1D. The person is “ipso facto entitled to the benefits of the [1951] Convention”, provided of course that Articles 1C, 1E and 1F of the 1951 Convention do not apply. This would be the case even if the person has never resided inside UNRWA’s area of operations.²⁶⁵

It is important to note that the “limitation in time” explained above does not mean that Palestinian refugees registered by UNRWA after signing the Convention do not fall within the scope of Article 1D.²⁶⁶ Such a conclusion would be contrary to the intention of the drafters to exclude all Palestinian refugees under UNRWA’s mandate from the application of the Convention.²⁶⁷

The same understanding of the article was confirmed by the German Federal Administrative Court²⁶⁸:

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

²⁶⁵ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.8

²⁶⁶ This is actually rigid interpretation admitted by the United Kingdom’s authorities in El-Ali case. The state “submits that the drafting parties had in mind only the group of persons identified as already receiving assistance and protection from UNRWA when the Convention came into force.” (*Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para. 62)

²⁶⁷ Atle Grahl-Madsen, “The Status of Refugees in International Law”, Leyden: A.W. Sijthoff, 1966, p.265

²⁶⁸ Bundesverwaltungsgericht, Urteil vom 4. 6. 1991 - Bverwg I C 42.88 (Federal Administrative Court, decision of 4 June 1991), published in InfAuslR 10/91, 305.

*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...*²⁶⁹

Following the same logic, Grahl-Madsen goes even further arguing that the terms “receiving...protection or assistance” do not necessarily refer to the actual care of the organization. It suffices that the person’s support is covered by the UNRWA’s mandate. Otherwise, not all of the Palestinians who are covered by the UNRWA’s mandate would be excluded from the application of the 1951 Refugee Convention, which is not in the line of the intent of the drafters.²⁷⁰

The German Federal Administrative Court also concluded that there is no need for actual protection or assistance for triggering Article 1D. “What is decisive is whether they belong to the category of persons for whose care UNRWA has taken on responsibility in accordance with its mandate.”²⁷¹ This reading is in compliance with the drafters’ aim to ensure that UNRWA, rather than any other state, particularly Arab States, is in first resort responsible for Palestinian refugees:

²⁶⁹ “Mit der Formulierung "zur Zeit" knüpft Art. 1D Abs. 1 GK an den bei Verabschiedung der Genfer Konvention am 28 Juli 1951 bestimmten Personengruppen bereits gewährten Schutz oder Beistand durch eine Organisation oder Institution der Vereinten Nationen mit Ausnahme der UNHCR an, ohne damit solche Personen aus seinem Anwendungsbereich auszuschließen, die erst zu einem späteren Zeitpunkt in den Genuß des Schutzes oder Beistandes gelangt sind. Eine andere Betrachtungsweise würde zu dem zweckwidrigen, ersichtlich nicht beabsichtigten Ergebnis führen, daß nach dem Stichtag Schutz oder Beistand genießende Personen, z.B. später geborene Abkömmlinge, eine unterschiedliche Behandlung nach der Genfer Konvention erfahren, obwohl sie dasselbe Flüchtlingsschicksal erleiden...” Translated by Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.98, supra note 53

²⁷⁰ Atle Grahl- Madsen, “The Status of Refugees in International Law”, Leyden: A.W. Sijthoff, 1966, p.265

²⁷¹ “Maßgebend ist, ob er der Personengruppe angehört, deren Betreuung die UNRWA entsprechend ihrem Mandat übernommen hat” Translated by Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.99, supra note 56

*...It would be contrary to this objective if Palestinian refugees would not be affected by the exclusion clause as long they would not claim UNRWA assistance, to which, according to their need, they would be entitled. They would then have considerable discretion whether to be assisted by UNRWA or to enjoy the benefits of the Convention.*²⁷²

It must be also added that registration with UNRWA is not the only proof that the person is entitled to the assistance of the organization, although it is one of the most influential indications.²⁷³ “Registration...is a matter of evidence, not of substance.”²⁷⁴ It is possible to have a situation when the person is covered by UNRWA’s mandate but has never been registered. Therefore, registration with UNRWA confirms rather than creates the fact of the person’s falling under the mandate of the organization.²⁷⁵

4.2. The Second sentence of Article 1D

While the first paragraph of Article 1D excludes some categories of refugees from the application of the Convention, the second paragraph determines a time limitation for such exclusion and sets legal outcomes for the situation when the first sentence ceases to apply.²⁷⁶

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General

²⁷² Diesera Ziel widerspräche es, wenn palästinensische Flüchtlinge von der Ausschlußklausel nicht erfaßt würden, solange sie Leistungen der UNRWA tatsächlich nicht in Anspruch nehmen, obwohl sie bei entsprechendem Bedarf dazu berechtigt wären. Sie hätten er dann weitgehend in der Hand zu bestimmen, ob sie sich von der UNRWA betreuen lassen oder die Vergünstigungen der Konvention in Anspruch nehmen wollen.’ Translated by Lex Takkenberg, *The Status of Palestinian Refugees in International Law*, Oxford, 1998, p.99-100

²⁷³ Bundesverwaltungsgericht, Urteil vom 4. 6. 1991 - Bverwg I C 42.88 (Federal Administrative Court, decision of 4 June 1991), published in InfAuslR 10/91, 305, Translated by Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.99, supra note 56

²⁷⁴ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para.97

²⁷⁵ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.100

²⁷⁶ Ibid, p.104

Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

In this sense Article 1D represents an “exclusion- inclusion” clause of the Convention.²⁷⁷

Although the second paragraph of Article 1D consists of only one sentence, that one phrase raises a lot of significant questions that entail debates among scholars and practitioners even nowadays. Different interpretations of the provision lead to sometimes even contradictory conclusions about the status of Palestinian refugees. The following interpretational questions can come to one’s mind while reading the second sentence of Article 1D: “1) What is meant by “such protection or assistance”? 2) Under what conditions may one conclude that protection or assistance 'has ceased'? 3) What is meant by the words “for any reason”? 4) What is the meaning of the subordinate clause 'without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations'? 5) What is meant by the words 'these persons'? 6) What is meant by the words 'shall ipso facto be entitled'? 7) Finally, what are to be considered 'the benefits of this Convention'? “²⁷⁸

Beginning with the explanation of the phrase “such protection or assistance” in the provision, it is difficult to disagree with the consideration that it obviously refers to protection and assistance mentioned in the first sentence of the Article. Therefore, one must keep in

²⁷⁷ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 88

²⁷⁸ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.104

mind that not actual protection or assistance but rather the falling under the UN agencies mandate are meant by this term.²⁷⁹

Concerning the second question, the inclusion clause of Article 1D is triggered when protection or assistance of UN agencies has ceased, i.e. those agencies are unable to provide it.²⁸⁰ Such a situation is possible in case when the special UN Agency's operation comes to an end or- the option that was ignored for a long time- when the person is out of the UNRWA's territory, therefore is not covered by its mandate.

Needless to say, initially, the only possible case of cessation of "assistance or protection" considered by the drafters of the Convention was the termination of UN Agencies. In fact, it was unnecessary to address the issue of Palestinian refugees' leaving the UNRWA area for several reasons.²⁸¹

First of all, "... the risk that European states might be faced with a vast influx of Arab refugees was too small to be worth taking into account."²⁸² Moreover, the political situation in Arab host countries was so stable at the time when the Convention was drafted that, for example, the likelihood of civil war in Lebanon, called "the Switzerland of the Near East", was equal to zero. Therefore, no possibility of movement of Palestinian refugees was considered during the drafting period, except for the case when they could leave the area for work. This category of refugees [temporary workers] could continue to enjoy UNRWA's protection upon their return.²⁸³

²⁷⁹ Ibid.

²⁸⁰ Ibid, p. 105

²⁸¹ Ibid, p.108

²⁸² UN Doc. A/C.2/SR. 19, 19, Lex Takkenberg and Christopher L. Tahbaz "The Collected Travaux Préparatoires of the 1951 Geneva Convention Relating to the Status of Refugees", Amsterdam: Dutch Refugee Council under the auspices of the European Legal Network on Asylum, 1989, vol.iii, p.380

²⁸³ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.107,108

The situation changed significantly after the 1967 War, expiration and non-renewal of travel documents for Palestinian refugees in Lebanon in 1980s, expulsion of Palestinians from Libya in 1995, and some other events. As a result, a large number of Palestinian refugees found themselves outside of the UNRWA area without the opportunity to obtain assistance from the agency.²⁸⁴

Although the state of affairs described above was not foreseen by the Convention drafters, it is evident that the residence of Palestinian refugees outside of UNRWA zone may be considered as one of the grounds that triggers the application of Article 1D (2). This fact was confirmed by the UNHCR in its 2002 Note on the Applicability of Article 1D.²⁸⁵ Such an interpretation is also in compliance with the Convention drafters' intention whose main purpose was to ensure that Palestinian refugees continue to receive international protection until the durable solution is found for them. The plain reading and purpose of the provision does not require its restricted interpretation and, thus, allows the application of Article 1D (2) to situations which were not foreseen by the drafters.²⁸⁶

Moreover, contrary to Takkenberg, S. Akram and G. Goodwin-Gill believe that the phrase "for any reason" includes also the situation when a Palestinian has left UNRWA zone but is able to return. One of the arguments of the authors is a plain language of the Article, which makes no restrictions in this regard. Moreover, they are convinced that "the argument that ipso facto clause should not apply to a Palestinian who can legally return to an UNRWA area because Article 1D is not meant to give such individual a choice between UNRWA assistance and 1951 Convention benefits, is weak."²⁸⁷ Although UNRWA was given primary

²⁸⁴ Ibid, p. 108-110

²⁸⁵ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.8

²⁸⁶ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p. 110,111

²⁸⁷ Susan M. Akram and Guy Goodwin-Gill, "Brief Amicus Curiae" submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church,

responsibility towards Palestinians, the most important was an aim to give “heightened” protection for them, but not to exclude them from international regime. In addition, the requirement to prove that one is not able to return to UNRWA zone would be an unfeasible burden on refugee. Therefore, the phrase “for any reason” in Article 1D includes “the voluntary actions of the individual in removing themselves from the area of operations of UNRWA.”²⁸⁸

With regard to the “subordinate clause” -“without position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations” – it clearly refers to Resolution 194 and the following UNGA Resolutions concerning Palestinian refugees. This fact confirms one more time the fact that the provision was meant to be applied to the Palestinian refugees. The subordinate clause can be regarded as a special circumstance for the cessation of Article 1D.²⁸⁹

There are some other interpretational questions concerning the wording of Article 1D. Nevertheless, one of the main and most widely discussed questions that the language of the second paragraph of Article 1D gives rise to is “*whether the persons who have been receiving UNRWA assistance and/or protection will automatically – i.e., without any further test become entitled to the benefits of the Convention, as soon as they cease to receive such assistance and/or protection; or if it is only meant that cessation of UNRWA assistance and/or protection shall free the persons concerned from the suspensive effect of the first paragraph of Article 1D, it being understood that each person`s claim to refugeehood is to*

Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol. XI, Kluwer Law International, 2000/2001, p. 240

²⁸⁸ Ibid, p. 240-242

²⁸⁹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p. 120

*tried in accordance with the provisions of Article 1A (2)."*²⁹⁰ Many scholars believe that in this case the Convention must be automatically applied to Palestinians.

4.3. Interpretations among scholars

In spite of the practical interpretation and implementation of Article 1D (2) in some countries, current academic researchers are by and large of the same view that Palestinian refugees "do not need to undergo additional or fresh determination of refugee status in order to qualify for protection under the 1951 Refugee Convention."²⁹¹ However, it must be added that there are some exceptions, such as James C. Hathaway's opinion.²⁹²

Lex Takkenberg argues that if UNRWA's assistance of Palestinian refugees ceases for any reason, the refugee must be "automatically-that is without any other inclusion clauses and in particular Article 1A, paragraph 2" -covered by and benefit from the 1951 Refugee Convention. Therefore, he believes that no refugee status recognition procedure is needed or applicable to this group of refugees.²⁹³

Moreover, Takkenberg notes that automatic granting of refugee status occurs not only when UNRWA stops to operate. The rule is also applicable when a Palestinian asylum-seeker leaves the UNRWA area and is either unable or unwilling to return there due to the circumstances given in Article 1A, "or other compelling reasons that may prompt a state party to that Convention to grant asylum to that person, and who are at the same time unable to reside in any other country where UNRWA operates."²⁹⁴

²⁹⁰ Atle Grahl-Madsen, "The Status of Refugees in International Law", Leyden: A.W. Sijthoff, 1966, p.141

²⁹¹ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 83

²⁹² James C. Hathaway, "The Law of Refugee Status", Toronto: Butterworths, 1991, p.208

²⁹³ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.122

²⁹⁴ Ibid, p.123

Atle Grahl-Madsen answers his own question quoted above along the same line as Takkenberg. He tries to prove that there can be no doubt that Palestinian refugees are “truly refugees in a general sense” and the whole group fall within the meaning of Article 1A (2) *prima facie*. According to the author, the unnecessary screening of each individual belonging to this large refugee group will be problematic and take a lot of time. A. Grahl- Madsen comes to the conclusion that the term “ipso facto” in Article 1D (2) means that no determination procedure is required, for those to whom the provision is applicable, in order to become entitled to the benefits of the Convention.²⁹⁵

Guy Goodwin Gill’s point of view on the issue does not contradict the opinions cited above:

*Palestinian Refugees who leave UNRWA’s area of operations, being without protection and no longer in receipt of assistance, would seem to fall by that fact alone within the Convention , whether or not they qualify independently as refugees with well- founded fear of persecution.*²⁹⁶

Moreover, the author argues that the phrase “these persons shall *ipso facto* be entitled to the benefits of the Convention”, once conditions are met, is the most and the only comprehensible terminology in the whole Article 1D. The term “ipso facto” means “by the very fact”, “by virtue of the fact itself”. It is obvious that in case of Article 1D, the cessation of protection or assistance of the agency in conjunction with a lack of the ultimate settlement is the fact that entitles persons to the benefits of the Convention. The understanding of the

²⁹⁵ Atle Grahl- Madsen, “The Status of Refugees in International Law”, Leyden: A.W. Sijthoff, 1966, p.141

²⁹⁶ Guy Goodwin-Gill, “The Refugee in International Law”, 2nd edition.Oxford: Clarendon Press, 1996, p.92

term becomes even clearer from the French text of the Convention where “*de plein droit*” refers to “*par le seul effet de la loi, sans constatation possible; a qui de droit*”.²⁹⁷

Susan M. Akram, who has perhaps one the highest number of publications dedicated to the issue of Palestinian refugees, agrees with the scholars listed above. She is convinced that the key purpose of Article 1D was to ensure that, if any of two agencies (UNCCP or UNRWA) fails to function, the Convention would *automatically* cover Palestinian refugees. Furthermore, in her opinion, there is no need for application of the individualized definition of refugees given in Article 1A (2) since the Convention covers Palestinian refugees as an entire group.²⁹⁸

There is also one significant difference between the alternative interpretation given by Akram and other scholars’ opinions. In her work written together with T. Rempel “Recommendations for Durable Solution for Palestinian Refugees: A Challenge to the Oslo Framework”²⁹⁹, the author argues that there was an event that has already taken place in history, which triggers the activation of the inclusion clause of Article 1D and the complete applicability of the Convention to all Palestinian refugees.³⁰⁰

Akram believes that the word “or” in the phrase “when such protection *or* assistance has ceased” (the 2nd paragraph of Article 1D) plays a decisive role in the issue of interpretation. In her opinion, non-receiving of “*either* protection *or* assistance” by

²⁹⁷ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, ^{August} 2005, p.viii

²⁹⁸ Susan M. Akram and Terry Rempel, Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees”, Boston University International Law Journal, Vol.22, No.1 (Spring 2004), p.81

²⁹⁹ Susan M. Akram and Terry Rempel, “Recommendations for Durable Solution for Palestinian Refugees: A Challenge to the Oslo Framework”, Palestine Yearbook of International Law, Vol. XI, No.1 (2000/2001), p.1-71

³⁰⁰ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005,p.90,91

Palestinian refugees must lead to the applicability of the inclusion clause of Article 1D. Therefore lack of one of these two conditions is enough to trigger an inclusion clause.³⁰¹

Further the author argues that having used the word “protection” in the sentence, the drafters of the 1951 Refugee Convention referred to the UNCCP’ mandate. Consequently, the term “assistance” was meant for UNRWA. As an argument in support of this consideration the author referred to the *Travaux Préparatoires* and the fact that the drafters cited more than just one UN agency.³⁰²

Hence, Akram tries to prove that UNRWA assistance and UNCCP protection are alternatives. Consequently, cessation of any of them leads to the automatic applicability of Article 1D (2) and of the whole Convention to all Palestinian refugees. The very aim of Article 1D was to make it sure that in case “either of these agencies failed to exercise its role” the function of that agency must be transferred to UNHCR. “This is what the “protection *or* assistance” and *ipso facto* language of Article 1D requires.”³⁰³

If one keeps in mind that already by 1952 UNCCP failed to provide an effective protection to Palestinian refugees, then according to Akram’s interpretation, the inclusion clause is fully applicable to all Palestinian refugees since that time, under the condition that Articles 1C,1E and 1D (1) are not applied. This interpretation has particular importance, especially if one takes into account that “protection rather than assistance was the critical and

³⁰¹ Susan M. Akram and Terry Rempel, “Recommendations for Durable Solution for Palestinian Refugees: A Challenge to the Oslo Framework”, *Palestine Yearbook of International Law*, Vol. XI, No.1 (2000/2001), p. 30

³⁰² “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005,p.91

³⁰³ Susan M. Akram and Terry Rempel, “Recommendations for Durable Solution for Palestinian Refugees: A Challenge to the Oslo Framework”, *Palestine Yearbook of International Law*, Vol. XI, No.1 (2000/2001), p.66

necessary ongoing requirement regarding the concern about continuation of international protection during preparatory works.³⁰⁴

Consequently, in accordance with the interpretation discussed above, all 1948 Palestinian refugees irrespective of whether they are inside or outside of the UNRWA area are *ipso facto* beneficiaries of 1951 Refugee Convention as a result of the cessation of UNCCP protection.³⁰⁵

Although Akram's alternative reading of the provision differs from the one given by UNHCR, it might be used as an additional, more detailed interpretation throughout the status-determination procedure of asylum-seekers in States-signatories to the 1951 Refugee Convention. In fact, this reading of the provision has already been adopted in some cases. For example, this alternative interpretation was fully accepted by Immigration Judge Tim O'Flynn in the United Kingdom (in case *Islam El- Issa v. Secretary of State Home Office*³⁰⁶), and was partially adopted by the Federal Court of Australia (in case *Minister for Immigration and Multicultural Affairs v. Wabq*³⁰⁷) in 2002.³⁰⁸

4.4. Interpretation given by UNHCR

According to Article 8 (a) of the UNHCR Statute and Article 35 of 1951 Refugee Convention, monitoring and ensuring implementation of international conventions related to refugees is one of the competences of UNHCR that is necessary for its role to protect

³⁰⁴ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.91-92

³⁰⁵ Ibid, p.92

³⁰⁶ *Islam El- Issa v. Secretary of State Home Office*, Appeal No. CC/21836/2000 and Home Office Reference No.Y76985, 4 February, 2002

³⁰⁷ *Minister for Immigration and Multicultural Affairs v. WABQ*, [2002] FCAFC 329, Australia: Federal Court, 8 November 2002, available at: <http://www.unhcr.org/refworld/docid/403b14df4.html> [accessed 5 November 2010]

³⁰⁸ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.93

refugees. For this reason the organization provides guiding principles on the important and controversial issues. Realizing this competence in connection with Article 1D, UNHCR published “ A Note on the Applicability of Article 1D of the 1951 Convention Relating to the Status of Refugees to Palestinian Refugees” (2002 UNHCR Note), revised in 2009.³⁰⁹

It is interesting that the first interpretation of Article 1D by UNHCR was given in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (paras.142 and 143). That interpretation was less sophisticated than the one given in the UNHCR Note. In particular, the insertion of Article 1D to the chapter named “Exclusion clauses” was strongly criticized by Lex Takkenberg.³¹⁰

Before starting to analyze the interpretation given by UNHCR, it is important to note that states are not legally bound by those guidelines.³¹¹ At the same time, the UNHCR Note is a “useful guidance for decision-makers in asylum proceedings.”³¹²

The Introduction to the UNHCR Note explains the main logic behind the fact of including Article 1D in the Convention.³¹³ On the one hand, the purpose was to keep away from overlap between competences of UNHCR and UNRWA. It resulted in adoption of 1st sentence of the Article the, so-called “exclusion clause”. On the other hand, drafters wanted to guarantee the continuity of the protection of Palestinian refugees by ensuring their right to

³⁰⁹ UNHCR Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, October 2002, reproduced as Appendix 7 in “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p 421, the revised version is available at: <http://www.unhcr.org/refworld/docid/4add77d42.html>

³¹⁰ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.103. See also Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.92-93

³¹¹ Ibid, p.85

³¹² UNHCR Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, October 2002, para 14

³¹³ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.2

benefit from the Convention in case they leave the UNRWA area. This was reflected in the 2nd sentence of the Article, the so called “inclusion clause”.³¹⁴

UNHCR’s interpretation does not contradict the current tendency among scholars. According to the revised Note, Palestinians who are covered by the “inclusion clause” of Article 1D automatically become beneficiaries of the Convention and do not need additional qualification as refugees.³¹⁵ The main question here is, however, who are the persons covered by the 2nd sentence of Article 1D are.³¹⁶

According to UN General Assembly Resolution 194 (III), both refugees and those who were internally displaced as a result of events in 1948 are “Palestinian refugees.” Nevertheless, there is a general principle that only persons who crossed the border can become beneficiaries of the 1951 Refugee Convention. Therefore, 1948 internally displaced Palestinians are not covered by Article 1D.³¹⁷

Contrary to 1948- internally displaced Palestinians, Palestinians internally displaced within the meaning of UNGA Resolution 2252 (ES –V) of 4 July 1967 and the following UNGA Resolutions, those who were not able not return to the occupied territories (persons who fled from the West Bank and the Gaza Strip as a result of 1967 conflict) fall within the scope of Article 1D.³¹⁸

³¹⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.85,86. See also UNHCR Note on the Applicability of Article AD of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, October 2002, para 2

³¹⁵ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.9 (b)

³¹⁶ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.86

³¹⁷ Ibid.

³¹⁸ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.4 (b)

Moreover, descendants of all beneficiaries of the Convention are also covered by Article 1D. This interpretation of the Article is made by the analogy of the principle of family unity in International Refugee Law.³¹⁹

The main determination criteria for the UNHCR's interpretation can be drawn from Paragraphs 7 and 8 of UNHCR Note:

7. If the person concerned is inside UNRWA's area of operations, he or she should be considered as "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and hence is excluded from the benefits of the 1951 Convention.

8. If, however, the person is outside UNRWA's area of operations, he or she is not "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and therefore "such protection or assistance has ceased" within the meaning of paragraph 2 of Article 1D. The person is "ipso facto entitled to the benefits of the [1951] Convention", provided of course that Articles 1C, 1E and 1F of the 1951 Convention do not apply. This would be the case even if the person has never resided inside UNRWA's area of operations.³²⁰

³¹⁹ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.87, see also UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, para 184, p.43

³²⁰ UN High Commissioner for Refugees, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, para.7,8

Therefore, the main question one must answer, in order to conclude within which of the two paragraphs of Article 1D the Palestinian refugee falls under the UNHCR Note, is whether the person concerned is inside or outside the UNRWA area. Those Palestinian refugees, who are on the territory of Syria, Lebanon, Jordan, the West Bank and the Gaza Strip and, consequently, fall within the UNRWA mandate, are not beneficiaries of the 1951 Refugee Convention.³²¹

It is important to emphasize, that in accordance with the 2002 UNHCR Note, persons who lack the registration with UNRWA but are eligible to be registered should be considered as those who are obtaining protection or assistance within the sense of paragraph 1 of Article 1D. “Registration with UNRWA is therefore an indicator of, but not a condition for, determining the applicability of Article 1D.”³²² The question of registration and eligibility to be registered must be determined individually.³²³ There is no similar provision in the revised 2009 UNHCR Note.

Consequently, according to the UNHCR Note, Palestinian refugees who reside outside the UNRWA area of operation, including both those who have moved from UNRWA zone and those who have never lived there, fall within the 2nd paragraph of Article 1D. Moreover, in accordance with the UNHCR Note and the intention of the drafters of the Convention, “No further screening under Article 1A (2) is required in this case, because the inclusion clause in Article 1D replaces the inclusion clause in Article 1A (2).”³²⁴

³²¹ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.89

³²² Ibid, p.87

³²³ UNHCR Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, October 2002, para13

³²⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.89-90

It is important that the UNHCR Note does not identify which kind of protection Palestinian refugees living outside the UNRWA area are entitled to. Offered benefits are to be specified by the policy of each state separately.³²⁵ There are some minimal guarantees, such as a principle of *non-refoulement*, which must be considered by all states. However, in exceptional situations, when the protection in a country of previous residence is ensured, national authorities can be allowed to return a Palestinian refugee.³²⁶

Therefore, “Accurately interpreting Article 1D of the Refugee Convention and the provisions related to it in the UNHCR Statute, UNCCP Resolution and UNRWA Regulations compel the conclusion that a heightened protection regime was intended—and, indeed, established—for Palestinian refugees.”³²⁷

On the other hand, it is important to make it clear that “recognition of refugee status does not prevent national authorities from returning a Palestinian asylum-seeker to his/her country of former residence if return can be carried out in accordance with international human rights standards.”³²⁸

To summarize it all, the wording of Article 1D of the 1951 Refugee Convention means the following:

If any Palestinian lives within the UNRWA area and, therefore, receives, or is eligible to receive, UNRWA assistance, then this person is not covered by the Refugee Convention in order to avoid the overlap between the competences of UNRWA and UNHCR.

³²⁵ With regard to the Member States of the European Union, they should apply minimal standards and follow the common tendency within the Union in order to contribute to the harmonization of the law of the Union.

³²⁶ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.90

³²⁷ S.M Akram, “Reinterpreting Palestinian Refugee Rights under International Law, and a Framework for durable solutions”, BADIL- Information and Discussion Brief, Issue No.1, February 2000, p.7, available at BADIL’s official site: www.badil.org

³²⁸ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.338

Once any Palestinian ceases to obtain assistance from UNRWA, either because the Agency have stopped to operate or because the person is out of the UNRWA area and physically incapable to obtain the assistance, or for any other reason, the person concerned must be automatically granted a refugee status and become a beneficiary of the Convention.

This is, in my opinion, the only proper understanding of all of the terms used in the two sentences of Article 1D of the Convention, based on the ordinary meaning and purpose of the Convention, intention of its drafters and the current state of affairs.

Chapter 5. Interpretation and Practical Implementation of Article 1D in Europe

The last chapter of this thesis will be dedicated to the status of Palestinians who chose Europe as a place of refuge. Here, I will briefly look at the jurisprudence of several European states in relation to understanding and application of Article 1D of the Convention and try to demonstrate some common misinterpretations. Furthermore, I will look at the tendency in European Union in general and comment on the recently decided Bolbol case, which is the first preliminary ruling of the European Court of Justice with regard to the interpretation of Article 1D.

5.1. The Palestinians in Europe

Despite all of the predictions of the drafters of the 1951 Refugee Convention, that a very small number of Palestinians would leave the neighbor Arab States, more than 700,000 displaced Palestinians to date are out of that area, leaving in Europe, America, or elsewhere. The two main reasons for that are: 1) a lack of the effective protection of the refugees in Arab States or 2) a subsequent forced displacement from those host Arab countries.³²⁹

The number of Palestinian refugees in European countries to date is more than 200,000 people. However, it is difficult to estimate the exact number of them in Europe. The explanation for this is that most of the states do not recognize Palestinians as a separate ethnic

³²⁹ Survey of Palestinian Refugees and Internally Displaced Persons, Edit. Ingrid Jaradat Gassner, Vol. VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.116

or national group and usually include them in the “other Middle East” asylum-seekers category in statistical data.³³⁰

In spite of the fact that the existence of a large group of Palestinians in Europe is “a relatively recent phenomenon” in compare with their presence in Arab states or America, their number in European states keep on increasing. The largest number of Palestinian population can be found in Germany, Britain, Scandinavian states and Spain, but smaller groups present in almost each states of European Union.³³¹

The pattern of migration of Palestinians changed significantly toward Europe since 1970s.³³² Obviously, one of the reasons for that was an occupation of the West Bank and the Gaza Strip; on the other hand, emergence of Palestinian Resistance Movement and it's difficult relations with the local governments took place in the Arab States.³³³ Finally, it became clear that neither return nor integration or settlement in Arab states can be a durable solution for many of the Palestinian refugees.

As a result of events pointed above, Palestinians started “to look for safe refuge beyond the geographical boundaries of the Arab region.”³³⁴ First Palestinian immigrants in Europe were business people who wanted to find “a safe haven for their investment”. Later they were followed by engineers, doctors, teachers and other specialists. Although most of

³³⁰ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p. 31-32

³³¹ Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, Refugee and Diaspora Studies, No.2, 2005, p.7

³³² Ibid, p.10

³³³ Ibid.

³³⁴ Ibid, p.11

them preferred North America as a host country there still were some groups who did not move further than Europe.³³⁵

Most of the Palestinians are arriving to Europe from the countries where they constitute a vulnerable group: their residency status is usually uncertain and they are simply denied most of the social and economic rights. Some of them obtained temporary Jordanian passport, some are holders of travel documents issued by Lebanon or Egypt, and some travel without any document, usually due to non-renewal of the expired one.³³⁶

It is important to note that those Palestinians who manage to reach Europe have to face many difficulties before that. Trafficking from Lebanon to Europe, for example, costs from 5,000 to 10,000 \$ for each Palestinian. However, by paying this money the person is not insured against exploitation and imprisonment, or the possibility to end up in the wrong state. One of the main reasons for the risks and difficulties faced by asylum-seekers are the restrictive entry measures adopted by European countries.³³⁷

Furthermore, even when Palestinians are able to enter Europe, in many cases it does not tail their automatic international protection. Many Palestinians live in Western States without any recognized legal status, not having permission to work and lacking most of the “basic essentials to live in freedom and dignity”.³³⁸

Although most European countries are parties to the 1951 Refugee Convention, in majority of cases they fail to provide Palestinians with the protection they are entitled to

³³⁵ Hanafi, Sari, “Here and There: Towards an Analysis of the Relationship Between the Palestinian Diaspora and the Centre”, Muwatin-The Palestinian Institute for the Study of Democracy, Ramallah, (in Arabic), 2001, p. 151

³³⁶ Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, Refugee and Diaspora Studies, No.2, 2005, p.11

³³⁷ Ibid.

³³⁸ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p.14

under this Convention.³³⁹ Protection gap for Palestinian refugees in Europe is mainly a result of misinterpretation of their status under Article 1D of the 1951 Refugee Convention.³⁴⁰ Therefore, the issue of proper interpretation of Article 1D becomes crucial when it comes to the status and rights of Palestinians living in Europe.

As it was mentioned in previous chapters, for a long time, for some political and historical reasons, Palestinian refugees were considered to be excluded from the international protection regime, which includes the 1951 Refugee Convention and the UNHCR Mandate.³⁴¹ However, many scholars correctly argue to date that such a reading of the Convention is erroneous based on the analysis of drafting history, wording and the purpose of the Convention.³⁴² Moreover, “For State Parties to the 1951 Refugee Convention and the 1967 Protocol to ignore the language and history of Article 1D and to apply an artificially restrictive interpretation derogates their international obligations.”³⁴³

As a result of misinterpretation by national authorities and courts, Palestinians seeking refuge in European countries are very often denied refugee status and do not enjoy the rights guaranteed by the Convention. Thus, distinct from all other asylum-seekers in Europe,

³³⁹ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.116

³⁴⁰ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p.31

³⁴¹ Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, Refugee and Diaspora Studies, No.2, 2005, p.14 and Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p.13

³⁴² See the previous chapter. See also, for example, S. Akram and G. Goodwin-Gill, "Brief Amicus Curiae on the Status of Palestinian Refugees under International Law, The Palestine Yearbook of International Law (2001) and Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998

³⁴³ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in The Palestine Yearbook of International Law 2000-2001, Vol.XI, Kluwer Law International, 2000/2001, p.191

Palestinians suffer not only from increasing restrictive measures of European asylum system, but also form additional discrimination.³⁴⁴

5.2 Interpretation and application of Article 1D in European States

Although the specific interpretation of Article 1D differs in many European countries there is fairly the following general tendency: most of the countries interpret and apply it in a way that does not offer Palestinians adequate protection.³⁴⁵ Thus, S.Akram and T. Rempel divide all non-Arab host states into two main categories: 1.those states that do not recognize or incorporate Article 1D in national asylum law³⁴⁶ and, therefore, ignore the Article and decide claims of Palestinians under the generally applicable Article 1A (2); and 2.those states that incorporate and, consequently, recognize Article 1D, but interpret it in a variety of incompatible ways.³⁴⁷

The categorization suggested in BADIL`s Handbook is even more detailed. According to the Handbook, there are four approaches: 1. Non-incorporation of Article 1D in national legislation; 2.non-application of Article 1D; 3.non-application of Article 1D based on erroneous Interpretation; and 4. Proper application of Article 1D.³⁴⁸ The last three approaches are practiced in Europe.

³⁴⁴ Survey of Palestinian Refugees and Internally Displaced Persons, Edit Ingrid Jaradat Gassner, Vol.VI, 2008-2009, BADIL Resource Center for Palestinian Residency and Refugee Rights, p.116

³⁴⁵ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, p.14

³⁴⁶ There are only two countries that did not incorporate Article 1D in the national Legislation- United States and Canada ("Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.339)

³⁴⁷ Susan M. Akram and Terry Rempel, Temporary Protection for Palestinian Refugees: A Proposal, Paper presented at the Stocktaking Conference on Palestinian Refugees Research in Ottawa, Canada, June 17-20, 2003, supra note 84 at p.14

³⁴⁸ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.338-339

5.2.1. Non-application of Article 1D

The states that belong to the first category, i.e. the states that do not apply Article 1D in their legislation, hold the view that Article 1D is applicable only in certain areas of Near East, meaning UNRWA's area. Following the interpretation given in the UNHCR Handbook³⁴⁹, authorities of these states believe that Palestinians who are outside of UNRWA area do not enjoy the agency's assistance. According to this explanation, only those Palestinians who actually receive assistance of UNRWA are meant by wording of Article 1D. Therefore, following this logic, Article 1D does not cover Palestinians residing outside of UNRWA zone and their refugee status is to be determined under Article 1A (2).³⁵⁰

The interpretation described above was highly criticized by many scholars, including L. Takkenberg.³⁵¹ The author of this thesis agrees with the critique and strongly believes that presence or absence of the person on the territory of UNRWA operation is not an important factor. What is relevant here is whether the refugee is eligible for UNRWA assistance and, thus, fall under its mandate.³⁵² Thus, the refugee status of Palestinian who is outside of UNRWA area, but is entitled to the assistance of the Agency, must be determined under Article 1D (2). Unfortunately, this reading of the stipulation is still not accepted by most European countries.

Austria is a good example of a state where Article 1D is not applied. There is an unofficial data that approximately 1,100 Palestinians reside in Austria.³⁵³ The refugee status and asylum in Austria are granted based on Article 7 of the Federal Law concerning the

³⁴⁹ UN High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, January 1992, para.143 available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html> [accessed 15 October 2010]

³⁵⁰ Lex Takkenberg, "The Status of Palestinian Refugees in International Law", Oxford, 1998, p.101

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Oxford University "Civitas- Foundation of Participation" project's database. Available at: <http://www.civitas-online.org>

Granting of Asylum of 14 July 1994 (Asylum Act).³⁵⁴ In relation to the determination procedure, the Asylum Act refers to Article 1A (2) and exclusion clauses 1C and 1F of the 1951 Refugee Convention.³⁵⁵ However, the Act says nothing about the special conditions set in Article 1D.³⁵⁶

One may argue that, although, there is no reference to Article 1D in the Asylum Act, the Article must be directly applied in Austrian Asylum Law System in accordance with Article 43 of the same Asylum Act. Article 43 stipulates that “The provisions of the Geneva Convention on Refugees shall remain unaffected.” Nonetheless, the existing case law in the State proves just the opposite, meaning that Article 1D is not implemented in Austria.³⁵⁷

Consequently, all Palestinian asylum cases in Austria are decided under Article 1A (2) of the Convention, therefore, do not differ from any other asylum cases.³⁵⁸ According to BADIL Resource Center for Palestinian Residency & Refuge, there was only one case when Article 1D of the Convention was considered by the Independent Federal Asylum Review Board. In that decision the Review Board held that Article 1D is not applicable under the Austrian asylum law.³⁵⁹

³⁵⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.144

³⁵⁵ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol.XI, Kluwer Law International, 2000/2001, p. 220

³⁵⁶ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.102

³⁵⁷ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 145

³⁵⁸ For example, the decision by the Administrative Appeals Court.[Verwaltungsgerichtshof] of 29 Jan. 1986, No. 84/01/0106, SlgNF 12.005(A)

³⁵⁹ Decision 220.450/0-IX/27/00

In another case, in which claimant was a Palestinian refugee from the Gaza strip, the Review Board stated that the discussion on the applicability of Article 1D is unnecessary since all the conditions required under Article 1A (2) were met.³⁶⁰

Therefore, in Austria there is one single procedure for all asylum seekers.³⁶¹ Only those who are recognized as refugees under Article 1A (2) become entitled to the benefits of the 1951 Refugee Convention. No exception and automatic recognition as beneficiaries of the Convention is ensured for Palestinians. As a result, contrary to the intention of the drafters of the 1951 Refugee Convention, there are some Palestinians living in Austria who are rejected the refugee status and, consequently, not recognized as refugees.

The situation is almost the same both in Belgium and Switzerland. All applications of Palestinian asylum-seekers in Belgium are scrutinized in accordance with Article 1A (2). “Article 1D does not play a role in the refugee determination process, despite the general reference in Article 48 [of the *loi*] to the 1951 Refugee Convention, which presumably includes a reference to Article 1D.”³⁶²

With regard to Switzerland too, “there is no provision based on Article 1D.”³⁶³ Although all provisions of the 1951 Refugee Convention are directly applicable in Swiss law the same way as any other international treaty signed and ratified by the State, in practice it is

³⁶⁰ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 145

³⁶¹ Ibid, p.146

³⁶² Ibid, p.149

³⁶³ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law 2000-2001*, Vol.XI, Kluwer Law International, 2000/2001, p. 220

not implemented.³⁶⁴ All applications for asylum in Switzerland are considered solely on the basis of amended Asylum Law of 26 June 1998.³⁶⁵

Distinct from Austrian Asylum Law, the Swiss one does not even refer to Article 1 of the Convention. Even though, the definition of refugee in Article 3 of Swiss Asylum Law is almost identical to the one given in the Convention, there is no paragraph similar to Article 1D. Consequently, registration with UNRWA is totally unrelated for the procedure, and the status of Palestinians in Switzerland is determined based on the element of persecution similar to any other refugees.³⁶⁶

One may argue that the policy of the countries that do not apply or incorporate Article 1D leads to the universal protection regime for all refugees. This is how, for example, Hathaway justifies Asylum system in Canada.³⁶⁷ Nevertheless, such practice, as it was already mentioned, is contrary to the accurate interpretation and true intent of the Convention drafters. “The effect of these states’ failure to apply Article 1D has been that they then erroneously apply the 1951 Refugee Convention Article 1A (2) analysis for stateless persons to Palestinians.”³⁶⁸ It prevents implementation of the inclusion clause, i.e. the second sentence, of Article 1D and, thus, denies “many Palestinian refugees the appropriate legal status to which they are entitled under the Convention.”³⁶⁹

³⁶⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 227

³⁶⁵ Ibid, p.226

³⁶⁶ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.103

³⁶⁷ Hathaway J. C., “The Law of Refugee Status”, Toronto, Vancouver, Butterworths, 1991, p.209

³⁶⁸ Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in The Palestine Yearbook of International Law 2000-2001, Vol.XI, Kluwer Law International, 2000/2001, p. 220-221

³⁶⁹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.103-104

5.2.2. Non-implementation of Article 1D for the reason of incorrect interpretation

Contrary to Austria, Belgium and Switzerland, Article 1D is hypothetically applicable in most other European countries. Nevertheless, the interpretation of either the first or the second clause, or even of some terms of the provision, in these countries leads again to the erroneous conclusion that the status of Palestinian refugees must be determined under Article 1A (2). Therefore, theoretically applicable Article 1D is not actually implemented as a result of misinterpretation in these countries.³⁷⁰

Authorities and courts of some countries, including Scandinavian countries, Germany, France and the Netherlands, agree that Palestinians are not obliged to fulfill all the conditions mentioned in Article 1A (2) in order to obtain the status of refugee.³⁷¹ But at the same time they believe that there are special events or circumstances that may trigger Article 1D, i.e. automatic recognition of Palestinians as refugees. Those circumstances vary in different jurisdictions.³⁷²

In Germany, there are several important rulings on the issue of status of Palestinian refugees and interpretation of Article 1D. The elaborated case law of the Federation can be briefly described as follows: “The motive of a Palestinian refugee for departing from UNRWA’s area of operation and her/his subsequent behavior have been found decisive in

³⁷⁰ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.339-340

³⁷¹ In Germany, for example it was decided by the Federal Administrative Court in case from 4 June 1991 (1C 42/88) based on the ordinary meaning of the term “ ipso facto”, the structure of Article 1 and the objective and purpose of the Article (Under “Entscheidungsgründe” in the decision, para. II, 2a,aa; para. II, 2a,bb; para. II,2a, cc), “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.176-177

³⁷² “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.340-341

this context, in addition to external factors beyond his/her control.”³⁷³ The precedent-setting decision was the decision of Federal Administrative Court in Berlin from 4 June 1991.³⁷⁴

Federal Administrative Court concluded that Article 1D is not applicable in case if Palestinian concerned had left the UNRWA area *voluntarily*.³⁷⁵

*The purpose of Article 1D would be missed if the persons concerned could choose to request either specifically protection or assistance according to paragraph 1, or generally the privileges of the 1951 Convention according to paragraph 2.*³⁷⁶

Consequently, it was clear from the Court’s decision that Palestinians should not have a right to choose between protection and assistance of UNRWA, and the benefits of the 1951 Refugee Convention. Only events that are beyond the control of the refugee may trigger inclusion clause of Article 1D. Those events may affect either all Palestinian refugees or a particular person.³⁷⁷

The alternative events that are necessary for implementation of the second sentence of Article 1D are: cessation of UNRWA; permanent end of the operation of UNRWA in the country of former habitual of the person concerned; permanent removal of the person from the territory of UNRWA operation; or unexpected and not foreseeable denial and

³⁷³ Ibid, p.175

³⁷⁴ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights, No.22, June 2004, p.29

³⁷⁵ Lex Takkenberg, The Status of Palestinian Refugees in International Law, Oxford, 1998,p.111-112

³⁷⁶ Decision by the Federal Administrative Court, 4 June 1991 (1C 42/88), Under “Entscheidungsgründe” in the decision, para II, 2b, dd (3), translated by BADIL in “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.178

³⁷⁷ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.178

impossibility to re-enter the area of UNRWA operation for the person concerned after his/her departure.³⁷⁸

Therefore, the phrase “for any reason” referring to the cessation of assistance or protection of the Agency in the second sentence of Article 1D was interpreted by the Court as “*for reasons beyond the control of person concerned*”. Thus, if the person leaves UNRWA area with the hope to improve his/her personal or economic situation, then, according to the Court, the assistance has not ceased and Article 1D (2) is not applicable.³⁷⁹

Evidently, the interpretation of Article 1D given by the Federal Administrative Court is the restrictive one. The subsequent jurisprudence demonstrated how hard it is to prove that the relinquishment from the assistance of the Agency was not voluntary. As a result, only few Palestinians were given refugee status under Article 1D in Germany. Most of them have to go through the ordinary determination procedure in accordance with Article 1A (2).³⁸⁰

On the one hand, the Court’s explanation seems to be sensible. On the other hand, it leads in many cases to a refusal of refugee status to people who have been internationally recognized refugees for half of the century. Distinct from all other nationals, Palestinian refugees do not have to prove their status of refugee due to historical events.³⁸¹

The difference between Palestinians and all other asylum-seekers is that “in respect of Palestinian refugees it has already been decided by the international community many years ago that, as long as no durable solution to their problem has been found, they should enjoy an international status. Unlike citizens of the host country, their flight makes them refugees for the second - or sometimes third - time and after having arrived in a new country

³⁷⁸Ibid, p.175

³⁷⁹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998,p.112-113

³⁸⁰ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights, No.22, June 2004, p.30

³⁸¹ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998,p.116

of refuge they should not have to prove what they already are: internationally recognized refugees.”³⁸²

The reading of Article 1D in Denmark and France is even more restrictive than in Germany. In the jurisprudence of both countries inclusion clause of Article 1D is applicable only in case if UNRWA ceases to operate, i.e. assistance of the Agency is ceased. This interpretation was given by the Danish Refugee Appeals Board in its decisions of 3 April and 13 September 1990 based on the note of the Danish Ministry of Foreign Affairs of 14 March 1988, as well as by French *Commission des Recours des Refugies* in its decision dated 25 July 1996. In both cases, however, the applicants were not excluded from applying under the ordinary determination procedure.³⁸³

Interestingly enough, that asylum system in Denmark has a special attitude toward the Palestinians arriving from Lebanon. The main question in cases that involve Palestinians from this country is whether the asylum-seeker can attain the necessary protection in Lebanon. In case when state authorities fail to find such a protection in Lebanon, Denmark is obliged to provide those Palestinians with residence permit and protection.³⁸⁴

The Danish Refugee Board has elaborated three main criteria that demonstrate a necessary level of protection in Lebanon:

1. Stay of the person in Lebanon must be legal
2. It must be feasible for the refugee to return to Lebanon lawfully

³⁸²Ibid, p.117-118

³⁸³ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.341

³⁸⁴ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights, No.22, June 2004, p.29

3. It must be view that the refugee can “continue living in peace in such a way that his or her personal integrity is protected”³⁸⁵

The Refugee Board believes that this threshold for Palestinians from Lebanon is lower than the one stipulated in Article 1A (2).³⁸⁶ What is even more, the burden of proof to establish “necessary protection” in this case, contrary to Article 1A (2), is not on the applicant, but on the Danish authorities.³⁸⁷ The Status of Palestinians from all other countries determines under the ordinary procedure.³⁸⁸

The interpretation of Article 1D similar to the one that is put into practice in France and Denmark was initially accepted in the Netherlands. The decision of the Judicial Division of the Council of State, which is the highest administrative court in the Netherlands, dated 6 August 1987, specified that only the termination of UNRWA’s mandate may lead to the application of Article 1D.³⁸⁹ That meant that the 1951 Refugee Convention would not apply to the persons who left UNRWA area until the existence of the Agency comes to an end.³⁹⁰

Later, in 2003, the Minister of Alien Affairs and Integration provided guidelines in relation to the recognition of Palestinian refugees.³⁹¹ In the amendment to this guidelines issued in April, 24 2003³⁹² it was explicitly stated that Palestinians outside of UNRWA zone, irrespective of whether they left it voluntary or not, must be assessed under Article 1A (2),

³⁸⁵ The Refugee Board Report, 1 April 1989 to 31 December 1991, p.39, see also “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p. 156

³⁸⁶ The Refugee Board Report, 1 April 1989 to 31 December 1991, p.40

³⁸⁷ Ibid, p.69

³⁸⁸ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights, No.22, June 2004, p.29

³⁸⁹ Decision of Judicial Division, Council of State from 6 August 1987, No.RO2.83.2767-A en B

³⁹⁰ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p.106

³⁹¹ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.341

³⁹² Interim Message Aliens Circular/TBV 2003/11, 24 April 2003, Official Gazette, 6 May 2003, No86, p.71

the same way as all other asylum seekers.³⁹³ Thus, according to this interpretation Article 1D again does not have any meaning with regard to Palestinians outside of UNRWA.³⁹⁴

Moreover, the guidelines expect Palestinian refugees to return to UNRWA territory with the aim to re-invoke protection of the Agency. Only in case when the alien can prove that he/she cannot return to the area due to well- founded fear of persecution, and cannot invoke protection against this, Article 1D can be applicable³⁹⁵

So, in the Netherlands “the inclusion clause is applicable only if Palestinian asylum-seekers are unable to return to their country of former habitual residence due to well-founded fear of persecution in that country and cannot invoke UNRWA protection there.”³⁹⁶

The problem here is that the authorities of the state erroneously believe that UNRWA’s mandate include both protection and assistance for the refugees.³⁹⁷ The same consideration was several times stated in many cases held by the Dutch courts until the Court of Appeal in its decision from April 2003³⁹⁸ concluded that UNRWA can not in fact provide protection to the claimant and the case must be re-decided by the authorities.³⁹⁹

³⁹³ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, *Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights*, No.22, June 2004, p.31

³⁹⁴ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.201

³⁹⁵ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, *Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights*, No.22, June 2004, p.31

³⁹⁶ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.341

³⁹⁷ *Ibid*, p.342

³⁹⁸ Amsterdam District Court/Rechtbank, AWB/0317365, AWB 03/17366

³⁹⁹ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.201-202

Consequently, the Netherlands are good example of European state where Article 1D is directly applicable but Palestinian asylum-seekers cannot draw rights from it because of the restrictive interpretation of the authorities of the state.⁴⁰⁰

A Scandinavian country, Sweden, has a very interesting and unusual understanding of Article 1D. According to the current jurisprudence, Palestinians registered by UNRWA are not entitled to claim asylum under Article 1D since their assistance is considered not to have ceased. Article 1D is applicable only after a person concerned is granted permanent residence permit that makes him/her a beneficiary of the 1951 Convention.⁴⁰¹

One may question then how it is possible for Palestinian refugee to obtain a residence permit in Sweden. The answer is that Palestinians from Occupied Palestinian Territories are granted residence permit on humanitarian basis. The same is sometimes applied to Palestinians from Lebanon, although the latter is decided by state authorities case-by-case.⁴⁰²

In accordance with the interpretation given by Swedish authorities, Article 1D does not play a role in a status determination procedure and becomes decisive only during the determination of the scope of the benefits for the person granted residence permit. Hence, , for example, the applicability of Article 1D in Sweden gives a Palestinian refugee, who obtained a residence permit, a right to the travel documents, which he otherwise may not get.⁴⁰³

The United Kingdom is another European country where Article 1D of the 1951 Refugee Convention is not applicable based on incorrect interpretation of the provision. One

⁴⁰⁰Ibid, p.200

⁴⁰¹ Elna Sondergaard, "Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention", *Al-Majdal- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights*, No.22, June 2004, p. 31

⁴⁰²Ibid.

⁴⁰³ "Closing protection gap", *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.219

of the most widely discussed issues concerning application of Article 1D in the UK's jurisprudence is an issue of misinterpretation of the term "at present" in inclusion clause.

The United Kingdom and Germany are two countries that have probably the biggest number of cases concerning Palestinian refugees. Based on the case-law one may draw a conclusion about the asylum policy in these countries with regard to the claims of UNRWA-treated Palestinians.

In September 2000 lawyers representing interests of Palestinian asylum seekers asked the authorities of the UK to clarify on the treatment of Palestinians assisted by UNRWA, and the Immigration and Nationality Directorate of the Home Office (IND) issued Asylum Policy Instruction: "Application for Asylum from UNRWA- assisted Palestinians: Article 1D of the Refugee Convention"⁴⁰⁴. The Instruction was an outcome of 2-years review of national court's judgments in cases that involved Article 1D. The "precedent-setting" decision of Court of Appeal, the case of El-Ali and Daraz⁴⁰⁵, became a main source for the Instruction.⁴⁰⁶

El- Ali (and Daraz) case, in which UNHCR intervened and Guy Goodwin-Gill was counsel for the organization⁴⁰⁷, was heard by the Court of Appeal (Lord Justice Laws, Lord Justice May, and Lord Phillips MR). The appeal involved two cases "as substantive appeals on the same procedural footing".⁴⁰⁸

⁴⁰⁴ Was issued on 2 September, 2002

⁴⁰⁵ Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, available at: <http://www.unhcr.org/refworld/docid/3f278a3a4.html> [accessed 20 September 2010]

⁴⁰⁶ "Closing protection gap", Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.231

⁴⁰⁷ Guy S. Goodwin-Gill, "Treaty Interpretation and English Law: Some Progress to Date and Some Challenges to Come", Notes for a talk to the International Law Association, University College, London, 10 March 2010, p.6

⁴⁰⁸ Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, para.1

The Applicants of both of the cases were Palestinians entitled to UNRWA assistance, who left Lebanon for the UK, where they sought asylum.⁴⁰⁹ Both of the applicants lost their cases at first instance since they failed to fulfill criteria set up in Article 1A (2) of the 1951 Refugee Convention.⁴¹⁰ In their submissions to the Appeals Tribunal applicants relied on Article 1D and claimed to be recognized as refugees without necessity to meet all the requirements of Article 1A (2), based on the fact that UNRWA assistance has ceased as soon as they left Lebanon and now they are entitled to the benefits of Refugee Convention “ipso facto”.⁴¹¹

Lord Justice Laws started his decision with the review of historical background emphasizing that it was “unusually important”.⁴¹² Further, he gave a summary of *Travaux Préparatoires*, mentioning that the relevance of it to the interpretation of the Convention is not in doubt.⁴¹³ In this regard it was absolutely correctly noted by G. Goodwin-Gill, that

*... the Travaux may indicate the origins of the ambiguity, such as lack of drafting time, but not necessarily provide a clear indication of exactly what was intended. States participating in the drafting process may not have anticipated a future problem, and resolving the ambiguity or obscurity will then depend on later practice and related developments.*⁴¹⁴

⁴⁰⁹ Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, paras. 3 and 8

⁴¹⁰ Ibid, para. 24

⁴¹¹ Ibid, para. 7

⁴¹² Ibid, para. 9

⁴¹³ Ibid, para. 18

⁴¹⁴ Guy S. Goodwin-Gill, “Treaty Interpretation and English Law: Some Progress to Date and Some Challenges to Come”, Notes for a talk to the International Law Association, University College, London, 10 March 2010, p. 7

This is exactly what was expected from El- Ali case: to resolve the ambiguity of some key terms used in Article 1D.

Lord Justice Laws mentioned three phrases of the provision that are ambiguous and bear one of the two following meanings⁴¹⁵:

“at present” may refer to:

- A. that the “persons” to whom the first sentence (and by cross-reference – “such persons” – the second sentence) refers are and are *only* those Palestinians who as at 28 July 1951, when the Convention was adopted, were registered to receive protection or assistance from non-UNHCR United Nations bodies and were resident in the territories where such bodies operated
- B. to include any Palestinian who is receiving UNRWA assistance at the time when the application of Article 1D falls to be considered in any individual case;⁴¹⁶

“such protection or assistance has ceased for any reason” may refer to:

- A. contemplates the happening of a single overall event, namely the cesser or withdrawal of its agencies’ support by the United Nations; as for example might have happened if it had become clear that the Palestinians could return in peace and security to their homelands, and in consequence the operations of (in this

⁴¹⁵ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.233

⁴¹⁶ Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, para.24

case) UNRWA were wound up; or perhaps if that were done for some other reason of international politics.

- B. contemplates the happening of individual or particular events: thus if an individual Palestinian leaves the territory where he is registered with UNRWA and/or receiving assistance from UNRWA, the relevant protection or assistance ceases in his case; he is accordingly and without more taken out of the scope of the first sentence of 1D and finds himself within the second.⁴¹⁷

“be entitled to the benefits of this Convention” can mean:

- A. that any such person merely becomes entitled to *apply* to a State Party for refugee status under Article 1A(2), and must demonstrate that Article 1A(2) applies to him.
- B. That any such person shall be accepted as a refugee (by any State Party where he claims asylum) without having to demonstrate that he falls within Article 1A (2). Subject to a separate point about the effect of the non-*refoulement* clause (Article 33) he is then entitled to all the material benefits of the Convention including and in particular those flowing from the provisions in Articles 3 ff.⁴¹⁸

⁴¹⁷ Amer Mohammed El-Ali v. The Secretary of State for the Home Department and Daraz v. The Secretary of State for the Home Department (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, para. 25

⁴¹⁸ Ibid, para. 26

Therefore, Lord Justice Laws gave rise to eight possible interpretation of Article 1D: from A-A-A to B-B-B.⁴¹⁹ The appellants, supported by Professor Guy Goodwin-Gill, urged B-B-B; the Secretary of State argued for A-A-A; the Appeals Tribunals adopted A-B-B while Lord Justice Laws decided that correct interpretation is A-B-B.⁴²⁰ Lord Justice May and Lord Phillips MR agreed with the interpretation given by Lord Justice Laws.⁴²¹

Consequently, the Supreme Court of Judicature Court of Appeal (Civil Division) adopted the interpretation of Article 1D according to which the Article is applicable only to those Palestinians who were receiving protection or assistance from UNRWA on the date when the 1951 Refugee Convention was signed. No one else [including the descendants of those persons and those who were receiving assistance or protection from UNRWA later than the date of signing of the Convention] is covered by Article 1D. Therefore, “The United Kingdom argues that the use of the words “at present” refers to 1951, when the Convention was drafted.”⁴²² Moreover, if Article 1D is applicable to a person, the same person is excluded from the scope of the Convention and, therefore, from applying for asylum under Article 1A (2), as long as UNRWA operates.⁴²³

Lord Justice Laws reasoned his ruling, as he believes, based on the ordinary meaning of the term “at present”⁴²⁴. Contrary to the interpretation of Professor Goodwin-Gill given in his supplementary submission, he believes that “continuative” approach to the phrase is

⁴¹⁹ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.233

⁴²⁰ *Amer Mohammed El-Ali v. The Secretary of State for the Home Department* (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, para.27

⁴²¹ *Ibid*, para.53,75

⁴²² *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para.62

⁴²³ Elna Sondergaard, “Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention and the 1954 Stateless Convention”, *Al-Majdal*- a quarterly magazine of Resource Center for Palestinian Residency and Refugee Rights, No.22, June 2004, p.32

⁴²⁴ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.234

incorrect.⁴²⁵ He even considers such an approach to be in conflict with the refugee definition given in Article 1A (2).⁴²⁶ Moreover, Lord Justice Laws argued that it was logical to assume that the drafters of the Convention had an intention to limit the scope of the Convention to only those Palestinians who received assistance from UNRWA on 28 July 1951 because the Convention entitles asylum-seekers to “a highly preferential and special treatment”.⁴²⁷

Although UNHCR represented by Professor Goodwin-Gill disagree with all the arguments mentioned above and argued just the opposite,⁴²⁸ the appeal was dismissed.

Interestingly enough that several months before El-Ali and Daraz case was decided, in 4 February 2002, the Immigration Appeals Tribunal adopted just the opposite interpretation of Article 1D, the one that is called “correct” in this thesis. In *Issam El- Issa v. The Secretary of State for the Home Department*⁴²⁹ Judge Flynn agreed with the interpretation given by Professors Goodwin-Gill and Susan Akram in Amicus Brief⁴³⁰ and recognized that the appellant was *ipso facto* entitled to the benefits of the Convention in accordance with the wording of Article 1D. However, this decision was overturned by the later decision of the Court of Appeal in regard to Mr. El-Ali.⁴³¹

⁴²⁵ *Amer Mohammed El-Ali v. The Secretary of State for the Home Department* (The United Nations High Commissioner for Refugees, Intervener), United Kingdom: Court of Appeal (England and Wales), 26 July 2002, para.33

⁴²⁶ *Ibid*, para.34

⁴²⁷ *Ibid*, para.36

⁴²⁸ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.323-324, *supra* 681-783

⁴²⁹ *Issam El- Issa v. The Secretary of State for the Home Department*, 4 February 2002 (CC/21836/200)

⁴³⁰ Guy Goodwin-Gill and Susan M.Akram, "Amicus brief on the status of Palestinian Refugees under international Refugee Law, The Palestine Yearbook of international law, 2000-2001

⁴³¹ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.237

Therefore, “even if a state recognizes the legal import of the *ipso facto* provision, the intended mandate of Article 1D may still be manipulated to create a standard that simply *excludes* Palestinians from the protection intended for them.”⁴³²

5.2.3. Correct implementation of Article 1D

Although S.Akram and T.Rempel talked only about two categories of the states, there is also the third one – the states where Article 1D of the Convention is properly implemented, at least in some cases.

One may argue that it is not possible to talk about the correct application of the provision when there is, in fact “a lack of consensus about the proper interpretation of Article 1D”⁴³³ It is important to make it clear here that the phrase “correct interpretation/application/implementation of Article 1D” in this thesis refers to the interpretation given by scholars such as L. Takkenberg, G. Goodwin-Gill, S. Akram, and others⁴³⁴, reflected in UNHCR Note, explained in a Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention issued by BADIL, and, supported by the author of this thesis.

Besides one case in the UK (El-Issa case mentioned above), Article 1D was more or less properly interpreted in jurisprudence of only 2 European countries- Hungary and

⁴³² Susan M. Akram and Guy Goodwin-Gill, “Brief Amicus Curiae” submitted to the United States Department of Justice Executive Office for Immigration Review, Board of Immigration Appeals, Falls Church, Virginia, 1999, in *The Palestine Yearbook of International Law* 2000-2001, Vol. XI, Kluwer Law International, 2000/2001, p.245

⁴³³ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.334

⁴³⁴ For the detailed explanation see the previous Chapter

Finland. This fact relates to at least three cases heard in Finland and five cases heard in Hungary in 2003.⁴³⁵

The Refugee determination process in Finland is provided according to Article 87 of the Aliens Act of 30 April 2004. The Article contains provisions identical to Article 1A (2) and 1D of the 1951 Refugee Convention. According to the Act, “persons who are eligible for protection or help from bodies or offices of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR)” are entitled to the refugee status as soon as the protection or help ceases.⁴³⁶

Therefore, to date the interpretation of Article 1D in the country is practically the same as the one that is called correct above. However, there is a significant addition to the “inclusion-exclusion” clause related to Palestinians refugees:

If the Person has voluntarily relinquished the protection mentioned above by leaving the safe area for reasons other than those related to a need for protection, his or her right of residence is examined under this Act [i.e. under Article 1A (2)]⁴³⁷

Therefore, future range of protection and possibility to get a refugee status for Palestinian asylum-seekers in Finland will basically depend on the elaboration and explanation of the meaning of the phrase “voluntarily relinquished” by the Finland authorities.⁴³⁸

⁴³⁵ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.338

⁴³⁶ Ibid, p.162 and 163

⁴³⁷ Section 87 (3) of the Aliens Act of 30 April 2004, Unofficial translation by the Finnish Directorate of Immigration

⁴³⁸ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.163

Concerning Hungary, Article 1D of the 1951 Refugee Convention was not considered in any case heard in the country before 2001. In 2001, in one of the individual cases, UNHCR's Branch Office in Hungary submitted an "expert opinion" with the suggestion of exceptional examination of Palestinian asylum claims based on Article 1D. In 2002 UNHCR intervened in another Palestinian asylum case upon the request of Hungarian Helsinki Committee and confirmed the necessity of application of principles set in Article 1D. Later, UNHCR Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees, issued in October 2002, was translated into Hungarian language and distributed to the authorities active in the sphere of Asylum Law.⁴³⁹

In 2003 there were already five decisions of the Hungarian Office of Immigration and Nationality (OIN), according to which Palestinians were granted refugee status generally based on the correct interpretation of Article 1D. Nevertheless, in three other Palestinian asylum-seekers cases, applicants were denied refugee status since they did not fulfill all the criteria set in Article 1A (2) of the Convention. It is still unclear based on which criteria those two groups of cases were decided differently. Therefore, the application of Article 1D even in Hungary seems to be decided case-by-case.⁴⁴⁰

5.3. Interpretation of Article 1D in European Union

European Union has its own very specific system of law, with many federal characteristics, and working mechanism of enforcement.⁴⁴¹ "With its own supranational court, the EC legal order permeates national ones, bringing well-established legal doctrines

⁴³⁹Ibid, p.188-189

⁴⁴⁰ "Ibid, p.189

⁴⁴¹ Cathryn Costello, "The European Asylum procedures directive in legal context", UNHCR New issues in refugee research , Research paper no.134., November 2006, p.2

which empower national judges and indeed litigants.”⁴⁴² And now, when EU develops common asylum policy, doctrines and principles elaborated in the Union play a big role in indicating the tendency of the future development of asylum law in Europe.

5.3.1. Article 12(1) (a) of the Qualification Directive

In October 1999, during the meeting in Tampere, the European Council decided to create a Common European Asylum System which would be in accordance with the 1951 Refugee Convention and the 1967 Refugee Protocol. Along with other objects, it was contracted to establish common rules for granting the refugee status in Europe.⁴⁴³

The result of two-and-a-half years of works was that on 29 April, 2004 the Member States of the Union adopted the Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who otherwise Need International Protection and the Content of the Granted (the Directive).⁴⁴⁴ The intention of the drafters was to harmonize asylum law in all Member States.⁴⁴⁵

The main aims of the Directive are: 1) to establish common criteria for granting protection to the asylum seekers and 2) to ensure minimum level of benefits obtainable in European countries. Moreover, the Directive ensured that those, who do not fulfill criteria set up in the Directive, but cannot return to the country of habitual residence due to human rights

⁴⁴² Ibid.

⁴⁴³ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.93

⁴⁴⁴ Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who otherwise Need International Protection and the Content of the Granted [2004] OJ L304/12 (Qualification Directive)

⁴⁴⁵ Jane McAdam, “The Qualification Directive: An Overview”, in Karin Zwaan (ed.), “The Qualification Directive: Central Themes, Problem Issues and Implementation in Selected Member States”, Wolf Legal Publishers, Nijmegen, 2007, p.7

anxiety, are entitled to the subsidiary protection, i.e. are allowed to remain on the territory of the country, according to the Directive.⁴⁴⁶

It is important to note, that the Directive is based on the already existed practice of the Member States and simply draws “the best” elements of national asylum systems.⁴⁴⁷ Therefore, it was not intended to establish a new protection system in Europe but rather to codify the best practice existed in the Member States and harmonize different approaches of European States. Thus, the Directive basically tends to the restrictive explanation of the existing practice rather than the elaboration of a new system.⁴⁴⁸

Article 12 of the Directive enunciates the grounds for an exclusion from being recognized as a refugee. Falling within the scope of [the first sentence of] Article 1D of the Convention is listed in Article 12 (1) (a) among other preconditions for the exclusion. Therefore, refugees receiving assistance from UNRWA are deprived the possibility to be recognized as a refugee in Europe.⁴⁴⁹

The purpose of such an exclusion was explained in UNHCR Comments on Article 12 (1) (a) of the Directive. According to the Comments, the aim pursued by the drafters of the Convention was to avoid “overlapping competencies between UNRWA and UNHCR”.⁴⁵⁰

⁴⁴⁶ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.93

⁴⁴⁷ “Explanatory Memorandum” in Commission of the European Communities Proposal for Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who otherwise Need International Protection COM (2001) 510 final (12 September 2001) 5.

⁴⁴⁸ Jane McAdam, “The Qualification Directive: An Overview”, in Karin Zwaan (ed.), “The Qualification Directive: Central Themes, Problem Issues and Implementation in Selected Member States”, Wolf Legal Publishers, Nijmegen, 2007, p.8-9

⁴⁴⁹ “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.94

⁴⁵⁰ UN High Commissioner for Refugees, UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the

According to the same UNHCR Comments, the second important aim of Article 1D was to ensure “continuity of protection and assistance of Palestinian Refugees as necessary.” This was guaranteed in the second paragraph of Article 1D, called “automatic inclusion” by UNHCR.⁴⁵¹

The second part of Article 12 (1) (a), which deals with the “*ipso facto*” recognition of Palestinians as refugees when the protection or assistance of UNRWA ceases, simply duplicates the language of Article 1D of the 1951 Refugee Convention, without further explanations. As a result, it is unclear whether Palestinian refugees have to meet all the criteria set up in Article 1A (2) of the Convention or must be recognized as refugees automatically.⁴⁵²

One of the alternative interpretations of Article 12 (1) (a) of the Directive was recently given by Advocate General Sharpston in her Opinion on *Bolbol* case heard by the European Court of Justice (ECJ).⁴⁵³ Her reading of Article 1D seems to be influenced by the interpretation of the phrase “has ceased for any reason” given by the German Federal Administrative Court, and by the explanation of Article 1D given in the Joint Position of the Council of the European Union on the harmonized application of the definition of the term

Content of the Protection Granted (OJ L 304/12 of 30.9.2004), 28 January 2005, available at: <http://www.unhcr.org/refworld/docid/4200d8354.html> [accessed 25 September 2010]

⁴⁵¹ Ibid.

⁴⁵² “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.94

⁴⁵³ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010. It is important to mention that Court of Justice is not binding by the Opinion of the Advocate General.

'refugee' in article 1 of the 1951 Convention⁴⁵⁴ which was replaced by the Qualification Directive in 2004.⁴⁵⁵

5.3.2. Case of Ms. Bolbol

Bolbol case is the first preliminary ruling of the European Court of Justice (ECJ) concerning the interpretation of Article 12 (1) (a) of the Directive- the provision that “directly reflects”⁴⁵⁶ Article 1D of the 1951 Refugee Convention.⁴⁵⁷ Although, in preliminary rulings ECJ does not decide any case on the merits and only gives an interpretation of the EU law or decides on the question of validity of EU acts, judgments of the Court play a big role in guiding the Member States toward uniform interpretation of EU law.⁴⁵⁸ Moreover, some authors believe that “it would... seem unacceptable to establish that the Court’s rulings produce no binding effect for national courts: if a merely advisory function were given to the Court, this would not provide a sufficient guarantee as to the uniform application of Community provision.”⁴⁵⁹ For these reasons Bolbol decision has a great importance with regard to the future interpretation of the provision concerning the status of Palestinian refugees in Europe.

The Bolbol case involves Palestinian woman who, together with her husband, left the Gaza Strip for Hungary where she obtained a residence permit. Later, when Ms Bolbol` s

⁴⁵⁴ Joint Position of 4 Mar. 1996 defined by the Council of the European Union on the basis of Article K. 3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees. Text: Official Journal, No.L 063, 13 Mar.1996, 2.

⁴⁵⁵ See Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p. 118-119

⁴⁵⁶ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, para.91

⁴⁵⁷ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010,para.37

⁴⁵⁸ Anthony Aust, “Handbook of International Law”, Cambridge University Press, 2010, p.440

⁴⁵⁹ Adelina Adinolfi, “New Modalities for the Preliminary References Procedure: The Amsterdam Treaty and the Conventions among Member States”, in “Collected Courses of the Academy of European Law/1997 European Community Law” by Academy of European Law, vol. VIII, Book 1, Kluwer Law International, 2001, p 89

request to extend the residence permit in the country was refused. She applied for the refugee status referring to the dangerous situation in the Gaza Strip.⁴⁶⁰

Ms Bolbol` s application was refused by Bevándorlási és Állampolgársági Hivatal (Hungarian Immigration Office) due to her failure to fulfill all the criteria set in Article 1A (2).⁴⁶¹ Making this decision, Hungarian authorities relied on the interpretation of Article 1D according to which Palestinians cannot be recognized as refugees automatically and have to fall within Article 1A of the Convention.⁴⁶² Therefore, the defendant (BAH) believed that “Article 1D does not automatically grant a basis for refugee status but is merely a provision concerning the Convention`s scope of *ratione personae*.”⁴⁶³

Ms Bolbol had another reading of the Article 1D of the 1951 Refugee Convention, according to which “the purpose of Article 1D is to make clear that where a person registered or entitled to be registered with UNRWA resides, for any reason, outside UNRWA`s area of operation and, for good reason, cannot be expected to return there, the States party to the Geneva Convention must automatically grant him refugee status.”⁴⁶⁴

Furthermore, one of the main issues in the case was that, in fact, Ms Bolbol never availed herself of the protection or assistance of UNRWA and was not registered by the Agency when she lived in the Gaza Strip. The Applicant, on the other hand, claimed that, although she never used the possibility to be assisted by UNRWA, she was actually entitled to such assistance.⁴⁶⁵

⁴⁶⁰ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, paras.25-26

⁴⁶¹ *Ibid.*, para.29

⁴⁶² *Ibid.*, para.29

⁴⁶³ *Ibid.*, para.32

⁴⁶⁴ *Ibid.*, para.31

⁴⁶⁵ *Ibid.*, para.27

The Decision of Immigration Office was challenged by the applicant in Fővárosi Bíróság (Budapest Metropolitan Court, Hungary), which referred the following three questions to the ECJ for a preliminary ruling:

‘For the purposes of Article 12(1) (a) of Council Directive 2004/83/EC:

1. Must someone be regarded as a person receiving the protection and assistance of a United Nations agency merely by virtue of the fact that he is entitled to assistance or protection or is it also necessary for him actually to avail himself of that protection or assistance?
2. Does cessation of the agency’s protection or assistance mean residence outside the agency’s area of operations, cessation of the agency and cessation of the possibility of receiving the agency’s protection or assistance or, possibly, an objective obstacle such that the person entitled thereto is unable to avail himself of that protection or assistance?
3. Do the benefits of the directive mean recognition as a refugee, or either of the two forms of protection covered by the directive (recognition as a refugee and the grant of subsidiary protection), according to the choice made by the Member State, or, possibly, [does it mean] neither automatically but merely [lead to] inclusion [of the person concerned within] the scope *ratione personae* of the Directive?’⁴⁶⁶

The Court’s interpretation of Article 12(1) (a) started with the reference to the 1951 Refugee Convention. There was no doubts in the ruling that, according to the recitals 3, 16 and 17 in the preamble to the Directive, “Geneva Convention constitutes the cornerstone of

⁴⁶⁶Ibid, para.35

the international regime for the protection of refugees” and, that all provisions of the Directive must “be interpreted in the light of its general scheme and purpose, while respecting the Geneva Convention and the other relevant treaties.”⁴⁶⁷

In fact, Advocate General Sharpston (AG) also started her opinion with the reference to the international law and named all the “relevant treaties” and acts, such as The 1951 Refugee Convention, The UN Resolutions, The UNHCR Notebook, The 2002 Note, The EC Treaty, etc., that must be taken into account while interpreting Article 12 (1) (a) of the Directive.⁴⁶⁸ Furthermore, she looked at the historical background, *Travaux Préparatoires* and different interpretations of Article 1D in jurisprudences of some European countries, since found it logical to apply the result of this analysis to EU law.⁴⁶⁹

Having demonstrated contradiction between UNHCR Handbook, which does not automatically recognize as refugees those Palestinians who are outside of UNRWA area, and The 2002 UNHCR Note (revised in 2009), that, to the contrary, automatically entitles this category of Palestinians to the benefits of the Convention, AG explicitly demonstrates her intention to treat namely the latter as an unofficial *amicus curiae* brief to the case.⁴⁷⁰

Therefore, “Advocate General Sharpston considers that Directive 2004/83 offers automatic recognition of refugee status to person who, as a result of external circumstances beyond their control, have ceased to receive protection or assistance from UN bodies other than the UNHCR.”⁴⁷¹

⁴⁶⁷Ibid, para.37-38

⁴⁶⁸ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para. 4-29

⁴⁶⁹Ibid, para.38-91

⁴⁷⁰Ibid, para.16-18

⁴⁷¹ Advocate’s General Opinion in case C-31/09, Court of Justice of European Union, *Narwas Bolbol v. Bevándorlási és Állampolgársági Hivatal*, Court of Justice of European Union, Press Release No 22/10, Luxembourg, 4 March 2010.

To the opinion of AG, displaced Palestinians who are receiving UNRWA assistance are excluded from the scope of 1951 Refugee Convention. However when the assistance ceases for any reason that is *beyond the control or wish of person concerned*, and he/she is not able to obtain it further, the person automatically becomes entitled to the benefits of the Convention. Nonetheless, according to AG, this is not applicable to the cases when UNRWA assistance has ceased as a result of the person's own actions. In this situation asylum seeker may be recognized as refugee only based on the generally applicable status determination procedure.⁴⁷²

Moreover, based on the same opinion of AG, a “person comes within the scope of the first sentence of Article 12 (1) (a) of the Directive only if he has actually availed himself of protection or assistance provided by organ or agency of UN” and, thus, “mere entitlement to such protection or assistance does not exclude such a person from being a refugee within the meaning of Article 2 (c) of the Directive.”⁴⁷³ Therefore, in this aspect, AG's reading of Article 1D of the Convention (and, consequently, Article 12(1) (a) of the Directive) is contrary to what I call in this thesis a “correct interpretation”, since she fails to recognize that all Palestinians fall within the scope of the exclusion clause merely by virtue of the fact that they are *entitled* to UNRWA assistance, without a need to actually avail themselves of that assistance.

The opinion of AG with regard to the first issue in the case was, unfortunately, supported by the ECJ in its decision: “A person receives protection or assistance from agency of the United Nations other than UNHCR, when that person has actually availed himself of

⁴⁷²Ibid, p.2

⁴⁷³ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, Opinion of Advocate General Sharpston, delivered on 4 March 2010, para.93

that protection or assistance.”⁴⁷⁴ And in the light of such reply on the first question the Court found it not necessary to answer two other questions referred to it.⁴⁷⁵

Since the Court did not answer the second question it is not possible to tell anything about its interpretation of inclusion clause (paragraph 2 of Article 1D) of the Convention. But the interpretation of the inclusion clause given by AG is, unfortunately, also not completely in compliance with the “correct interpretation.” AG believes that Palestinians who were assisted by UNRWA can become beneficiaries of the Convention only under the condition when the assistance or protection of the agency ceases *without the person’s own volition*. With no doubts, such an interpretation opens prospect for different restrictive interpretations of the phrase “of his own volition” by authorities of European states.

Although Opinion of AG in Bolbol case was not fully in harmony with the interpretation of Article 1D given in the UNHCR Note, there are some aspects in it that raise optimistic view on the future treatment of displaced Palestinians in Europe. First of all, AG affirmed that once the assistance of UNRWA ceases, Palestinians must be *automatically* granted refugee status (although in her opinion it also depends on the conditions of cessation). Moreover, the Opinion did not support restricted interpretation of Article 1D given by the UK’s authorities and did not put temporary limitations on the application of the provision.

Therefore, it is clear from this chapter that the real intention of the 1951 Refugee Convention’s drafters is not fully understood in many European countries. Although- as I argue it in this thesis- all Palestinians residing outside of UNRWA area must be automatically recognized as refugees, a big number of them to date is not granted a refugee status in Europe

⁴⁷⁴ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, *para.* 57

⁴⁷⁵ *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, European Union: European Court of Justice, 17 June 2010, *para.* 56

due to misinterpretation or incorrect application of Article 1D of the Convention. Even though there are some cases where this provision was correctly interpreted and implemented, it is still not a generally accepted rule. In many countries Palestinians are treated similar to any other asylum-seeker. “In this way, a provision intended to help them has in fact worked against their best interests.”⁴⁷⁶

⁴⁷⁶ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.viii

Conclusion and recommendations

This thesis has demonstrated that “Palestinian refugees have a status that is unique under international refugee law.”⁴⁷⁷ They are defined separately from all other refugees and covered by special international regime established particularly for them.

One of the reasons why the case of Palestinians is an exceptional one is that because, contrary to all other refugee issues, it seems to be impossible to find one particular durable solution suitable for the whole group.⁴⁷⁸ On the one hand, the absence of peace and continuation of the conflict in the area makes a return of the refugees impossible in most of the cases. On the other hand, non-granting of permanent legal status and violation of civil and economic rights of Palestinians in the countries of first asylum create an obstacle for the refugees’ settlement in those, mostly Arab, states. In addition, a settlement and resettlement of Palestinians in the State Parties to 1951 Refugee Convention is also infeasible in many cases due to erroneous interpretation of some provisions of the Convention.

“Unlike any other group of refugees in the world, Palestinians are singled out for exceptional treatment in the major international legal instruments which govern the rights and obligations of states towards refugees...”⁴⁷⁹ In the 1951 Refugee Convention this fact is stipulated in Article 1D. “It is sometimes said that this means that Palestinians are “excluded”

⁴⁷⁷Guy Goodwin-Gill and Susan M. Akram, “Foreword to Amicus Brief on the status of Palestinian refugees under international refugee law”, in *The Palestine Yearbook of International Law 2000-2001*, Vol.XI, Kluwer Law International, 2000/2001, p. 185.

⁴⁷⁸ Lex Takkenberg, “The Status of Palestinian Refugees in International Law”, Oxford, 1998, p. 326

⁴⁷⁹ Guy Goodwin-Gill and Susan M. Akram, “Foreword to Amicus Brief on the status of Palestinian refugees under international refugee law”, in *The Palestine Yearbook of International Law 2000-2001*, Vol.XI, Kluwer Law International, 2000/2001, p. 185

from the Convention”⁴⁸⁰, but -as I argued- “this does a disservice to the drafters, and can seriously compromise the goal of protection.”⁴⁸¹ “Some scholars...rightly argue that the exclusions should only apply within UNRWA areas of operation.”⁴⁸²

It was shown in this thesis that “taking into account the plain language, actual historical context and appropriate canons of treaty construction, the actual intent of the interrelated provisions governing the legal status of Palestinian refugees was to provide them with *greater* protection than that afforded all other refugees in the world, rather than the *least* protection which they receive under the current regime.”⁴⁸³ “The Travaux Préparatoires clearly show the United Nations and member states determining, as a matter of policy, that Palestinian refugees were presumed to be in need of international protection, and that in certain circumstances they would automatically fall within the 1951 Convention.”⁴⁸⁴

However, it was revealed in the last Chapter of the present thesis that in many states, including European ones, Article 1D of the Convention is misunderstood and misinterpreted by state authorities. As a result, in many cases Palestinians are not granted refugee status and, therefore, cannot enjoy a full range of rights enunciated in the 1951 Refugee Convention. “...A state of confusion and the absence of a clear policy on how to deal with Palestinians still exists in most countries amid the increasing trend by European countries to

⁴⁸⁰ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.vi

⁴⁸¹ Ibid.

⁴⁸² Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, Refugee and Diaspora Studies, No.2, 2005, p.14

⁴⁸³ Guy Goodwin-Gill and Susan M. Akram, “Foreword to Amicus Brief on the status of Palestinian refugees under international refugee law”, in The Palestine Yearbook of International Law 2000-2001, Vol.XI, Kluwer Law International, 2000/2001, p185

⁴⁸⁴ Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p.vii

close their doors to immigration while paying lip service to international conventions on refugees and stateless persons.”⁴⁸⁵

Therefore, “there is a lack of consensus about the proper interpretation of Article 1D of the 1951 Refugee Convention, resulting in the non-implementation of its provisions and referral of Palestinian refugees to status determination under the criteria of Article 1A (2) of the 1951 Refugee Convention.”⁴⁸⁶ As a result, “it is ironic that Article 1D, initially meant to provide Palestinian refugees with heightened protection, resulted in negligible attention.”⁴⁸⁷

In a hearing organized by the Council of Europe’s Committee on Refugees in Budapest in December 2002 the contributors came to conclusion that “the solution to the Palestinian refugee issue is essentially a political one that requires the full support of the international community.”⁴⁸⁸ I believe that this kind of support is impossible until Palestinians residing in Europe are recognized as refugees and beneficiaries of the 1951 Convention, under the condition that Articles 1C, 1E and 1F do not apply.

The analysis presented in this thesis leads to the only possible conclusion, which is more a recommendation for national authorities and courts of European states, as well as “the Council of European Union and other institutions of EU, including European Court of Justice”⁴⁸⁹: for states to fulfill their obligations under international law, and to contribute to international support and protection of Palestinian refugees it is necessary to:

⁴⁸⁵ Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, *Refugee and Diaspora Studies*, No.2, 2005, p.14

⁴⁸⁶ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005 p.334

⁴⁸⁷ Randa Farah, “The Marginalization of Palestinian refugees”, in “Problems of Protection: the UNHCR, refugees, and Human rights”, ed. Niklaus Steiner, Mark Gibney, Gil Loesher, Routledge, 2003, p.173

⁴⁸⁸ Abbas Schiblak, “Palestinian Refugees in Europe, Challenges of Adaption and Identity”, *Refugee and Diaspora Studies*, No.2, 2005, p.14

⁴⁸⁹ “Closing protection gap”, *Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005 p.359

- fully apply both clauses of Article 1D in cases involving Palestinian refugees; and
- adopt and implement, so-called, proper interpretation of Article 1D,i.e, the one recommended by UNHCR, BADIL Handbook, legal scholars and author of this thesis.⁴⁹⁰

Although, Article 1D was already properly applied in some European countries, including Hungary and Finland⁴⁹¹, and was partially correctly interpreted by European Court of Justice in the Bolbol case, most European States, as well as European Union in general, should improve their understanding of the provision in order to interpret and apply it in accordance with its real meaning and recommendations of UNHCR and legal scholars. Therefore, “it is seriously to be hoped that, so long as Palestinian refugees continue to be in need of protection and assistance, an approach consistent with the object and purpose of the relevant international instruments will be adopted; the goal of continuity of protection especially should be recalled, and given life and meaning.”⁴⁹²

⁴⁹⁰ Ibid,p.358-³⁵⁹

⁴⁹¹ Ibid, p.337

⁴⁹² Guy S. Goodwin-Gill, Preface to “Closing protection gap”, Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention, BADIL Resource Center for Palestinian Residency and Refugee Rights, August 2005, p viii

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