

**IN THE COURT OF APPEAL
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL**

C/2002/0751

B E T W E E N:

AMER MOHAMMED EL-ALI

Appellant

- v -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**SKELETON ARGUMENT ON BEHALF OF THE INTERVENER
(UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES)**

Time estimate: 2 days (hearing); 3 hours (reading)
Listing: Floating over 1-3 July 2002

Recommended reading:

Immigration Appeal Tribunal Determination [Authorities Vol. 2, Tab 41/466-479]
UNHCR Letter, 8 November 2001 [Authorities Vol. 1, Tab 9/127-128]
1951 Convention relating to the Status of Refugees, Article 1D [Authorities Vol. 1,
Tab 2/8]
Statute of the Office of the United Nations High Commissioner for Refugees Article
7C [Authorities Vol. 1, Tab 1/2]
1954 Convention relating to the Status of Stateless Persons, Article 1 [Authorities
Vol. 1, Tab 3/20]
United Nations General Assembly Resolution 56/56 [Authorities Vol. 1, Tab 23/183-
186]
United Nations General Assembly Resolution 56/54 [Authorities Vol. 1, Tab 22/181-
182]
United Nations General Assembly Resolution 302 (IV) [Authorities Vol. 1, Tab
14/160-163]
United Nations General Assembly Resolution 2341B (XXII) [Authorities Vol. 1, Tab
19/174-176]

I. INTEREST OF THE INTERVENER

1. The Office of the United Nations High Commissioner for Refugees ('UNHCR') has been entrusted by the United Nations General Assembly with the responsibility of providing international protection, under the auspices of the United Nations, to refugees within its mandate and of seeking permanent solutions to the problems of refugees. The Statute of the Office of the High Commissioner specifies that the High Commissioner shall provide for the protection of refugees falling under the competence of the Office by, inter alia:

‘Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto...’

Statute of the Office of the United Nations High Commissioner for Refugees, UNGA Res. 428(V), 14 December 1950, Annex, paragraph 8 [Authorities Vol. 1, Tab 1/1-5 at 3]

2. This supervisory responsibility of the UNHCR is also recognized in Article 35 of the 1951 Convention relating to the Status of Refugees, to which the United Kingdom became a party on 11 March 1954.

Article 35 – Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.¹

3. The present case concerns the interpretation of Article 1D of the 1951 United Nations Convention relating to the Status of Refugees (1951 Convention), and presents questions involving the essential interests of refugees within the mandate of the High Commissioner and the international protection function of the Office. The resolution of this case will likely affect the interpretation by the United Kingdom of the 1951 Convention with regard to the determination of refugee status and the grant of asylum to those who qualify for such status. The decision in this case can also be expected to influence the manner in which the authorities of other countries apply the refugee definition contained in the 1951 Convention/1967 Protocol.

¹ See also Article II, 1967 Protocol relating to the Status of Refugees [Authorities Vol. 1, Tab 4/31-34 at 32].

4. As explained in copies of correspondence copied to the Court of Appeal under cover of UNHCR's letter of 11 June 2002 [Authorities Vol. 1, Tab 6/ 73-77] requesting permission to intervene in these proceedings, UNHCR has a clear interest in ensuring the correct and consistent interpretation of the 1951 Convention by States party. See also *T v. Secretary of State for the Home Department* [1996] AC 742, 779A-B [Authorities Vol. 1, Tab 7/78-124].
5. The appeal before the Court raises an important point of interpretation of Article 1D of the 1951 Convention. Given its supervisory responsibilities, UNHCR considers it appropriate to place its own view before the Court and to provide any additional assistance to the Court for which it may be called upon.
6. UNHCR will limit its submissions to the construction of the 1951 Convention. It will not therefore comment on the underlying material facts, or on the exercise of their mandate responsibilities by other United Nations agencies.

II. SUMMARY OF ISSUES

7. Article 1D of the 1951 Convention relating to the Status of Refugees provides:

This Convention shall not apply to *persons who are at present receiving* from organizations 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 resolutions adopted by the General Assembly of the United Nations, *these persons shall ipso facto be entitled to the benefits of this Convention.* [emphasis supplied]
[Authorities Vol. 1, Tab 2/8]

8. The provision was drafted primarily with the situation of Palestinian refugees in mind. The decision of the Immigration Appeal Tribunal raises important issues of interpretation in relation, in particular, to the scope of the article ('persons who are at present receiving... protection or assistance'), the cessation of protection or assistance 'for any reason', and the consequences ('*ipso facto* entitled to the benefits' of the Convention).

III. SUMMARY OF INTERPRETATION

9. In the view of the Office of the United Nations High Commissioner for Refugees, Article 1D of the 1951 Convention is premised on the fact that protection or assistance are already available to certain Palestinian refugees, pending a definitive settlement of their situation; so long as their needs as refugees (protection or assistance) are met, there is no recourse to the benefits and protection available under the 1951 Convention. The article operates in fact as an ‘inclusion’ clause; it makes inclusion contingent upon certain events and ensures that such protection or assistance will continue automatically in certain circumstances. The element of continuity is implicit in the words used in Article 1D and contemporaneous instruments.
10. UNHCR is also of the view that the meaning of Article 1D was not frozen in time, either at the date of signature or of ratification of the Convention. On the contrary, the temporal, material and personal scope of the provision must be understood in the light of institutional and international developments since 1948.
11. UNHCR further considers that, as a matter of language and meaning, the words ‘for any reason’ are capable of including not only the formal cessation or winding up of the relevant United Nations agencies, but also the frustration of their operations in general or in particular localities, and the removal or departure of protected persons from their area of protection or assistance. As regards the latter situation, UNHCR understands the words ‘for any reason’ to apply to two broad situations. First, they apply when a Palestinian refugee is either *unable* to return to UNRWA’s area of operation because the country refused to re-admit him or her. Secondly, they apply where the Palestinian refugee is *unwilling* to return to the UNRWA area for reasons other than personal convenience. This would include instances where the individual is able to demonstrate that he or she would face a threat to life or freedom, or other compelling protection reasons. *UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, 1979, paragraphs 142, 143* [Authorities Vol. 1, Tab 8/125-126]; *UNHCR, Letter of 8 November 2001 to the Immigration and Nationality Directorate.* [Authorities Vol. 1, Tab 9/127-128]
12. In the view of UNHCR, Article 1D does not extend to every Palestinian displaced as a result of the hostilities of 1948-49 or subsequently, or who is descended from those so displaced. Many Palestinian refugees have found their own solutions

through emigration and settlement, and do not require or request protection or assistance from United Nations agencies.

13. In interpreting the personal scope of Article 1D, therefore, it is necessary to have regard to the working definition of Palestinian refugee applied by the United Nations Relief and Works Agency, which has been accepted by the UN General Assembly and endorsed through the support of States.
14. In short, UNHCR recommends that the Court adopt the interpretation of Article 1D that draws on the history of the efforts of States and the United Nations to resolve the problem of Palestine refugees: Such refugees are to be protected until their situation is definitively settled in accordance with the relevant General Assembly resolutions; if they are left without protection or assistance for any reason, the Convention regime is triggered with regard to Palestinian refugees present in the territory of a State party.

IV. HISTORICAL BACKGROUND

15. From a historical perspective, Article 1D of the 1951 Convention makes certain provision for Palestine Arab refugees, as a consequence of their displacement during the Arab-Israeli conflict in 1948-49 and subsequently. The application of this article to other groups is not an issue in this appeal, although UNHCR is of the view that its terms do not rule out its being applied to similar situations in the future. For present purposes, however, the initiation and development of United Nations action on behalf of Palestine refugees is central to understanding the rationale and scope of this article.
16. On 29 November 1947, the United Nations General Assembly voted in favour of a plan to partition Palestine into two separate States, one Arab and one Jewish. *United Nations General Assembly Resolution 181(II) A, 29 November 1947.* [Authorities Vol. 1, Tab 10/129-151]
17. The British mandate terminated on 14 May 1948, and the next day the Jewish community proclaimed the State of Israel. The first Arab-Israel war followed, with many thousands of Palestinian Arabs fleeing into neighbouring countries. On 19 November 1948, the General Assembly established the Special Fund for Relief of Palestine Refugees. The following month, the General Assembly established a Conciliation Commission for Palestine (UNCCP), charged with taking steps to achieve a final settlement. *United Nations General Assembly Resolutions 212 (III),*

- 19 November 1948, para. 5* [Authorities Vol. 1, Tab 12/154-156 at 155]; *194(III), 11 December 1948, para. 2* [Authorities Vol. 1, Tab 13/157-159 at 157].
18. A year later, in December 1949, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was set up as a subsidiary organ of the General Assembly, to provide assistance to those who had left Palestine as a result of the conflict. That assistance has been mainly in the fields of relief, health and education, for which purposes a refugee is defined by UNRWA as ‘a person whose normal residence was Palestine for a minimum of two years immediately preceding the outbreak of conflict in 1948, and who, as a result of that conflict, lost both... home and... means of livelihood, and who is in need’. This definition has been extended to the children of such persons, and by resolution 2252(ES-V) of 4 July 1967 the General Assembly authorised UNRWA to assist others in the area, displaced by the hostilities of June that year, as a matter of urgency and on a temporary basis. *United Nations General Assembly Resolutions 302 (IV), 8 December 1949, para. 7* [Authorities Vol. 1, Tab 14/160-163 at 161]; *2252(ES-V), 4 July 1967* [Authorities Vol. 1, Tab 18/172-173], *confirmed by Resolution 2341 B(XXII), 19 December 1967* [Authorities Vol. 1, Tab 19/174-176].
 19. The General Assembly has further authorised such assistance to persons displaced ‘as a result of the June 1967 and *subsequent hostilities*’. [emphasis supplied] *United Nations General Assembly Resolution 56/54, 10 December 2001, paragraph 3*. [Authorities Vol. 1, Tab 22/181-182]
 20. UNRWA assistance has always been limited as to locality, being restricted to Lebanon, Syria, Jordan, West Bank, the Gaza Strip and, after the 1967 displacements, Egypt; and limited also as to refugees registered and actually residing in those host countries.
 21. At the time, both protection and assistance for Palestinian refugees fell within the area of responsibility of UNCCP and UNRWA. Solutions, repatriation or compensation, were also expected to eventuate. UNRWA was directed to consult with the UNCCP, ‘in the best interests of their respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III)...’ *United Nations General Assembly Resolution 302 (IV), 8 December 1949*. [Authorities Vol. 1, Tab 14/160-163]
 22. Moreover, the General Assembly intended UNCCP to assist Governments and authorities concerned to achieve a final settlement, and to take on, ‘in so far as it

considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine by resolution 186(S-2) ...’ *United Nations General Assembly Resolution 194 (III), 11 December 1949, paras. 2(a), 6.* [Authorities Vol. 1, Tab 13/157-159 at 157 and 158]

23. Those functions had in turn been defined to include the use of,
- ‘... good offices with the local and community authorities in Palestine to (i) Arrange for the operation of common services necessary to the safety and well-being of the population of Palestine; ... (iii) Promote a peaceful adjustment of the future situation of Palestine.’
United Nations General Assembly Resolution 186 (S-2), 14 May 1948. [Authorities Vol. 1, Tab 11/152-153]
24. The UN Conciliation Commission was instructed to ‘facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation’, and by resolution 394(V) of 14 December 1950, to ‘continue consultations with the parties concerned regarding measures for the protection of the rights, property and interests of the refugees’. *United Nations General Assembly Resolutions 394 (V), 14 December 1950* [Authorities Vol. 1, Tab 16/167-168]; *393 (V), 2 December 1950* [Authorities Vol. 1, Tab 15/164-166].
25. The Statute of the Office of the United Nations High Commissioner for Refugees and the text of the 1951 Convention relating to the Status of Refugees (and slightly later, the 1954 Convention relating to the Status of Stateless Persons) were drafted at a time when the Palestine refugee problem was high on the international agenda and an early solution was still expected.
26. It was decided generally not to extend the UNHCR Statute or to apply the 1951 Convention to Palestine refugees, because of certain political and practical considerations. Given that steps had already been taken to provide for assistance to Palestine refugees and to promote solutions, it was institutionally desirable formally to demarcate the mandates of UNHCR, UNRWA, and UNCCP. The primary consideration, however, was the desire of Arab States, concurred in by other States, to maintain the special status of Palestinian refugees within the regime described above. A secondary consideration, confirmed in the drafting of relevant international instruments, was to provide a protection safety net for such refugees, should protection or assistance otherwise cease.

V. INTERPRETING INTERNATIONAL INSTRUMENTS

27. The 1969 Vienna Convention on the Law of Treaties confirms the rule of customary international law that 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’. *Article 31(1), 1969 Vienna Convention on the Law of Treaties*. [Authorities Vol. 1, Tab 5/35-72 at 48-49]
28. The ‘context’ comprises, in addition to the text, including its preamble and annexes:
- ‘(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
(b) any instrument which was made by one or more of the parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.’
- Article 31(2), 1969 Vienna Convention on the Law of Treaties*. [Authorities Vol. 1, Tab 5/35-72 at 49]
29. The rules of treaty interpretation permit recourse to ‘supplementary means of interpretation’, including the *travaux préparatoires*, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31, ‘(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable’. *Article 32, 1969 Vienna Convention on the Law of Treaties*. [Authorities Vol. 1, Tab 5/35-72 at 49]
30. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail. *Article 33, 1969 Vienna Convention on the Law of Treaties*. [Authorities Vol. 1, Tab 5/35-72 at 49-50]
31. In interpreting Article 1D of the 1951 Convention relating to the Status of Refugees, it is appropriate to have regard to the words in context and, so far as they appear ambiguous or at least unclear, to consider also the *travaux préparatoires* both of the Convention itself, and of other contemporaneous international instruments which addressed the same issue. In regard to the protection of refugees, this includes the Statute of the Office of the United Nations High Commissioner for Refugees, the 1954 Convention relating to the Status of Stateless

Persons, the resolutions of the General Assembly making provision for Palestinian refugees, and later developments, including the 1967 Protocol relating to the Status of Refugees.

VI. DRAFTING THE INTERNATIONAL INSTRUMENTS

32. Palestine refugees were extensively discussed, first, in the Third Committee of the UN General Assembly during the drafting of the Statute of the Office of the United Nations High Commissioner for Refugees and the refugee definition to be considered by the Conference of Plenipotentiaries in 1951; second, by the Conference itself; and third in the negotiations in 1954 on the Convention relating to the Status of Stateless Persons.

Third Committee of the General Assembly

33. The problem of the definition of the term refugee to be applied by UNHCR and the definition to be inserted in the draft convention was referred to the Third Committee of the General Assembly. In discussing the UNHCR mandate, it was recalled that separate and special provision had already been made for Palestine Arab refugees, and it was proposed that the mandate should not ‘extend to categories of refugees at present placed under the competence of other organs or agencies of the United Nations’. *GAOR, Fifth Session, 326th Meeting, 24 November 1950, para. 48 (Mr Rochefort, France)* [Authorities Vol. 1, Tab 24/187-193 at 191]; *GAOR, Fifth Session, 328th Meeting, 27 November 1950, para. 45 (amendment submitted by Egypt, Lebanon and Saudi Arabia)*. [Authorities Vol. 1, Tab 25/194-199 at 197]
34. The reason for the proposed amendment was to be found in the fact that Palestine refugees were ‘the direct result of a decision taken by the United Nations’, and therefore, ‘a direct responsibility on the part of the United Nations’. *GAOR, Fifth Session, 328th Meeting, 27 November 1950, para. 47 (Mr Azkoul, Lebanon)*. [Authorities Vol. 1, Tab 25/194-199 at 197-198].
35. It was feared that otherwise Palestine refugees would become submerged and relegated to a position of minor importance. The only real solution to their problem was repatriation and they should ‘continue to be granted a separate and special

status'. *GAOR, Fifth Session, 328th Meeting, 27 November 1950, paras. 52, 55 (Mr Baroody Saudi Arabia)*. [Authorities Vol. 1, Tab 25/194-199 at 198].²

36. Representatives of Arab States were concerned also that the protection of the High Commissioner should be available if the other relevant UN agencies ceased to function. *GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 13 (Mr Raafat (Egypt))*. [Authorities Vol. 1, Tab 29/218-223 at 219]
37. It was also recognized as essential that the *continuity* of protection be ensured.³
38. A Saudi Arabian amendment to substitute the words 'who is still receiving' protection or assistance, for the words 'who is receiving' protection or assistance, was duly adopted in relation to the text of the UNHCR Statute. The question of carrying the amendment through to the text of the draft convention does not appear to have been expressly raised, and no explanation is given for the discrepancy. However, there is no evidence whatsoever in the record of the debates that any inconsistency was intended; on the contrary, the UNHCR Statute and the Convention were intended to be complementary.
39. The Third Committee thus recommended two texts to the General Assembly. The recommended Statute for UNHCR contained a clause amended in accordance with the proposal submitted by Egypt, Lebanon and Saudi Arabia; paragraph 7(c) of the UNHCR Statute consequently provides that the competence of the High Commissioner shall not extend to a person 'who *continues to receive* from other organs or agencies of the United Nations protection or assistance'). The UNHCR Statute as a whole was adopted by General Assembly Resolution 428 (V) on 14 December 1950. [Authorities Vol. 1, Tab 1/1-5] *Report of the Third Committee*:

² GAOR, Fifth Session, 329th Meeting, 29 November 1950, para. 37 [Authorities Vol. 1, Tab 26/200-205 at 202]; 330th Meeting, 30 November 1950, paras. 3-8 [Authorities Vol. 1, Tab 27/206-210 at 206], and UN doc. A/C.3/L.131/Rev.1; the revised text proposed for the draft convention read: 'This Convention shall not apply to persons who fall under the auspices of other organs or agencies of the United Nations other than the International Refugee Organization'; that for the draft statute read: 'Provided that the competence of the High Commissioner... shall not extend to... (c) a person who, on 1 January 1951, came under the auspices of other organs or agencies of the United Nations, other than the International Refugee Organization'. See also GAOR, Fifth Session, 332nd Meeting, 1 December 1950, paras. 34, 65-6, 70-3 (Mr Moodie, Australia); UN doc. A/C.3/L.133. [Authorities Vol. 1, Tab 28/211-217 at 213-214 and 215-216].

³ GAOR, Fifth Session, 344th Meeting, 11 December 1950, paras. 24-5 (Mr Baroody, Saudi Arabia). GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 28 (Mr Lesage, Canada); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 29-30 (Mr Davin New Zealand); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 39 (Mr Noriega Mexico); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 42 (Mr Raafat, Egypt) [Authorities Vol. 1, Tab 29/218-223 at 219-220].

UN doc. A/1682: GAOR, Fifth Session, Annexes, 26. [Authorities Vol. 1, Tab 30/224-234 at 229-232].

40. The Third Committee's draft refugee definition, which the General Assembly 'recommended to Governments participating in the [1951] Conference to take into consideration', included what was then Article 1C. This had not yet been amended, and stated that 'The Convention shall not apply to persons who are at present receiving from other organs or agencies of the United Nations protection or assistance'. *Report of the Third Committee: UN doc. A/1682: GAOR, Fifth Session, Annexes, 26, Recommendations of the Third Committee, B* [Authorities Vol. 1, Tab 30/224-234 at 233-4]; *United Nations General Assembly Resolution 429 (V), 14 December 1950.* [Authorities Vol. 1, Tab 1/1-5].
41. During further drafting at the 1951 Conference of Plenipotentiaries, however, steps were taken to guarantee consistency and continuity of protection.

Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

42. The Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons met in Geneva from 2 – 25 July 1951. The Palestine refugee issue was raised almost at once. *1951 Conference of Plenipotentiaries, Summary Record of the 2nd Meeting: UN doc. A/CONF.2/SR.2, p. 22 Mostafa Bey (Egypt):* 'the Egyptian Government considered that so long as the problem of the Palestine refugees continued to be a United Nations responsibility, the Convention should not be applicable to them. Once United Nations assistance ceased, the Palestine refugees should automatically enjoy the benefits of the Convention. The Egyptian Government had no doubt at all that such refugees came under the terms of article 1.' [Authorities Vol. 1, Tab 33/276-303 at 297]⁴
43. The temporary and contingent nature of the provision in question was also recognized: *1951 Conference of Plenipotentiaries, Summary Record of the 19th*

⁴ See also the Egyptian delegate's remarks at the 20th Meeting: UN doc. A/CONF.2/SR.20, pp. 8-9. [Authorities Vol. 2, Tab 36/356-372 at 363-364] See further the views of Mr Rochefort (France): 1951 Conference of Plenipotentiaries, Summary Record of the 2nd Meeting: UN doc. A/CONF.2/SR.2, p. 27 [Authorities Vol. 1, Tab 33/276-303 at 302] and 1951 Conference of Plenipotentiaries, Summary Record of the 3rd Meeting: UN doc. A/CONF.2/SR.3, p. 10 [Authorities Vol. 1, Tab 34/304-327 at 313].

Meeting : UN doc. A/CONF.2/SR.19, p. 11 [Authorities Vol. 1, Tab 35/328-355 at 338].⁵

44. The Egyptian delegate proposed an amendment to what was then draft Article 1C, the aim of his delegation being ‘to grant to all refugees the status for which the Convention provided’. *1951 Conference of Plenipotentiaries, Summary Record of the 19th Meeting*: UN doc. A/CONF.2/SR.19, pp. 16-17 (Mostafa Bey, Egypt); UN doc. A/CONF.2/13. [Authorities Vol. 1, Tab 35/328-355 at 343-344 and Authorities Vol. 1, Tab 31/263].⁶
45. The British representative, Mr Hoare, expressed the view that the effect of paragraph C, ‘as drafted was to make the exclusion permanent. That was, indeed, why the Egyptian representative had submitted his amendment..., since he wanted to provide for the possible future inclusion of that group within the Convention. He (Mr Hoare) was supported in his view by the quite different reference to that category in the [UNHCR] Statute’. *1951 Conference of Plenipotentiaries, Summary Record of the 19th Meeting*: UN doc. A/CONF.2/SR.19, p. 18. *1951 Conference of Plenipotentiaries, Summary Record of the 19th Meeting*: UN doc. A/CONF.2/SR.19, pp. 26-7 (Mr Habicht, International Association of Penal Law) [Authorities Vol. 1, Tab 35/328-355 at 345 and 353-354].
46. Discussion of draft article 1C resumed at the 29th Meeting. Mostafa Bey (Egypt) reiterated the object of the Egyptian amendment, which ‘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.’ The representative of Iraq added ‘that the amendment represented an agreed proposal on the part of all the Arab States... It was obvious that, if the Egyptian amendment was rejected, the refugees it was designed to protect might eventually find themselves deprived of any status whatsoever’. The Egyptian amendment was adopted by 14 votes to 2, with 5 abstentions, and paragraph C of article 1, as amended, was adopted by 18 voted to none, with 5 abstentions. *1951 Conference*

⁵ Mr Rochefort, France: ‘... as the representative of Egypt had pointed out, the effect of paragraph C of article 1, for example, would be *merely to postpone* the inclusion of the Palestinian refugees.’ (Emphasis supplied). See also 1951 Conference of Plenipotentiaries, Summary Record of the 19th Meeting: UN doc. A/CONF.2/SR.19, pp. 16 (Mostafa Bey, Egypt) [Authorities Vol. 1, Tab 35/343-7]. 1951 Conference of Plenipotentiaries, Summary Record of the 20th Meeting: UN doc. A/CONF.2/SR.20, pp. 8-9 (Mostafa Bey, Egypt) [Authorities Vol. 2, Tab 36/363-4].

⁶ See also 1951 Conference of Plenipotentiaries, Summary Record of the 19th Meeting: UN doc. A/CONF.2/SR.19, p. 17 (Mr Al Pachachi, Iraq) [Authorities Vol. 1, Tab 35/328-355 at 344]

of Plenipotentiaries, Summary Record of the 29th Meeting: UN doc. A/CONF.2/SR.29, pp. 6, 8, 9. [Authorities Vol. 1, Tab 35/328-355 at 444, 446 and 447].

47. The *travaux préparatoires* of paragraph 7(c) of the UNHCR Statute and Article 1D of the 1951 Refugee Convention confirm the agreement of participating States that Palestine refugees were in need of international protection, and that there was no intention to exclude them from the regime of international protection. What was important was continuity of protection; the non-applicability of the 1951 Convention was intended to be temporary and contingent, postponing or deferring the incorporation of Palestine refugees until certain preconditions were satisfied.

1954 Convention relating to the Status of Stateless Persons

48. By 1954, it had become clear that, while the Palestine problem would not be resolved as promptly as once expected, it was nevertheless a temporary phenomenon requiring special attention.
49. Meeting in New York to conclude the work on stateless persons left undone by the 1951 Conference, States agreed on an equivalent inclusion clause for Palestine refugees, suspending their claim to the benefits of the new convention in the expectation of an appropriate nationality status in the context of a final settlement. Article 1(2)(i) reflects the drafting experience and intentions of the earlier process, to provide as follows:

‘This Convention shall not apply:

- (i) 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 so long as they are receiving such protection or assistance...’

1954 Convention relating to the Status of Stateless Persons
[Authorities Vol. 1, Tab 3/20]

50. Between 1950 and 1954, the international community of States endorsed on three separate occasions the necessity of maintaining a separate, internationally protected status for Palestine refugees, and of providing a protection safety net, should protection or assistance cease for any reason, without their situation being definitively settled.

VII. THE INTERPRETATION AND APPLICATION OF ARTICLE 1D TO PALESTINIAN REFUGEES

51. The decision of the Immigration Appeal Tribunal in *El-Ali v. Secretary of State for the Home Department* [Authorities Vol. 2, Tab 41/466-479] shows that Article 1D continues to give rise to problems of interpretation and application, particularly in cases where a Palestinian seeks the protection of the 1951 Convention after leaving a country in UNRWA's area of operations where he or she was registered with UNRWA or otherwise eligible for assistance from UNRWA. UNHCR therefore presents the following more detailed views on (1) the nature of the clause; (2) the temporal scope of the clause; and (3) the material and personal scope of the clause.

1. The nature of Article 1D

52. In the view of UNHCR, the decision of the Immigration Appeal Tribunal does not take into account the internationally recognized refugee character of persons within Article 1D in its judgment. The Tribunal appears to read into the Convention a 'primary question', namely, that:

'... the interpretation of the Convention... must always be such that the primary question is whether an individual is, in his present circumstances, one who is in need of protection.'

[para 32 at Authorities Vol. 2, Tab 41/466-479 at 474-475]

53. The Tribunal seems also to assume that the 'principle of individual status determination' necessarily governs every aspect of interpretation of the Convention, and further suggests that the interpretation of Article 1D is to be governed by the level of 'sympathy' felt by the decision-maker for the particular applicant. [paras 43, 44 at Authorities Vol. 2, Tab 41/466-479 at 478-479]

54. In UNHCR's view, these factors are not appropriate to the interpretation and application of Article 1D, which is often incorrectly characterised solely as an 'exclusion' clause. 'Exclusion clauses', such as Article 1E and Article 1F, are remarkable for their categorical removal of certain individuals or classes of persons from the protection of the Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and

obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that [he or she has committed a war crime, etc.]
Article 1E, 1F 1951 Convention relating to the Status of Refugees [Authorities Vol. 1, Tab 2/8]

55. The conditional and contingent nature of Article 1D, on the other hand, is in marked contrast. Those to whom the Convention is not to apply are those ‘at present receiving... protection or assistance’ / ‘qui bénéficient actuellement d’une protection ou d’une assistance’, and only until such time as protection or assistance shall have ceased ‘for any reason’, without their position having been definitively settled in accordance with the relevant General Assembly resolutions. In those circumstances, these persons ‘shall *ipso facto* be entitled to the benefits of this Convention’ / ‘bénéficieront de plein droit du régime de cette Convention’.
56. The conditional and contingent nature of Article 1D is reflected in other contemporaneous instruments. UNHCR’s Statute limits the High Commissioner’s competence in regard only to a person ‘who continues to receive... protection or assistance’. *UNHCR Statute, paragraph 7(c)* [at Authorities Vol. 1, Tab 1/2]
57. The 1954 Convention relating to the Status of Stateless Persons is not to apply to ‘persons who are at present receiving... protection or assistance so long as they are receiving such protection or assistance.’ *Article 1(2), 1954 Convention relating to the Status of Stateless Persons* [at Authorities Vol. 1, Tab 3/20-21]
58. The States which participated in the drafting of the various international instruments were equally of the view that the purpose of Article 1D was to provide a non-permanent bar to Convention protection. They expected that the Palestine refugee problem would be resolved on the basis of the principles laid down in UNGA Resolution 194 (III) [at Authorities Vol. 1, Tab 13/157-159], particularly through repatriation and compensation in accordance with paragraph 11, and that protection under the 1951 Convention would ultimately be unnecessary. However, they also sought to anticipate a situation of no settlement, and to avoid a lacuna in the provision of international protection.⁷

⁷ See also United Nations General Assembly Resolution 56/56, 10 December 2001, preamble, expressing awareness of ‘of the *continuing* needs of Palestine refugees throughout the Occupied Palestinian Territory and in the other fields of operation, namely, in Lebanon, Jordan and the Syrian Arab Republic...’ (emphasis supplied) [Authorities Vol. 1, Tab 23/183-6, 184].

59. The refugee character of the protected constituency was never in dispute. Hence, in the absence of settlement in accordance with relevant General Assembly resolutions, no new determination of eligibility for Convention protection would be required. They would ‘*ipso facto/de plein droit*’ benefit from the Convention regime.⁸
60. To impose the ‘primary question’ suggested by the Tribunal on the words of Article 1D will inevitably lead to the specific conditions applicable under that article being ignored, namely, cessation of other international protection and assistance and absence of definitive settlement. As the *travaux préparatoires* clearly indicate, the United Nations and Member States have determined, as a matter of policy, that Palestinian refugees are presumed to be in need of international protection and, in certain circumstances, will automatically fall within the Convention.
61. Moreover, the ‘principle of individual status determination’ is not mentioned in the Convention. It may reasonably be inferred from the terms of Article 1A(2), but must be applied subject to the express terms of that Article, including its approach ‘by category’ to both statutory refugees (Article 1A(1)) and Palestinian refugees. Moreover, the *application* of Article 1D in practice will likely require an assessment of whether an individual falls within its terms. Beyond that examination, no ‘determination of status’ as such is required, for it has already been made as a matter of law and policy and incorporated as such into the refugee definition. This does not exclude the necessity, mentioned further below, of examining whether it is actually feasible for a particular Palestinian refugee to return to UNRWA’s area of operations in practice and to avail him- or herself of UNRWA’s assistance.
62. Finally, there is no justification for introducing subjective considerations, such as ‘sympathy’, into the interpretation of the 1951 Convention. This argument also disregards the position of the international community to treat the Palestinian refugee problem as one for resolution and settlement as a whole. While it was initially thought that a solution would be forthcoming relatively quickly, the Member States of the United Nations have repeatedly endorsed the protection and

⁸ Compare Article 1A(1), 1951 Convention [Authorities Vol. 1, Tab 2/7].

assistance functions of UNRWA to both the descendants of the original refugees and to others displaced at a later time.⁹

63. It is clear from Article 1 that the purpose of the 1951 Convention is not only to provide protection to those who, having applied, are found to be in need of it; but also to ensure *continuing protection* for certain refugees. *Article 1A(1), Article 1C(5), Article 1C(6), 1951 Convention relating to the Status of Refugees* [Authorities Vol. 1, Tab 2/7].

2. The temporal scope of Article 1D

64. In the view of UNHCR, the Immigration Appeal Tribunal has misinterpreted the phrase ‘at present’ in Article 1D. This misinterpretation is evident when regard is had to context, including the debates in 1950-1951 and other contemporaneous international instruments intended to address the questions of protection and institutional responsibility for Palestine refugees.

65. The Tribunal states that ‘the key to the problem is the interpretation of the words “at present” in the first sentence of Article 1D’. [para 33 at Authorities Vol. 2, Tab 41/466-479 at 475].

66. It concludes:

‘that the words “at present” cannot have been intended to carry any continuative meaning. The first sentence... refers to the circumstances which were present at the time of the signing of the Convention. The second sentence makes provision for the uncertain future... We decide that “at present” in Article 1D is a reference to 28 July 1951. Only persons receiving on that date protection or assistance from organizations or agencies of the United Nations (other than UNHCR) are excluded from the Convention by the first sentence of Article 1D, and only those persons are entitled to the benefit of the second sentence.’

[para 41 at Authorities Vol. 2, Tab 41/466-479 at 478]

⁹ See United Nations General Assembly Resolution 56/56, 10 December 2001, paragraph 10, requesting the UNRWA ‘Commissioner-General to proceed with the issuance of identification cards for *Palestine refugees and their descendants* in the Occupied Palestinian Territory...’ (emphasis supplied); also, United Nations General Assembly Resolution 56/54, 10 December 2001, ‘Persons displaced as a result of the June 1967 and subsequent hostilities’. [Authorities Vol. 1, Tab 23/183-185 and Vol. 1, Tab 22/181-182].

67. Elsewhere, the Tribunal asserts that those who debated and agreed the wording ‘could not have intended “at present” to bear any continuative meaning.’ [para 40. at Authorities Vol. 2, Tab 41/466-479 at 478].
68. On the contrary, as shown above (see paragraphs 35-39, 45-47), those who debated and agreed the meaning intended precisely that consequence, which is confirmed by the contemporaneous terms of the UNHCR Statute and the 1954 Convention relating to the Status of Stateless Persons.
69. In reaching its conclusion, the Tribunal seeks to rely on the fact that the 1967 Protocol relating to the Status of Refugees did not ‘amend’ Article 1D, claiming that ‘Before 1967, Article 1D could refer only to those persons who had a fear based on events before 1951’.[paras 36, 37 at Authorities Vol. 2, Tab 41/466-479 at 476].
70. This reasoning is misplaced. The 1967 Protocol only amended that provision of the 1951 Convention in which a dateline was *expressly* mentioned as a relevant criterion; it did not ‘amend’ Article 1A(1), Article 1D, or Article 1C, or Article 1E, or Article 1F.
71. In addition, the Preamble to the 1967 Protocol clearly identifies that the goal of ‘equal status’ is to be enjoyed by ‘*all* refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951.’ *Preamble, third paragraph, 1967 Protocol relating to the Status of Refugees* (emphasis supplied) [Authorities Vol. 1, Tab 4/31]; *Article 31(2), 1969 Vienna Convention on the Law of Treaties* [Authorities Vol. 1, Tab 5/49].
72. Evidently, equal status could not be achieved if the category of refugees falling within Article 1D were subject to the 1 January 1951 or any other dateline.
73. Moreover, Article 1D is not based as such on a ‘well-founded fear of persecution’ in the sense of Article 1A(2). It is based on the events of 1948-1949, the mandates of UNRWA and UNCCP, the parameters for a final solution laid down in the relevant General Assembly resolutions, and until such time as a definitive settlement is attained.

The question of the 'relevant date'

74. The Tribunal invokes the date at which the Convention was opened for signature (28 July 1951) as a criterion governing the delimitation of the category of Palestinian refugees within the scope of Article 1D. No such date is mentioned in the Convention and its introduction has potentially arbitrary and inconsistent consequences. On the one hand, it ignores the social reality of Palestine refugees, many hundreds of thousands of whom continue to live in precarious settlements, and the historical reality, which was the hopeful though misguided expectation that a solution would be forthcoming in the short term.
75. The inconsistency becomes readily apparent when considering other potential 'relevant dates'. The UNHCR Statute was adopted by the UNGA on 14 December 1950; the Office of the High Commissioner came into being on 1 January 1951; the 1951 Convention was signed on 28 July 1951 and came into force on 22 April 1954; the 1954 Convention on Stateless Persons was opened for signature on 23 September 1954 and came into force on 6 June 1960. The position argued for by the Immigration Appeal Tribunal requires that the category of 'persons receiving protection or assistance from organizations other than UNHCR' will vary according to the instrument in question, and that the same individual may receive different answers, depending on an arbitrarily selected date, rather than on whether he or she is in fact within the substantive terms of the provision.
76. The three instruments were all drafted over a period of three to four years, under the auspices of the United Nations and in the light of policy decisions adopted by the General Assembly. The drafters clearly intended to ensure continuity of protection for those affected by a particular situation, so long as that situation remained unresolved and independently of any date.

3. The material and personal scope of Article 1D

77. In the view of UNHCR, Article 1D temporarily suspends the application of the 1951 Convention to refugees receiving protection or assistance from agencies other than UNHCR, until such protection ceases for any reason without the situation of such persons having been definitively settled in accordance with the relevant General Assembly resolutions.

78. Whether a person is entitled to the benefits of the Convention regime under Article 1D, therefore, requires answers to the following questions/inquiry into the following matters:

1. Is the person in question receiving protection or assistance from an agency other than UNHCR?
2. Has the protection or assistance ceased for any reason?
3. Has the situation of the individual, as a member of the relevant group or category of refugees contemplated by Article 1D, been definitively settled?
4. What is entailed by the terms, '*ipso facto* entitled' / 'bénéficient de plein droit'?

1. *Is the person in question receiving protection or assistance from an agency other than UNHCR?*

79. In UNHCR's view, the first question is a matter of fact to be decided on the basis of the individual's former place of residence and relationship with UNRWA.

80. None of the General Assembly resolutions providing for relief to Palestine refugees, or establishing agencies for the provision of such relief, defines those who are to benefit. UNRWA has therefore developed and modified its working definitions over the years, which have been communicated to the General Assembly and never opposed. So far as registration with UNRWA determined the provision of relief, funding constraints have led to limitations on eligibility and to the exclusion from UNRWA rolls of numbers of Palestinians who became refugees as a result of the 1948 conflict. Rules issued in 1993 defined a 'Palestine refugee' for UNRWA purposes as 'any person whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict'. Provision is also made for registration entitlement to descend, though through the male line only. Following the 1967 War, the General Assembly approved the provision of humanitarian assistance by UNRWA, 'on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities.' Notwithstanding the 'temporary' and 'emergency' aspects of this measure, it has been endorsed in subsequent General Assembly resolutions and extended further to those displaced by 'subsequent hostilities'. *UNRWA, 'Consolidated Registration Instructions', 1 Jan. 1993, para. 2.13; United Nations General Assembly Resolutions 2252 (ES-V),*

4 July 1967; and 56/54, 10 December 2001. [Authorities Vol. 1, Tab 18/172-173 and Vol. 1, Tab 22/181-182].

81. Given the nature and purpose of the UNRWA 'definition', it follows that the category of Palestinian refugees in principle falling within the terms of UNGA resolution 194 (III) [at Authorities Vol. 1, Tab 13/157-159] is broader than that eligible for assistance. UNRWA has also confirmed that its mandate is geographically limited to refugees who had taken refuge in Jordan, the West Bank, Syria, Lebanon, and the Gaza Strip. In consequence, it has been UNHCR's position that Palestinians registered with or otherwise eligible for UNRWA protection or assistance who are outside UNRWA's area of operations and unable to return for reasons other than personal convenience are *ipso facto* entitled to the benefits of the 1951 Convention. See further below, paragraphs 93-99 (on the nature of *ipso facto* entitlement).
2. *Has the protection or assistance ceased for any reason?*
82. In UNHCR's view, the second question is also a matter of fact to be decided in the light of the individual's personal history.
83. Although many States in 1950-51 cited the possibility of UNRWA or other competent agency ceasing to exist, there are clearly many reasons why protection or assistance can come to an end. Over the years, these have included military occupation of the territory in which UNRWA operates and the interruption of its programmes, or further flight because of well-founded fear of persecution. Where protection or assistance has so ceased, then absent definitive settlement, such persons are automatically entitled to the benefits of the Convention and no separate determination of well-founded fear is required.
84. The Immigration Appeal Tribunal appears to have misunderstood the role and responsibility of UNRWA and its integration with the Convention scheme of protection. [para 45 at Authorities Vol. 2, Tab 41/466-479 at 479].
85. The extent of UNRWA's mandate and its practice *are* precisely relevant to the interpretation of Article 1D. Moreover, UNRWA does not extend its mandate in isolation, but under the authority of the United Nations General Assembly, of which it is a subsidiary organ, and with the agreement of those UN Member States, such as the United Kingdom, which are involved in its governance.

86. The Tribunal also misunderstands the relationship of UNRWA and the 1951 Convention in supposing that ‘UNRWA can, by extending its mandate or enlarging its activities for humanitarian reasons, *exclude* individuals from the benefits of the Convention regime’. [emphasis supplied] [para 45 at Authorities Vol. 2, Tab 41/466-479 at 479].
87. On the contrary, UNRWA’s practice is precisely to ‘include’ Palestinians within the realm of its protection and assistance; and where such inclusion continues, there is no need for protection under the Convention. It is certainly correct that the application of Article 1D is dependent on the mandate of the relevant United Nations agency, but this does not mean that the agency in question has the power to ‘exclude’ persons from the benefit of the Convention.
88. In this context, it should be recalled that both UNHCR and UNRWA are subsidiary organs of the United Nations General Assembly. As the *travaux préparatoires* demonstrate, the responsibilities of the two agencies were intended to be complementary and to ensure continuity of international protection.
89. As indicated above, the notion of ‘exclusion’ is misleading, confusing the issue with the prejudicial consequences of, for example, an application of Article 1F. The character of Article 1D, considered in context, is that of an *inclusion clause*, though one which regulates the moment at which the Convention protection regime substitutes for that of other UN agencies.
90. This misunderstanding appears also in the view of the Tribunal that, as a consequence of its interpretation,
- ‘many persons at present receiving protection or assistance from UNRWA are not (because they were not receiving it on 28 July 1951) excluded from the protection of the Refugee Convention.’ [para 47 at Authorities Vol. 2, Tab 41/466-479 at 479B]
91. While this interpretation may appear generously to include Palestinian refugees within the scope of status determination under Article 1A(2), it in fact undermines the object and purpose of Article 1D, considered in context with the policy of the UN General Assembly and the mandate of UNRWA and related UN programmes, which is (1) to make separate and specific provision for Palestinians, pending definitive settlement; and (2) to provide for automatic inclusion of Palestinians within the Convention protection regime, should certain conditions come about.

92. In the view of UNHCR and for the reasons set out above, the Tribunal was in error in concluding that Article 1D, ‘applies only to persons receiving protection or assistance from UNRWA on 20 July 1951.’
3. *Has the situation of the individual, as a member of the relevant group or category of refugees contemplated by Article 1D, been definitively settled?*
93. In UNHCR’s view, Article 1D looks forward to a *political settlement* of the Palestinian refugee problem, on the basis of the principles laid down in, among others, General Assembly Resolution 194 (III) of 11 December 1948, or such later resolutions as have been or may be approved by the General Assembly. The history of United Nations action since 1948 provides regular endorsement of this goal. Whether such future settlement is ‘definitive’ will be a political and factual matter.
4. *What is entailed by the terms, ‘ipso facto entitled’ / ‘bénéficient de plein droit’?*
94. In UNHCR’s view, *ipso facto* entitlement amounts in effect to the automatic entitlement of Palestinian refugees to be treated in accordance with the 1951 Convention relating to the Status of Refugees.
95. This interpretation of Article 1D is clearly required by the words employed in the second paragraph, considered ‘in accordance with (their) ordinary meaning’. *Article 31(1), 1969 Vienna Convention on the Law of Treaties* [Authorities Vol. 1, Tab 5/48-49].
96. ‘Ipso facto’ means ‘by that very fact’, ‘by virtue of the fact itself’, in this case the cessation of protection or assistance and the absence of definitive settlement, which are the facts expressly mentioned. The French text is equally or even more compelling: ‘de plein droit’ means, ‘par le seul effet de la loi, sans contestation possible; à qui de droit’.
97. The English and French texts are also clear as to the consequences: The refugees in question, ‘shall... be entitled to the benefits of this Convention’. These benefits are those provided for in Articles 2-34 inclusive.¹⁰

¹⁰ Cf. Article I(1), 1967 Protocol relating to the Status of Refugees [Authorities Vol. 1, Tab 4/31-34]

98. Again, the French is unambiguous: The refugees in question, ‘bénéficieront... du régime de cette Convention’ / ‘will benefit... from the regime of this Convention’.
99. It has been argued that the effect of Article 1D is merely to provide for access to a procedure for determining refugee status under Article 1A(2). This disregards the clear, ordinary meaning of the words. Moreover, Article 1A(2) is not a ‘benefit’, but a set of criteria according to which certain, but not all, the Convention beneficiaries may be identified. Article 1D, like Article 1A(1), has already accomplished that purpose.
100. It is thus clear that, in certain given circumstances, Palestinian refugees are to enjoy the protection and benefits of the 1951 Convention automatically and as a matter of right.
101. The obligation applies only with regard to States party to that treaty, and only with respect to qualifying Palestinian refugees within their territory. No determination of a well-founded fear is necessary. The only matters to be decided are the questions set out above and whether, in appropriate cases, the individual has ceased to be a refugee under Article 1C (for example, by reason of acquisition of a new, effective nationality), or falls within the terms of Article 1F.
102. A Palestinian refugee would qualify if he or she is unable to return to UNRWA’s area of operations in practical terms and to avail him/herself of UNRWA’s assistance. Two scenarios may be foreseen. First, if the person is unable to return to UNRWA’s area of operations in a legal manner because the authorities of the country concerned refuse readmission or to renew his or her travel document, then the second paragraph of Article 1D would be applicable. The person concerned would *ipso facto* qualify for the benefits of the 1951 Convention, that is, without any further examination of the grounds under Article 1A.
103. Secondly, if it is feasible for the person to return, it is then necessary to examine the reasons why he or she left. If the individual is unwilling to return because of threats to his or her life or freedom, or other compelling protection-related reasons, he or she would again *ipso facto* benefit from the Convention’s entitlements in accordance with the second paragraph of Article 1D.
104. On two separate occasions when the UNHCR Executive Committee has addressed so-called ‘irregular’ movements of refugees, participating States have expressly acknowledged that refugees may have justifiable reasons for such action. *Executive*

Committee Conclusion No. 15 (XXX) 1979 and Executive Committee Conclusion No. 58(XL) - 1989 [at Authorities Vol. 2, Tab 42/480-483 and Authorities Vol. 2, Tab 43/484-486].¹¹

105. However, if the person does not wish to return to UNRWA's area of operations for reasons of personal convenience, he or she cannot benefit from the second paragraph of Article 1D. It is for the country where asylum is sought to decide whether it is appropriate to grant permission to remain, for example, on humanitarian grounds, or to pursue possible return to the UNRWA area of operations.

VIII. CONCLUSION

106. UNHCR submits that its interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees is consistent with the ordinary meaning of the words and with the intentions of the drafters, as disclosed in the *travaux préparatoires*. Its construction is in harmony with the object and purpose of the Convention and with the complementary measures undertaken to ensure the protection of Palestinian refugees, pending a definitive settlement of their situation.
107. To this end, the interpretation to be adopted and applied by States party to the Convention should : –
1. Recognize the character of Article 1D as an 'inclusion clause', where inclusion is dependent on the occurrence of certain specified events;
 2. Apply Article 1D to Palestinian refugees registered with UNRWA or otherwise eligible for UNRWA protection or assistance, in accordance with the working definition of Palestinian

¹¹ **Executive Committee Conclusion No. 15 (XXX) — 1979** Refugees without an Asylum Country, *Report of the 30th Session: UN doc. A/AC.96/572*, para. 72(2): (k) Where a refugee who has already been granted asylum in one country requests asylum in another country on the ground that he has compelling reasons for leaving his present asylum country due to fear of persecution or because his physical safety or freedom are endangered, the authorities of the second country should give favourable consideration to his asylum request... **Executive Committee Conclusion No. 58 (XL) — 1989** The Problem of Refugees and Asylum Seekers who Move in an Irregular Manner from a Country in which They had already found Protection: *Report of the 40th Session of the Executive Committee: UN doc. A/AC.96/737*, p.23: (f) Where refugees and asylum seekers... move in an irregular manner from a country where they have already found protection, they may be returned to that country if (i) they are protected there against *refoulement* and (ii) they are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them... (g) *It is recognized that there may be exceptional cases in which a refugee or asylum seeker may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he previously found protection.* Such cases should be given favourable consideration by the authorities of the State where he requests asylum... [emphasis supplied]

refugees applied by that agency and extended and endorsed by the United Nations General Assembly;

3. Interpret the words ‘for any reason’ in their ordinary, broad sense, so as to include not only the formal cessation of protection or assistance, but also the removal or departure of Palestinian refugees from the area of UNRWA operations;

4. Recognize the continuing entitlement of Palestinian refugees to international protection, pending definitive settlement, and without introducing any dateline for such entitlement;

5. Automatically, and without having recourse to procedures and standards established for other refugee claimants, extend the benefits of the 1951 Convention to eligible Palestinian refugees who satisfy the criteria of Article 1D, second paragraph.

108. UNHCR therefore submits that the court should accept the interpretation of Article 1D as set out in this skeleton argument, irrespective of the outcome of the present appeal on the facts.

GUY S. GOODWIN-GILL
BLACKSTONE CHAMBERS
26 June 2002

Annex
Summary of International Provisions

UNHCR Statute, paragraph 7(c)	1951 Convention relating to the Status of Refugees, Article 1D	1954 Convention relating to the Status of Stateless Persons, Article 1
<p>Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:...</p> <p>(c) Who continues to receive from other organs or agencies of the United Nations protection or assistance...</p>	<p>This Convention shall not apply to persons who are at present receiving from organizations or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.</p> <p>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 Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.</p>	<p>1. For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any State under the operations of its law.</p> <p>2. This Convention shall not apply:</p> <p>(I) 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 so long as they are receiving such protection or assistance</p>
<p>Il est entendu que le mandat du Haut Commissaire, tel qu’il est défini au paragraphe 6 ci-dessus, ne s’exerce pas:...</p> <p>(c) Sur les personnes qui continuent de bénéficier de la protection ou de l’assistance d’autres organismes ou institutions des Nations Unies...</p>	<p>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 Commissaire des Nations Unies pour les réfugiés.</p> <p>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.</p>	<p>1. Aux fins de la présente Convention, le terme ‘apatride’ désigne une personne qu’aucun Etat ne considère comme son ressortissant par application de sa législation.</p> <p>2. Cette Convention ne sera pas applicable:</p> <p>(I) 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 Commissaire des Nations Unies pour les réfugiés, tant qu’elles bénéficieront de ladite protection ou de ladite assistance;</p>

**IN THE COURT OF APPEAL
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL**

C/2002/0751

B E T W E E N:

AMER MOHAMMED EL-ALI

Appellant

- v -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**SKELETON ARGUMENT ON BEHALF OF
THE INTERVENER (THE UNITED NATIONS HIGH COMMISSIONER FOR
REFUGEES)**

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**IN THE COURT OF APPEAL
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL**

C/2002/0751

B E T W E E N:

AMER MOHAMMED EL-ALI

Appellant

- v -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

SUPPLEMENTAL SUBMISSIONS ON BEHALF OF THE INTERVENER

1. UNHCR wishes to make brief further submissions supplemental to and in clarification of those made in its Skeleton and orally, and in reply to questions raised by the Court. In view of the pressure on time, and in its status as intervener, UNHCR hopes that these written submissions will be convenient for the Court and will be considered. Copies have been provided to Counsel to the Appellant and Counsel to the Respondent.

1. **The amendment of Article 1D (then Article 1C)**

2. When the Conference of Plenipotentiaries met in Geneva in July 1951, the UNHCR Statute had been amended to provide that the competence of the High Commission should not extend to a person, ‘who *continues to receive*... protection or assistance.’

Skeleton, paragraph 39; Authorities, Vol. 1, Tab 30/224-234, 229-232.

3. For reasons which are not clear (but which may have been dictated by time constraints), the draft Convention refugee definition, which was debated in the Third Committee at the same time, was not amended prior to being submitted, through the General Assembly, to the Conference of Plenipotentiaries. Article 1C, as it then was, read as follows:

‘The Convention shall not apply to persons who are at present receiving from other organs of the United Nations protection or assistance.’

Skeleton, paragraphs 38, 40.

4. Various delegations noted one worrisome aspect in particular of this provision – it amounted to a permanent denial of Convention benefits to a particular population. There were various ways by which this objection might be met, but even then there were different views on what the text meant.

Authorities, Vol. 1, Tab 35/347-8 (Mr Rochefort, France, commenting on the ambiguity); Tab 35/350 (Mr Warren, USA, commenting on the ‘anomaly’ presented by the text of Article 1C, which ‘required redrafting’).

5. Egypt's proposed amendment (UN doc. A/CONF.2/13, Authorities, Vol. 1, Tab 31/263) was intended simply to ensure that when protection by other UN organs ceased, the refugees concerned would come under the protection of the Convention, but did not deal with other potential difficulties. [Authorities, Vol. 2, Tab 40/444 (Mostafa Bey, Egypt)].
6. The High Commissioner for Refugees, Mr van Heuven Goedhart, was of the view that, 'the Egyptian amendment apart, a specific act would be required to bring the persons referred to... within the scope of the Convention when the protection and assistance ceased'. [Authorities, Vol. 2, Tab 37/384]

2. Relation between UN General Assembly resolutions, the UNRWA mandate, and the 1951 Convention

7. The extent of UNRWA's mandate is central to understanding the personal scope of Article 1D. The endorsement or extension of UNRWA mandate activity by the UN General Assembly when addressing the Palestinian refugee question over the years is not equivalent to 'amending' the Convention. All States party to the 1951 Convention are (now, with the membership of Switzerland in 2001) in fact Member States members of the United Nations and the General Assembly. The relevant resolutions of that body can therefore be seen as evidence of practice indicating, on the part of States, how the notion of Palestinian refugee and the scope of UNRWA's mandate are to be understood.
8. What the General Assembly does is to clarify the scope of UNRWA's mandate. Similarly, the content of the Article 1F(a) category of war crimes and crimes against humanity is determined by 'external' factors, such as the evolving content of other treaties, including those concluded after the 1951 Convention. The UN Security Council, moreover, acting on behalf of Member States under Article 24 of the United Nations Charter, has directly affected the interpretation of Article 1F(c) of the 1951 Convention by declaring, with reference to refugee protection and exclusion, that 'acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations' (SC res. 1373, 28 September 2001, paragraph 5).
9. The Vienna Convention on the Law of Treaties recognizes the importance of subsequent practice of States in the interpretation of treaties.

Article 31(3)

There shall be taken into account, together with the context...

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

[1969 Vienna Convention on the Law of Treaties; Authorities, Vol. 1, Tab 5/48-9].

3. ‘Persons’

10. The word ‘persons’ is not a term of art. Considered in the context of a provision dealing primarily with the Palestinian refugee situation, it serves the purpose of describing the group, the members of which may be receiving protection or assistance. Considered in relation to the regime of benefits provided by the 1951 Convention, the word ‘persons’ encompasses also the individual members of the group for whom protection or assistance may have ceased. The individual and collective uses of the word are not mutually exclusive, but complementary.
11. To this extent, it is reasonable and consistent with history to see the group in question, in this case Palestinians, as identified by the events of 1948-49, as receiving protection or assistance in 1951, and as likely to continue to receive assistance thereafter. No social group is finite and it cannot reasonably have been expected that there would be no births (or deaths) within the group, such as would affect the composition, but not the identity of the group.
12. On the changes in the composition of the Palestinian refugee community, see the General Assembly resolutions cited below in paragraph 16.

4. ‘At present receiving’

13. The phrase ‘at present receiving’ should be interpreted in historical context, including the origins of the phrase, the intent of the drafters, and the approach adopted in contemporaneous instruments, such as the UNHCR Statute and the 1954 Convention relating to the Status of Stateless Persons. [Skeleton, paragraph 68.]
14. The interposition of a ‘relevant date’ leads to inconsistent, indeed absurd, interpretations between instruments concerned to make provision for a common problem. [Skeleton, paragraphs 75-6.] Had they wanted to include such a date, the drafters were free to do so, as they did in Article 1A(2). The ‘group’ aspect to Article 1D, Paragraph 7C, and Article 1(2)(i) illustrates the view of the participating States in conferences and the General Assembly that the Palestinian refugee problem is to be approached as a whole, but is not inconsistent with recognition also of the rights of individual members of that group.

15. The object and purpose of the Convention and of the special provisions adopted for Palestinians require that the words ‘persons at present receiving’ be understood to mean **‘persons who were and/or are now receiving’** protection or assistance. This interpretation, which is descriptive rather than definitive, effectively reconciles any apparent discrepancy between the first and second paragraphs of Article 1D (due, it is submitted, to the process of amendment by addition of a paragraph, but without substantial revision of the text as a whole; see paragraphs 2-6 above).
16. It is further submitted that this interpretation minimizes ambiguity and avoids arbitrary distinctions. It is most consistent with the original intentions of States and with those set down in subsequent relevant General Assembly resolutions.

UNGA res. 2252 (ES-V), 4 July 1967, paragraph 6; Authorities, Vol. 1, Tab 18/172-3. UNGA res. 2341 (XXII) B, paragraph 2, 19 December 1967; Authorities, Vol. 1, Tab 19/175. UNGA res. 56/54, 10 December 2001, paragraph 3; Authorities, Vol. 1, Tab 22/181. UNGA res. 56/56, 10 December 2001, paragraph 10; Authorities, Vol. 1, Tab 23/183-5.

17. There is no evidence in the *travaux préparatoires* to suggest that the drafters, at that time, contemplated a protracted refugee situation. On the contrary, it was still thought that the Palestinian refugee problem would be settled relatively soon, and that all those ‘at present receiving’ protection or assistance would benefit.
18. However, there was considerable debate on what ‘at present’ entailed, and certain delegations were concerned that its meaning should *not* be fixed in time, as was clearly evident during debates in the Third Committee:

Mr Lesage (Canada) remarked that, ‘It was not the length of time for which these agencies existed which mattered, but the fact that they were protecting refugees.’

Mr Davin (New Zealand) agreed, adding that ‘a legislative text was usually drawn up in the present tense, although it applied to the future.’

Mr Lequesne (United Kingdom) noted that, ‘although the organs concerned might still be exercising their functions, they might no longer be according protection.’

Mr Noriega (Mexico) was of the view that, ‘Competence was implicit in the idea of protection, because the fact that

persons were receiving protection from certain organs meant that those organs were in fact performing their functions.’

[GAOR, Fifth Session, 344th Meeting, 11 December 1950, paragraphs 28, 29, 37, 39; Authorities, Vol. 1, Tab 29/219-20.]

5. ‘Ceased for any reason’

19. Protection or assistance may cease for a number of reasons, other than the complete cessation or winding up of the relevant United Nations agencies; the question of cessation is a matter of fact.
20. In practice, protection or assistance may cease in the following (non-exhaustive) circumstances:
 1. Where UNRWA itself has been wound up and no longer exists.
 2. Where military occupation or activities have physically interrupted UNRWA’s provision of services.
 3. Where an individual entitled to protection or assistance under UNRWA’s mandate has been expelled or refused permission to return to UNRWA’s area of operations.
 4. Where an individual entitled to protection or assistance under UNRWA’s mandate is effectively unable to avail him- or herself of protection or assistance in UNRWA’s area of operations.
 5. Where UNRWA (theoretically) has de-registered an individual.
 6. Where an individual entitled to protection or assistance under UNRWA’s mandate has left UNRWA’s area of operations for reasons of personal convenience.
21. In each of the first four examples, Palestinians, individually or as a group, come within the second paragraph of Article 1D. They are *ipso facto* entitled to the benefits of the Convention, unless otherwise excludable, for example, under Article 1E or 1F.
22. In the last two examples, the second paragraph of Article 1D does not apply. The fifth example is hypothetical, since UNRWA does not in practice ‘de-register’ Palestinians entitled to protection or assistance. In the sixth example, the Palestinian refugee also does not qualify, even though physically removed from UNRWA’s area of operations. In practice, residence and return are an integral part of UNRWA’s operations, in the sense that UNRWA may intercede with host State

authorities to facilitate return; the individual's 'reasons of personal convenience' are therefore insufficient to negate his or her eligibility for services.

23. In UNHCR's view, the above interpretation serves to prevent the use of Article 1D, otherwise than by Palestinian refugees who have protection-related reasons for leaving UNRWA's area of operations, are in need of protection, and are otherwise excluded from protection.

6. **Discrimination**

24. There are dangers attached to applying the 'non-discrimination' to circumstances unintended by the drafters, and in disregard of the unique and special situation of Palestinian refugees, for whom alternative and separate provision has been made within the United Nations, including in regard to a political solution. The objective stated in the Preamble of the 1951 Convention cannot disregard the express provisions of Article 1
25. There is no 'discrimination' arising in the separate treatment of Palestinian refugees under Article 1D any more than in the case of statutory refugees under Article 1A(1). If there is discrimination, it is more in the form of positive discrimination, or such different treatment as is required by the fact that the refugee character of the group in question has already been decided, and is justified on the basis of their internationally recognized special situation.

7. *Non-refoulement*

26. Every refugee, including a Palestinian refugee accepted under the exception to Article 1D, is entitled to benefit from the principle of *non-refoulement*. The fact that the Palestinian refugee is accepted without inquiry into the existence of a well-founded fear does not mean that he or she may not have such fear, or that he or she may not be at risk if returned to a particular State.
27. If it is proposed to remove a Palestinian refugee (there being no formal obligation to grant asylum), inquiry will have to be made into the risks, if any, attached to return to the intended destination.

Conclusion

28. UNHCR respectfully repeats the submissions as to the correct interpretation of Article 1D made in its Skeleton Argument [paragraph 107], save that it would add the words ‘for protection-related reasons and not for reasons of personal convenience’ to point 3 (see paragraphs 102-103 and 105 of the Skeleton). In its view, this interpretation flows from the intention of the drafters as revealed in the *travaux préparatoires*, in contemporaneous international instruments dealing with the Palestinian problem, and from the relevant resolutions of the General Assembly since 1948.
29. If the Court should find that there is no clear answer to be drawn from the *travaux préparatoires*, the Office of the United Nations High Commissioner for Refugees respectfully submits that particular weight should be given to its view, as the body responsible for supervising the application of the Convention. UNHCR respectfully requests the Court to adopt its interpretation in applying the provisions of Article 1D.

GUY S. GOODWIN-GILL
BLACKSTONE CHAMBERS
2 July 2002

**IN THE COURT OF APPEAL
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL**

C/2002/0751

B E T W E E N:

AMER MOHAMMED EL-ALI

Appellant

- v -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

**SUPPLEMENTAL SUBMISSIONS ON BEHALF OF
THE INTERVENER**

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