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Palestinian Refugees: Triggering the Inclusion Clause of the 1951 Convention relating to the Status of Refugees[1]

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Abstract

Palestinian refugees have not only been called the largest and most protracted refugee community (UNHCR, 2006), they also have a unique status under the 1951 Convention Relating to the Status of Refugees[3] (1951 Convention). What was meant to be a privilege, turned into a trap Palestinian refugees have been locked in for over seven decades, have not been able to and meant to escape from, that has served and still serves everyone well but the Palestinian refugees. If legal analysis, though, was actually allowed to lift the politically imposed veil, one would see the bars removed and the door wide open. This article focuses on Art. 1 D 1951 Convention, introduces its historical and institutional background, analyzises and interprets its exclusion and inclusion clauses and applies the outcome to the realitiy on the ground. The conclusions are astonishing, demonstrating that the very legal provision having caused the Palestinian refugees to be excluded from refugee protection in the beginning, has long been triggered for their ipso facto inclusion. Acknowledging this could become a game changer for the Palestinian fate and the Middle East Conflict.

Key Words:

Palestinian refugees; exclusion; inclusion; UNRWA; UNHCR

1. Introduction: The Refugee Definition

The legal definition of a refugee is found in Article 1 A para. 2 of the 1951 Convention. In its 1967 New York Protocol[4] version, it covers any person who

> "owing to 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 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."

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[3] Convention Relating to the Status of Refugees (adopted 28/7/1951, entered into force 22/4/1954, 189 UNTS 137, 1951 Convention).
[4] Protocol Relating to the Status of Refugees (adopted 31/1/1967, entered into force 4/10/1967, 606 UNTS 267, 1967 Protocol).

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However, Art. 1 D 1951 Convention introduces the following exception:

> "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 resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention."

Art. 1 D cl. 1 marks an exclusion clause, from which Art. 1 D cl. 2 not only formulates a counter-exception but also an independent element of inclusion (UNHCR, 2020: 240, 242; Albanese & Takkenberg, 2021: 107-108; German Federal Constitutional Court [BVerfG], Judgement of 4/6/1991, No. 1 C 42 88, paras. 17-21). This is explained by the traditional particularity of statutory refugee protection (Art. 1 A para. 1; Albanese & Takkenberg 2021: 82), which, according to the temporary (Art. 1 A para. 2) and territorial restrictions (Art. 1 B), was originally also applied to neo-refugees under the 1951 Convention and broken up only by the 1967 Protocol. The provision considers the special characteristics of certain refugee groups. The combination of exclusion and ipso facto inclusion proves that the Article 1 D seeks to ensure continuity of international protection and thus has rightly been called the "contingent inclusion clause" by the UNHCR (2020: 243; Qafisheh & Azarov 2011: MN 72).

2 Justification of the particularity of special protection

The 1950 UNHCR Statute[5] already provides for a corresponding exclusion (Para. 7 lit. c UNHCR Statute). Since the 1951 Convention incorporated the statutory protection of refugees, and the mandate of the UNHCR extended to it and replaced the International Refugee Organization, at the time the 1951 Convention came into being, only the United Nations Conciliation Commission for Palestine (UNCCP) (overlooking this Kraft, 2016: MN 14), and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)[6] identified as "organs or agencies of the United Nations" that provided "protection or assistance" for refugees (cf. Art. 1 D cl. 1 1951 Convention). This remained unchanged until today. Both were founded in connection with the 1948 Arab Israeli War, the preceding 1947 displacements, and in view of an estimated 700,000-1,000,000 displaced persons (Albanese & Takkenberg, 2021: 35-36; Qafisheh & Azarov, 2011: MN 9). Discussions during the formation of the 1950 UNHCR Statute and 1951 Convention referred exclusively to Palestinian refugees (Albanese & Takkenberg, 2021: 78.73; Hathaway & Foster, 2014: 510-513; Qafisheh, 2015: 65; Qafisheh & Azarov 2011: MN 3-8). Art. 1 D of the 1951 Convention goes back to a joint intervention by Egypt, Lebanon and Saudi Arabia justified as follows:

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

[5] General Assembly Resolution 428 (V), Statute of the Office of the United Nations High Commissioner for Refugees (adopted 14/12/1950, UNHCR Statute).
[6] The United Nations Korean Reconstruction Agency had already been established by UN General Assembly Resolution 409 (V), Organization and Operation of the Work of the Economic and Social Council and Its Commissions (adopted 1/12/1959, UN-GA Res. 409 [V]) but not operationally active until 1953 (Lyons, 1958: 181-188).

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> to the principles of the United Nations, and the obligation of the Organization toward them was a moral one only. The existence of the Palestine 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. Furthermore, the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return. That Member claimed to abide by United Nations decisions; the Organization should therefore prevail upon it to permit the Palestine refugees to return to their homes. He was addressing his remarks particularly to those Member States which had taken a leading part in bringing about the partition of Palestine."[7]

The specificity was thus based on the international responsibility for the emergence of the refugee situation, the unconditional will to return of the persons concerned as reflected in the mandate and group-based refugee definion of the UNCCP (Qafisheh, 2015: 64-66) and the fact that the Palestine refugees did not necessarily seek refuge outside their country of origin (Albanese & Takkenberg, 2021: 36). The exclusion from the 1951 Convention should provide for a special form of protection (Akram, 2018: 426), avoid additional obligations on Arab and European States (Hathaway and Foster, 2011: 512-513), and take into account the institutional delimitation interest of the UNHCR (Robinson, 1997: 54).

3 Exclusion Clause

3 1 Organs and Agencies of the United Nations

3.1.1 UNCCP

The UNNCP was established under the 1948 UN General Assembly Resolution 194 (III), Palestine – Progress Report of the United Nations Mediator (adopted 11/12/1948, UNGA Res. 194 [III]) (Albanese & Takkenberg, 2021: 41). The Commission was comprehensively mandated (No. 2 UNGA Res. 194 [III]) to assist the governments and authorities concerned to bring about a final settlement of all outstanding issues between them (No. 6 UNGA Res. 194 [III]). Specifically with regard to refugees, the General Assembly

> "Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.
>
> Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations" (No. 11 UNGA Res. 194 [III]).

Diplomatic efforts by the UNNCP to resolve disputes over territorial and refugee issues through international conferences failed (Albanese & Takkenberg 2021: 41-42, referring to the Conferences of Lausanne, 27/4-12/9/1949, Geneva, 30/1-15/7/1950, and Paris, 13/9-19/11/1951). Despite formal continued existence, no substantial work by the

[7] United Nations General Assembly, Fifth Session, Official Records, Third Committee, 328th Meeting of 27.11.1950, UN Doc. A/C.3/SR.328, para. 47.

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Commission can be discerned any longer (Albanese & Takkenberg 2021: 46-49). Since 1951, the UNCCP has declared in its annual reports that it is unable to make progress (UNCCP, 1951c: para. 22, 79; most recently UNCCP, 2020).

3.1.2 UNRWA

Almost exactly one year after the UNCCP, on the third recommendation (UNCCP, 1949: 17) of the Economic Survey Mission (ESM) (Albanese & Takkenberg, 2021: 43-44), the UNRWA was established by General Assembly Resolution 302 (IV), Assistance to Palestine Refugees (adopted 8/12/1949, UNGA Res. 302 [IV]) with the following mandate:

> "(a) To carry out in collaboration with local governments the direct relief and works programs as recommended by the Economic Survey Mission;
>
> (b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available" (No. 7 UNGA Res. 302 [IV]).

This was done in recognition of the need for continued assistance to support the Palestinian refugees, without prejudice to No. 11 of UNGA Res. 194 (III) (No. 5 of UNGA Res. 302 [IV]). At the same time, its establishment was a recognition of the failure of the UNCCP to provide economic and social reintegration to the refugees as targeted by its mandate (see No. 11 UNGA Res. 194 [III]) (cf. Albanese & Takkenberg 2021: 77). UNRWA was instructed to coordinate with UNNCP (No. 20 UNGA Res. 302 [IV]). Unlike the UNHCR, UNRWA does not work globally but is limited to five areas ("fields"), namely the Gaza Strip, the West Bank (including East Jerusalem), Syria, Lebanon and Jordan (UNHCR, 2020: 241; Albanese & Takkenberg, 2021: 195).

3.2 Persons Enjoying Protection or Assistance of the United Nations.

3.2.1 Institutionalized Collective Determination

While Art. 1 A, C, E and F of the 1951 Convention refer to "person" in the singular, Art. 1 D uses the term "persons" in the plural with regard to exclusion and inclusion. This underlines the group-related character of the provision already expressed in the delimitation of the areas of competence of the UN organizations (though differing in conclusions Hathaway & Foster, 2014: 516). The 1951 Convention determines the excluded through the enjoyment of protection or assistance from other UN specialized agencies.

3.2.2 Beneficiaries under UNCCP

UNGA Res. 194 (III) does not define its beneficiaries. However, its drafting history evidences related discussions (Albanese & Takkenberg, 2021: 85-86). When asked by the representative of New Zealand whether the term "refugees" included Arabs as well as Jews, the representative of the United Kingdom responded affirmatively (UNCCP 1961: para. 25). Accordingly UNCCP interpreted the refugee concept on a group basis (Akram, 2018: 425):

> "According to the above interpretation the term "refugees" applies to all persons, Arabs, Jews and others who have been displaced from their homes in Arab Palestine…" (UNCCP, 1950: point 1).

However, UNCCP saw the need for further specification in order to implement its own

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mandate. In 1951, a memorandum from the Principal Secretary presented an expert opinion of the Legal Advisor, in which nationality, ethnic origin, the auxiliary factors of domicile, establishment and residence, and persons assimilated to refugees were specified as constituent factors (UNCCP, 1951b). For Palestine, reference was made to the Ordinance on Nationality for Palestine of July 24, 1925. Ethnic origin was regarded as the decisive reason for expulsion and, to that extent, as constituting the concept "refugee" (UNCCP, 1951b: B). The exclusivity of this finding is surprising and contradicts the drafting history of No. 11 UNGA Res. 194 (III). It ignores the fate of some 17,000 Jewish refugees in the aftermath of the 1948 events (on this figure UNCCP, 1949: 16; Albanese & Takkenberg, 2021: 35-36). Also, displaced persons who were considered "others" (21,555 residents) in the 1931 Census of the Mandate Power because they were neither of Arab (i.e., Muslim or Christian) (Krämer, 2015: 375) nor Jewish origin were excluded from the refugee definition (UNCCP, 1951b: B). In summary, the study defined the term "refugee" as follows:

> "*Article 1*
>
> Are to be considered as refugees under paragraph 11 of the General Assembly resolution of 11 December 1948 persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date.
>
> Are also to be considered as refugees under the said paragraph stateless persons of Arab origin who after 29 November 1947 left the aforementioned territory where they had been settled up to that date.
>
> *Article 2*
>
> The following shall be considered as covered by the provisions of Article 1 above:
>
> 1. Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that latter date were Palestinian citizens;
> 2. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947." (UNCCP, 1951b: at the end).

The Legal Advisor's Addendum proposed to amend it in two respects. Art. 1 should be given a third paragraph, which should read:

> "Persons who have resumed their original nationality or who have acquired the nationality of a country in which they have racial ties with majority of the population are not covered by the provisions of the above paragraphs of this Article. It is understood that the majority of the said population should not be an Arab majority" (UNCCP, 1951a).

Furthermore, a third article should clarify the concept of "of Arabic origin":

> *"Article 3*
>
> The term "of Arab origin" appearing in the foregoing Articles related to persons belonging to the Palestine Arab community and to those who are considered or who considered themselves as belonging to that community" (UNCCP, 1951a).

This refugee definition was neither followed up nor adopted by the UN General Assembly. It has no legally binding force. Nevertheless, it refers 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" and would therefore in principle be excluded from the scope of the 1951 Convention under Article 1 D cl. 1 of the

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1951 Convention or included via cl. 2. The restriction to refugees of Arab origin was ultra vires.

3.2.3 Beneficiaries under UNRWA

The organizational purpose of UNRWA was to implement the relief and work programs for Palestine refugees (Akram, 2018: 425). This necessarily also reflected on the needs-based (Akram, 2018: 425) definition of the beneficiaries (Albanese & Takkenberg, 2021: 90) in an Interim Report:

> "For working purposes, the Agency has decided that a refugee is a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood. A large measure of flexibility in the interpretation of the above definition is accorded to chief district officers to meet the many border-line cases which inevitably arise. In some circumstances, a family may have lost part or all of its land from which its living was secured, but it may still have a house to live in. Others may have lived on one side of the boundary but worked in what is now Israel most of the year. Others, such as Bedouins, normally moved from one area of the country to another, and some escaped with part or all of their goods but cannot return to the area where they formerly resided the greater part of the time. These examples give an idea of the varying conditions that must be met in administering the relief program" (UN General Assembly 1950: para. 15).

After multiple changes, the definition has been essentially stable since 1952. The 2009 Consolidated Eligibility and Registration Instructions (CERI) describe eligible individuals in two groups:

> "*1. persons who meet UNRWA's Palestine Refugee criteria*
>
> These are persons whose normal place of residence was Palestine [i.e., the territory formerly designated as British Mandate Palestine (UNRWA, 2009: VII.I)] during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services. The Agency accepts new applications from persons who wish to be registered as Palestine Refugees. Once they are registered with UNRWA, persons in this category are referred to as Registered Refugees or as Registered Palestine Refugees.
>
> *2. persons who do not meet UNRWA's Palestine Refugee criteria*
>
> These persons are grouped in the categories listed below. While registered for the purposes of receiving UNRWA services, these persons are not counted as part of the official Registered Refugee population of the Agency. They consist of persons who at the time of original registration did not satisfy all of UNRWA's Palestine Refugee criteria, but who were determined to have suffered significant loss and/or hardship for reasons related to the 1948 conflict in Palestine; they also include persons who belong to the families of Registered Persons. These categories are:
>
> 2.1 Jerusalem Poor and Gaza Poor [...]
>
> 2.2 Frontier Villagers [...]
>
> 2.3 Compromise Cases [...]
>
> 2.4 MNR Family Members [...]
>
> 2.5 Non-Refugee Wives [...]
>
> 2.6 Kafalah Children [...]" (UNRWA, 2009: III.A).

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In addition, UNRWA considers, among others, 1967 IDPs as eligible for benefits without being registered in UNRWA's system (UNRWA, 2009: III.B).

3.2.4 Palestinian Refugees under the UNHCR Guidelines on International Protection No. 13

The UNHCR Guidelines on International Protection No. 13 on the Applicability of Article 1 D of the 1951 Convention to "Palestinian Refugees" define the same as follows:

> "Palestine refugees: Persons who are "Palestine refugees" within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there.
>
> Displaced persons: Persons who are "displaced persons" within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions, and who, as a result of the 1967 conflict, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there. It also includes those persons displaced by "subsequent hostilities".
>
> Descendants: "Descendants" refers to all persons born to Palestine refugees or displaced persons, as defined above. Based on principles of gender equality and non-discrimination on the basis of sex, as well as the principle of family unity, these descendants, whether they are descended through the male or female line, would be considered to fall within the purview of Article 1D. This includes descendants who were born outside of and who have never resided in UNRWA's areas of operation, where the criteria for the application of Article 1D are met." (UNHCR, 2020: 242, footnotes ommitted).

With regard to the definition of "Palestine Refugees", a footnote refers on the one hand to the UNCCP definition in the Addendum to a Definition of a "Refugee" and the underlying Note by the Principle Secretary, and on the other hand to the UNRWA definition (UNHCR 2020: 242, fn. 17). The reference only in a footnote makes it possible to make a determination based on the UNCCP definition without recourse to the ethnic narrowing there. If this is combined with the UNRWA definition, Palestinian refugees are persons,

1. who have left the territory currently under the control of the Israeli authorities and that is
    a. after November 29, 1947, and
        - were Palestinian nationals at the time, or
        - as stateless persons had resided there until then;
    b. after August 6, 1924 but before November 29, 1947, and who were Palestinian citizens at the latter date;
    c. before August 6, 1924, and who had opted for Palestinian citizenship and regained it by November 29, 1947;

or

2. whose habitual residence during the period June 1, 1946, to May 15, 1948, was Palestine (i.e., the area formerly known as British Mandate Palestine), and who lost both their homes and livelihoods as a result of the 1948 conflict.

"Palestinian refugees" also include "displaced persons" as defined in UN General

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Assembly Resolution 2252 (ES-V), Humanitarian Assistance (adopted 4/7/1967, UNGA Res. 2252 [ES-V]) and subsequent resolutions, because they were displaced as a result of the 1967 conflict from Palestinian territory occupied by Israel since that time and cannot return there. In that resolution, UNRWA was mandated to provide, to the extent possible, humanitarian assistance on an emergency basis and as a temporary measure to others in the area who were displaced at the time and in urgent need of assistance due to hostilities. An exact definition is lacking again. Historically, the majority came from the West Bank, which was annexed by Jordan at the time, held Jordanian citizenship as a result, fled to the other side of the Jordan River, and were considered IDPs by Jordan. IDPs from the Gaza Strip were not assimilated to this group by Jordan but are considered IDPs under UN GV Res. 2252 (ES-V) (Albanese & Takkenberg, 2021: 104, 200). Referring to UN General Assembly Resolution 37/120, United Nations Relief and Works Agency for Palestine Refugees in the Near East (adopted 16/12/1982, UNGA Res. 37/120), UNHCR also includes persons displaced by subsequent hostilities (UNHCR, 2020: 242).

Consideration of descendants of "Palestine refugees" is not grounded in the UNCCP definition. UNRWA-CERI considers as "Palestine refugees" only descendants of the male line. Descendants of female "Palestine refugees" who are married to a non-refugee are not listed as "[p]ersons who meet UNRWA's Palestine Refugee criteria" but as "[p]ersons who do not meet UNRWA's Palestine Refugee criteria". However, they are still eligible for benefits. Descendants of "displaced persons" are not only ineligible for registration under UNWRA's benefits system – as is the displaced person himself – but are not eligible for benefits in their own right. This would, if protection is not indirectly provided through a parent, lead to exclusion from both protection regimes and contradict the intention of Art. 1 D 1951 Convention, which seeks to convey unconditional ("ipso facto") protection through the combination of exclusion (cl. 1) and inclusion (cl. 2).

Whereas Article 1 D cl. 1 of the 1951 Convention neutrally refers to "persons [!] currently enjoying the protection or assistance of a United Nations organization or institution, with the exception of the United Nations High Commissioner for Refugees," UNHCR Guidelines No. 13 narrow the scope of application in terms of persons to the aforementioned subcategories. In doing so, they leave out of account numerous groups of persons to whom UNRWA provides protection and assistance but who have not suffered displacement. This is consistent with the nature of the Convention as a refugee protection instrument.

3.3 Exclusion for Current Enjoyment of Protection or Assistance.

3.3.1 Protection respectively Assistance

According to Art. 1 D cl. 1 1951 Convention, exclusion requires that UN organs or institutions provide "protection or assistance". None of the terms is specified further. Some assume – also in view of the drafting history of the Convention – that the terms had synonymous meanings and could also have been replaced by "care", "aid" or "support" (Qafisheh, 2015: 69; Qafisheh & Azarov, 2011: MN 52; obviously similarly undifferentiated Marx, 2019: § 3 para. 72). However, this would ignore that the terms "protection" and "assistance" were ultimately and alternatively chosen. Others argue that a distinction is irrelevant, since both aspects would be covered by UNRWA's mandate. To establish this, however, would first require a sound determination of the terms.

Although the term "protection" is neither defined in the 1951 Convention, nor in the

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UNHCR Statute or the General Assembly resolutions establishing UNCCP or UNRWA (Albanese & Takkenberg, 2021: 401), systematic interpretation reveals that it is mentioned in several places in the Convention, including in the refugee definition (Art. 1 A para. 2 and C para. 1, 3 and 5). This is very much in favor of defining the various mentions in close reference to each other (Storey, 2016: 488; more cautiously Hathaway, 2016: 484-485). It corresponds to the intention of Art. 1 D 1951 Convention to avoid a duplication of responsibilities, but not to deny protection as foreseen by the Convention (Qafisheh, 2015: 67). "Protection" thus means protection from persecution (Art. 1 A para. 2) (see also Qafisheh & Azarov, 2011: MN 54), diplomatic protection (Art. 1 C para. 1), as well as a minimum human rights standard actually realized (cf. Art. 1 C para. 5), and is thus a comprehensive refugee-specific, compensatory legal status as well as its redemption and transfer into durable solutions (Albanese & Takkenberg, 2021: 404-408).

Although the mentioned concept of protection always refers to States as guarantors, the UNHCR Statute assigns "international protection" also as a task to UNHCR (Para. 1 1950 UNHCR Statute). Since UN bodies and institutions always operate on the territory of a State and thus in its dependence and usually without enforcement power, a cooperative relationship (cf. the obligation of States Parties to cooperate with the UNHCR in Article 35 of the 1951 Convention or the call for cooperation with the UNHCR in the underlying UNGA Res. 428 [V], para. 2) is required in which UN bodies and institutions are often limited to urging the State to grant protection in full (Albanese & Takkenberg, 2021: 402). This is reflected in the obligations of UNHCR as to how protection is to be granted (Para. 8 1950 UNHCR Statute), which also form the standard for other UN organs or agencies that grant refugee protection under Art. 1 D 1951 Convention (Qafisheh & Azarov, 2011: MN 53, 78).

According to Goodwin-Gill & McAdam, a synopsis of the 1951 Convention and the 1950 UNHCR Statute reveal the following direct and indirect aspects of UNHCR's protection activities: direct protection activities, including intervention on behalf of individuals or groups, comprise, first, the protection of the refugee's basic human rights (e.g., non-discrimination, freedom and security of the person), but in addition:

> "(1) the prevention of the return of refugees to a country or territory in which their life or liberty may be endangered; (2) access to a procedure for the determination of refugee status; (3) the grant of asylum; (4) the prevention of expulsion; (5) release from detention; (6) the issue of identity and travel documents; (7) the facilitation of voluntary repatriation; (8) the facilitation of family reunification; (9) the assurance of access to educational institutions; (10) the assurance of the right to work and to benefit of other economic and social rights; (11) the treatment generally in accordance with international standards, not excluding access to and by UNHCR, the provision of physical and medical assistance, and personal security; and (12) the facilitation of naturalization." (Goodwin-Gil & McAdam, 2007: 447; Albanese & Takkenberg, 2021: 402).

Indirect protection activities refer to

> "(1) promoting the conclusion of international conventions for the protection of refugees, supervising their application and proposing amendments thereto; (2) promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection; and (3) promoting the admission of refugees." (Goodwin-Gill & McAdam, 2007: 426; Albanese & Takkenberg, 2021: 402).

The UNHCR itself rightly emphasizes that international protection, to be implemented in

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cooperation with States and non-governmental organizations, would have to cover all needs arising from the absence of national protection (UNHCR 1983: para. 12, footnotes omitted).

The English term "assistance" is also used by the 1951 Convention in connection with legal assistance (Art. 16 para. 2), public assistance (Art. 23) and administrative assistance (Art. 25). The French term "assistance" is found in Art. 16 para. 2 and Art. 23, but not in the context of administrative assistance. This clearly establishes the primary meaning of "assistance" in the sphere of public welfare.

3.3.2 Protection AND Assistance

According to the wording of Art. 1 D cl. 1 1951 Convention, it seems to be sufficient for exclusion that either "protection or assistance" is provided. However, this would mean accepting deficits in protection and assistance that would be alien to the 1951 Convention. Only protection and assistance in their cumulation enable "the widest possible exercise of these fundamental rights and freedoms" as defined to be the objective of the 1951 Convention (Preamble, 2nd recital). In case of State protection, both aspects would have to be jointly considered as primary State tasks. Nothing else can apply to international protection replacing it.

Moreover, Art. 1 D cl. 2 of the 1951 Convention bases inclusion on the alternative of protection or assistance, too; i.e., the omission of only one of the two would be sufficient to trigger the protection of the Convention ipso facto. If alternatives were required for both exclusion and inclusion in strict accordance with the wording, this would lead to results that make no sense and would have to be resolved in either the inclusion or the exclusion provision. In accordance with the protective purpose of the Convention, the decision can only be made in favor of a corrective interpretation in the exclusion clause (disagreeing Hathaway & Foster 2014: 520-521). Exclusion from the personal scope of application of the Convention is therefore only given if the UN bodies or institutions provide protection and assistance, whereby it is sufficient that several participants together provide protection and assistance by shared responsibilities.

3.3.3 Protection and Assistance by UNCCP

The mandate of UNCCP originally referred to repatriation, resettlement and economic and social rehabilitation of refugees, as well as compensation for loss of or damage to property, in accordance with No. 11 of UNGA Res. 194 (III). Repatriation and resettlement are generally durable solutions in the field of refugee protection. Compensation payments are also directly linked to the refugees' fate and are thus also aimed at finding a durable solution. These task descriptions can therefore be seen as measures of "protection". Compared to the mandate of the UNHCR, they concern only part of the latter's protection responsibilities and are designed to bring about an early pacification of the conflict (Albanese & Takkenberg, 2021: 403-404). In contrast, the economic and social rehabilitation also mentioned is an element of public welfare and thus of "assistance".

3.3.4 Assistance and Protection by UNRWA

The organizational purpose of UNRWA is to implement the assistance and work programs for Palestine refugees (No. 7 UNGA Res. 302 [IV]). This corresponds to the element of "assistance" as defined in Art. 1 D of the 1951 Convention. At the same time, the establishment of UNRWA was an expression of the failure of the UNCCP and, in effect, a

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replacement of the UNCCP's mandate, which was also designed to provide assistance, and which subsequently focused on the "protection mandate". Initially, UNRWA's mandate did not include the protection aspect. With the de facto cessation of UNCCP's work and the resulting defencelessness of the refugees (Akram, 2018: 426), UNRWA was asked to include compensatory protection aspects in its mandate. This was reflected in the concept of "passive protection" by Refugee Affairs Officers and Refugee Affairs Assistants during the first Intifada (Albanese & Takkenberg, 2021: 418-420), Operation Support Officers during the second Intifada (Albanese & Takkenberg, 2021: 425-426) and, after various conceptualizations (see for the development of UNRWA's protection mandate Albanese & Takkenberg, 2021: 408-434), in a renewed UNRWA mandate by the UN General Assembly:

> "The General Assembly [...]
>
> Recognizes the acute protection needs of Palestine refugees across the region, and encourages the Agency's efforts to contribute to a coordinated and sustained response in accordance with international law, including the Agency's development of its protection framework and function in all field offices, including for child protection." (UN General Assembly Resolution Res. 71/93, Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East [adopted 6/12/2016, UNGA Res. 71/93], para. 19).

On this basis, while the UN General Assembly continues to emphasize the primary responsibility of States to provide protection, it recognizes that UNRWA makes a contribution to this end (UNRWA, 2016: 30), although it does not relate to finding durable solutions to the refugee issue (Akram, 2018: 426).

3.3.5 Current enjoyment

According to Article 1 D cl. 1 of the 1951 Convention, all persons who "currently" enjoy "protection" and "assistance" from the UNCCP and/or UNRWA are excluded. The wording allows for several variants of interpretation. A cut-off date approach that looked at the date of interpretation of the Convention on July 28, 1951, or its entry into force on April 22, 1954 (thus on both dates Symes & Jorro, 2010: 380), and asked who was enjoying appropriate protection and assistance at that time (so Hathaway & Foster, 2014: 513-515), would not do justice to the intention of separating a special group of refugees who share a common fate (German Federal Administrative Court [BVerwG], Judgement of 4/6/1991, No. 1 C 42.88, para. 23). This would lead to different protection mechanisms and standards, and thus unequal treatment for a single refugee group (Goodwin-Gill & McAdam, 2007: 157-158), and to numerous demarcation difficulties of an institutional and organizational nature (UNHCR 2020: 243). Moreover, it would have been obvious to anchor a corresponding point in time in the Convention text. The temporal and spatial delimitation of the 1951 Convention by the 1967 Protocol underlines the future-open nature of the term "at the time" and refers to the point in time at which refugee protection is considered. Therefore, UNHCR could rightly refer Article 1 D cl. 1 1951 Convention to the 1967 IDPs as well (UNHCR 2020: 242). UNGA Res. 2252 (ES-V), which extends UNRWA's mandate in this respect, is dated 4 July 1967 and is framed in terms of time by the ratification of the 1967 Protocol on 31 January 1967 and its entry into force on 4 October 1967.

It is disputed whether protection and assistance must actually be enjoyed (European Court of Justice [ECJ], Judgement of 17/6/2010, Nawras BolBol, No. C-13/09, para. 51;

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Judgement of 19/12/2012, Mostafa Abed El Karem El Kott, No. C-364/11, para 44; Qafisheh & Azarov, 2011: MN 27) or must still have been enjoyed shortly before the application was filed (extending the previous case law, ECJ, Mostafa Abed El Karem El Kott, paras. 49-52), or whether it is sufficient that a member of the group of persons enjoying the protection and assistance would be entitled to do so. The wording and the exceptional nature of the clause initially suggest the former (ECJ, Nawras BolBol, para. 51; Kraft, 2016: MN 19) but the systematic interpretation points to a collective character due to the use of the plural for the personal scope of the clause. The institutional delimitation also speaks in favor of a provision along the lines of an institutional distribution of responsibilities that avoids overlaps.

However, on a teleological interpretation, the community of fate thus established can only go so far as the individual person could actually avail himself of the protection offered by the UN organs or agencies elsewhere. This is consistent with the interpretation of the other refugee statuses, which are based on the actual existence of priority protection. Such an interpretation is further supported by the fact that the determination of the personal scope of application of Article 1 D of the 1951 Convention is not directly based on a jointly suffered fate of displacement or flight, but only on the enjoyment of protection and assistance based on it.

Current enjoyment of protection and assistance therefore means that, at the time of refugee status determination, the person either actually enjoys it or is entitled to it (legal entitlement) (UNHCR, 2020: 243) as well as actually able to avail of it (accessibility). This has considerable significance in the case of secondary displacement from a State of residence outside UNRWA's areas of responsibility (on such secondary expulsions in the Middle East, see Erakat, 2014: 590-598, 601-611).

If, on the other hand, a person who objectively shares the fate of the refugee group or who would actually be under the UN mandate is legally or factually prevented from enjoying protection and assistance, he or she is not affected by the exclusion (Qafisheh & Azarov, 2011: MN 58-59). Reasons for this could include exclusion from eligibility for benefits due to legal requirements or being prevented from entering or returning (Qafisheh & Azarov, 2011: MN 56) to UNRWA's area of operation. The persons concerned may therefore claim to be refugees within the meaning of Article 1 A para. 2 of the 1951 Convention, provided that the relevant conditions apply.

3.3.6 Presumption Rule

If a person actually enjoys protection and assistance according to these standards, the actual quality of the protection and assistance does not need to be further examined to determine whether and to what extent it meets the standards required for adequate refugee protection. The systematics of the exclusion and inclusion clauses of Article 1 D cl. 1 and 2 1951 Convention show that the examination of this is reserved for the inclusion clause. The prerequisite for inclusion is a substantial deficit of protection and assistance. The systematics of Art. 1 D is based on the institutional confidence that the protection and assistance currently enjoyed, as provided by the competent other UN organs and institutions, is sufficient to justify exclusion from the scope of the 1951 Convention. As a result, in the case of the current enjoyment of protection and assistance via other UN organs or institutions, there is an irrebuttable presumption (alluding though in a different context Albanese & Takkenberg, 2021: 115-116) regarding the sufficient quality of the

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exclusion in Art. 1 D cl. 1.

3.4 Exclusion

The 1951 Convention does not apply to persons meeting the above outlined criteria for exclusion (Art. 1 D cl. 1 1951 Convention) unless he or she at the same time meets the conditions of inclusion (Art. 1 D cl. 2). Therefore, they cannot claim refugee status under Art. 1 A para. 2 1951 Convention even if they fulfilled the criteria of the general refugee definition there. The exclusion is naturally limited to the protection granted by the 1951 Convention but does not affect the applicability of other instruments of humanitarian migration law (Qafisheh & Azarov, 2011: MN 26).

4 Inclusion

4.1 General Considerations

The exclusion of persons from Convention protection under Art. 1 D cl. 1 1951 Convention is intended to last only as long as protection and assistance are actually provided. Art. 1 D cl. 2 therefore calls for their inclusion

> "[w]hen 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".

First, it should be noted that while this clause also indirectly affects the institutional delimitation of UNRWA's and UNHCR's responsibilities, it directly impacts the coordination of the special refugee protection regime for Palestinian refugees with the general one of the 1951 Convention. There is nothing in the wording of Article 1 D 1951 Convention to suggest that the Convention intended to establish clearly defined geographical areas of responsibility and that the applicability of the exclusion clause or inclusion clause would depend on where the refugee was currently located.[8] Instead, the only question that matters is whether the refugee is receiving benefits or whether they have ceased. Insofar as this is geographically determined for UNRWA (UNHCR, 2022: 241), the scope of application of the 1951 Convention and thus the mandate of UNHCR adapts geographically as a reflex for the question of exclusion; the inclusion clause, however, breaks through any geographical delimitation of areas of responsibility precisely when its criteria are fulfilled. Otherwise, protection gaps would arise, which the systematics of Article 1 D cl. 1 and 2 1951 Convention teleologically aim to avoid. Because of the ipso facto inclusion, it does not even matter whether the person concerned is outside his or her country of origin, as would have been required by the general refugee definition of Article 1 A 2 1951 Convention.

4.2 Ceasing of Protection or Assistance.(

4.2.1 Protection or Assistance

"Protection" or "assistance" must have ceased to exist. As in the case of the exclusion in Art. 1 D cl. 1 1951 Convention, both elements in the inclusion clause of Art. 1 D cl. 2 are

[8] Of different opinion Albanese & Takkenberg (2021: 115-116): "Accordingly, Article 1 D (2) can only be triggered when Palestinian refugees are outside UNRWA's areas of operations." Their argumentation apparently focuses more on the exclusion element than on the consequences for the inclusion element.

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linked with an "or". As already explained (see 3.3.2), it is sufficient for inclusion that only one of the two elements has ceased to apply (Albanese & Takkenberg, 2021: 115, also applicable to the inclusion of Palestinians).

The yardstick for the required quality of protection and assistance cannot therefore be solely the mission of the competent UN bodies/institutions and their implementation, though this is the only point made by Albanese & Takkenberg (2021: 116-117). The latter is necessarily limited and dependent on the States of their field of operation: As in Art. 1 A para. 2 1951 Convention, Art. 1 D cl. 2 of the 1951 Convention is not about the attribution of responsibility (accountability view) but protection (protection view). What is crucial is whether under the umbrella of the competent UN organs and agencies the persons concerned are actually offered a kind of protection and assistance, which according to the human rights standard of the 1951 Convention could be regarded as adequate compensation for the State protection lost due to the conflict.

4.2.2 Cessation

According to the wording, "cessation" means more than just a qualitative deterioration. This is confirmed by a systematic interpretation of the term in Art. 1 C para. 5 and 6 1951 Convention, where the term "cessation" (there with regard to the circumstances giving rise to the fear of persecution) is given a fundamental and permanent meaning. The meaning and purpose of the provision in Art. 1 D cl. 2 1951 Convention also speak in favor of focusing on substantial changes in order not to endanger the institutional and organizational structure of international refugee protection in the case of only temporary deficits. This is particularly true in view of the difficulties of demarcation and randomness that might otherwise be expected in case of gradual fluctuations in effectiveness of protection and assistance.

On the other hand, systematics and teleology of other inclusion clauses (Art. 1 A para. 1 and 2 1951 Convention) show that it is not the formal legal but actual situation that should determine refugee status. Nothing else can apply to the interpretation of the term "cessation" in the inclusion clause of Art. 1 D cl. 2 1951 Convention. Moreover, in contrast to Art. 1 C para. 5 and 6, the purpose of Art. 1 D cl. 2 is not to justify the termination of refugee protection by way of exception, but to ensure its continuity. Against the background of the protective purpose of the Convention and refugee protection in general, by arguing with the functioning of the international protection system; refugees can be expected to accept restrictions on their rights at most temporarily and depending on the degree of impairment. As in all other respects for the determination of the refugee concept, the future development is decisive, i.e., a prognosis must be made, for which in turn the past can provide indications.

As the wording itself (emphasized by ECJ, Mostafa Abed El Karem El Kott, para. 53) indicates with the phrase "for any reason", the term "has ceased" is to be interpreted broadly (UNHCR, 2020: 244). Namely, it is not limited to the end of the mandate of UNCCP and UNRWA (without any further justification referring to UNRWA alone UNHCR, 2021: 244) or even to the case of definitive settlement of the fate of the refugee group in accordance with the relevant resolutions adopted by the UN General Assembly. Conversely, it would be contrary to the teleology of the provision and the establishment of two deliberately separate institutional systems of protection and assistance to assume that the individual refugee could determine, purely on a subjective basis, by his own

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conduct, the responsibility for the protection and assistance to be granted to him (Qafisheh & Azarov, 2011: MN 57). The wording of the inclusion clause (Art. 1 D cl. 2), like that of the exclusion clause (Art. 1 D cl. 1), is once again directed at "persons" in the plural instead of at a "person" in the singular, as in Art. 1 A, C and F. As in case of the exclusion clause, a collective responsibility for the protection and assistance systems of the individual refugee is defined, a similar collective view is also to be taken for the inclusion clause. From this the intention can be inferred that inclusion and exclusion should, at least as a rule, be group related.

On the other hand, it would be contrary to the purpose of both protection instruments to assume that gaps in protection for the individual refugee should be accepted. On the contrary, Article 1 D 1951 Convention aims precisely at the continuity of refugee protection across institutional boundaries. The wording is also sufficiently flexible to include the individual fate under the "person" concept, if only the criteria for this are of an objective nature.

Therefore, in order to trigger UNHCR's jurisdiction and the applicability of the 1951 Convention, the cessation of protection or assistance must be objectively justified in the collective and individual case, i.e., be beyond the control of the persons concerned (UNHCR, 2020: 243; ECJ, Mostafa Abed El Karem El Kott, para. 58; Kraft, 2016: MN 21).

4.2.3 Institutional Review

The concept of Art. 1 D 1951 Convention is institution related. The protection and assistance of only one UN organ or agency would be sufficient for exclusion (Art. 1 D cl. 1), while exclusion could also be based on the protection or assistance of several. As with the exclusion clause, the inclusion clause (Art. 1 D cl. 2) must first be examined for each individual institution and then considered comprehensively. As long as exclusion could still be based on the protection and assistance of another UN organ or agency, it would continue.

4.2.4 No Final Settlement pursuant to the Relevant UN General Assembly Resolutions

The discontinuation of protection and assistance would only lead to inclusion under Art. 1 D cl. 2 1951 Convention if "the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations". According to the wording of the provision, such a settlement must already be "definitive" and is necessarily of a collective nature due to the use of the plural in the term "persons".

With regard to the legal status to be achieved by the regulation and the factual living and protection conditions, the Convention does not make any independent statements. The substance and quality of the regulation to be made are rather derived from the reference "in accordance with the relevant resolutions adopted by the General Assembly of the United Nations". Particular importance is attached to No. 11 of UNGA Res. 194 (III), which sees the final solution in a return or compensation of the refugees:

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

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authorities responsible" (UNGA Res. 194 [III]).

Again, though, the fundamental criterion for the 1951 Convention is not the form but the substance of protection. The definitive settlement must therefore also meet substantive requirements and grant the persons concerned perspectively permanent protection and assistance.

The requirements for the return can be derived from the concept of protection in Art. 1 C para. 5 1951 Convention, since this also bases termination of refugee protection on a renewed, adequate offer of protection by the State of origin which the refugee cannot reject. A final option of return (cf. on the origins and development of the right to return Albanese & Takkenberg, 2021: 352-354, 364-369), which in fact would not provide the Palestinian refugees with a dignified perspective on life and enable them to live “in peace with their neighbors”, as explicitly mentioned in the resolution, would therefore be insufficient. The return should only take place at the request of the refugees and thus voluntarily. As return is to be made possible, it is concluded that restitution payments would also have to be made (Albanese & Takkenberg, 2021: 350). For the compensation solution expressly demanded by the resolution, international law provides general guidelines to be observed (Albanese & Takkenberg, 2021: 354-358, 369-372, 451-454). Merely symbolic compensation would be insufficient.

In the end, there is no question that a definitive settlement in this sense has not yet been reached (ECJ, Mostafa Abed El Karem El Kott, para. 54).

4.2.5 Objective Reasons for Cessation

UNHCR (2020, 244-247) lists as alternative objective grounds for cessation (1) termination of UNRWA's mandate; (2) UNRWA's inability to fulfill its protection or assistance mandate; (3) threat to life, physical integrity, security or freedom or other protection-related grounds; and (4) practical, legal or security obstacles that prevent applicants from availing of UNRWA's protection or assistance.

Firstly, the exclusive focus on UNRWA and neglect of UNCCP must be criticized. Although UNCCP no longer plays any role in the actual protection and assistance of refugees due to its de facto demise, this is precisely a crucial point for the examination of Art. 1 D cl. 2 1951 Convention and the triggering of the inclusion clause. Secondly, the threat to life, physical integrity, security or freedom or other protection-relevant reasons within the area of operation of the responsible UN organs or agencies is a sub-case of the de facto loss of the granting of protection and assistance. And thirdly, according to the view taken here, practical, legal or security obstacles that prevent applicants from availing themselves of the protection or assistance of the UN organs or agencies already lead to a lack of current enjoyment of the same and thus already to an exclusion from the scope of the Convention (Art. 1 D cl. 1).

Therefore, only (1) the formal termination of the mandate of the UN organs or agencies and (2) the de facto cessation of protection and assistance can be considered as objective reasons for discontinuation.

4.2.5 Formal Termination of the Mandate of the UN Organ or Agency

The formal termination of the mandate of a UN organ or agency, and thus also of UNCCP and UNRWA, requires a decision by the UN General Assembly (cf. Art. 22 of the 1945

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Charter; Albanese & Takkenberg, 2021: 118) and would collectively affect everyone who had previously enjoyed protection and assistance (UNHCR, 2020: 245).

If the formal termination of the mandate was linked to the definitive settlement of the fate of the group of persons in accordance with the resolutions of the UN General Assembly relating thereto, there would be no change to the protection regime of the 1951 Convention; rather, subsidiary refugee protection would be replaced by newly established State protection.

If, on the other hand, there was no such final settlement and the persons concerned do not still receive protection and assistance through other UN organs or agencies, the inclusion clause (Art. 1 D cl. 2 1951 Convention) ensures continuity of refugee protection via the 1951 Convention and through UNHCR (Para. 7 lit. c UNHCR Statute).

4.2.6 Factual Cessation of Protection or Assistance

As is generally the case, it is not the formal legal situation that is ultimately decisive for determining the refugee concept under Art. 1 1951 Convention, but rather the actual existence of sufficient protection, which is intended to ensure "the widest possible exercise of these fundamental rights and freedoms" (reiteration 2 of the preamble). It must therefore be assumed that protection and assistance have ceased if they are not any or no longer sufficient (Marx, 2019: MN 74). This is confirmed by the wording, which refers to that protection and assistance have "ceased for any reason" (ECJ, Mostafa Abed El Karem El Kott, paras 56-57).

The duration of the absence of a final settlement is not in itself evidence of the de facto cessation of protection and assistance. Even if the mandate of the UNCCP is aimed at a final resolution of the conflict and its consequences, success in this regard is dependent on conditions that go beyond the scope of refugee protection and would also be alien to the convention in other respects. Rather, the quality of the protection and assistance provided by the other UN bodies and institutions is decisive. This must not be merely formal or symbolic. According to the European Court of Justice (ECJ), Judgement of 13/1/2021, XT, No. C-507/19, para. 51, the inclusion clause therefore applies

> "where it becomes evident, based on an assessment, on an individual basis, of all the relevant evidence, that the personal safety of the stateless person of Palestinian origin concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee that the living conditions of that individual would be compatible with its mission, and that person is forced to leave the UNRWA area of operations owing to circumstances beyond his control."

Even if the standards of refugee protection under the 1951 Convention are not directly relevant due to the exclusion clause of Article 1 D cl. 1, which is to be applied in principle, they nevertheless represent a comparative standard of what the contracting states had in mind as an image of meaningful protection. International bodies and institutions can be of varying degrees of robustness, but as a rule they are dependent on the cooperation of the states in their area of operation. In this respect, the provision of protection and assistance involves a division of labor. This is clearly illustrated by the protection mandate of the UNCCP, i.e., a commission that is aimed at providing protection and assistance, but from the outset did not have enforcement mechanisms or even sufficient implementation resources in this regard. Where such a division of labor is lacking, the enjoyment of protection and assistance is at risk and a lapse is foreseeable.

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The assumed or actual temporary nature of the loss of protection is irrelevant (Marx, 2019: MN 75). At most, a very temporary, only selective failure of protection could constitute an exemption (cf. Albanese & Takkenberg, 2021: 118). Similarly, the reason for the factual loss of protection and assistance is irrelevant. It can take place as a whole or limited to a certain area (geographical, country-specific, group-related, personal, factual), i.e. collectively, if the other UN organs or agencies would no longer be able or willing to continue to provide protection and assistance precisely there (UNHCR, 2020: 245). However, since the fundamental priority of the protection of the other UN organs and agencies over that one of the Convention is formulated in general terms in Art. 1 D No. 1 1951 Convention and does not recognize any geographical subdivision according to geographical fields (ECJ, XT, paras. 52-53), the ECJ comes to the conclusion that

> "[...] in order to determine whether the protection or assistance from UNRWA has ceased, it is necessary to take into account, as part of an individual assessment of all the relevant factors of the situation in question, all the fields of UNRWA's area of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein" (ECJ, XT, para. 67).

With regard to the possibility of access to protection in another field of operation, the European Court of Justice specifies,

> "that the fact that a stateless person of Palestinian origin is registered with UNRWA does not give him or her any right to access or move within the area of operations of that organisation by moving from one field of that area to another. UNRWA does not have the authority to allow stateless persons of Palestinian origin to access the territories of the five fields of that area, which are under the jurisdiction of different States or autonomous territories.
>
> In these circumstances, the determining authority and the court or tribunal hearing an appeal against the decision of that authority must take into consideration all the relevant factors of the situation in question which shed light on the question whether the stateless person of Palestinian origin concerned had, at the time of his or her departure from UNRWA's area of operations, the concrete possibility of accessing one of the five fields of UNRWA's area of operations in order to receive UNRWA's protection or assistance.
>
> To that end, the fact that that stateless person has a right to obtain a residence permit in the State or in the autonomous territory of the relevant field of UNRWA's area of operations is an indication that that stateless person is able to access that area and thus receive UNRWA's protection or assistance, provided that UNRWA is able to provide that protection or assistance to him or her in that area.
>
> In the absence of such a right, the fact that that stateless person has family ties in a given field of UNRWA's area of operations, had his or her actual or habitual residence in that area or resided there before leaving that area may be relevant, provided that the States or territories concerned consider that such elements are sufficient to enable, irrespective of the granting of any residence permit, a stateless person of Palestinian origin to access and safely remain on their territory.
>
> Likewise, account must be taken of all evidence, such as declarations or practices of the authorities of the said States and territories, which imply a change of attitude towards stateless persons of Palestinian origin, in particular where, through such declarations and practices, they express an intention no longer to tolerate the presence on their territory of such stateless persons if they do not have a right of residence" (ECJ, XT, paras. 58-62).

However, a move to another geographical area of responsibility of the previously responsible UN organs or agencies in order to be subject to the same protection or

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assistance in the second area in the event of the loss of protection or assistance in the first area is only reasonable if it can be assumed that the mandate will be fulfilled there at least for the duration of a conflict, but in case of doubt permanently.[9] Insofar as the discontinuation of protection in a field of operations is not linked to country-specific peculiarities but to the general limitations of the UN organs and agencies themselves, this is doubtful. In many cases, the de facto cessation of protection and assistance, despite the continued existence of a mandate to do so, indicates an unwillingness or inability to provide protection in general. In such a case, it is therefore up to the State Party to the Convention to prove that the protection provided by the previously responsible UN entity elsewhere meets the minimum requirements on a permanent basis.

On the other hand, the European Court of Justice assumes,

> "[...] that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which that person could receive protection or assistance from UNRWA and, secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which he or she travelled or to be able to return at short notice to the field from which he or she came [....]" (ECJ, XT, para 80).

In doing so, however, the courts must examine the voluntary nature of the departure and the foreseeability of the loss of protection and assistance in the area of operation to which the person concerned is heading, as well as the foreseeable lack of possibility of return on the basis of concrete information available to him. The standard applied by the European Court of Justice is that of individual obviousness. Sudden and unforeseen developments of the situation in this regard are contrary to the assumption of foreseeability (ECJ, XT, paras. 77-79).

The formal establishment of a de facto cessation of protection and assistance, for example through a General Assembly resolution, is a helpful source of knowledge in such cases but not a prerequisite for the assumption. This can also result from the analysis of the situation on the ground (UNHCR, 2020: 245). In this respect, the European Court of Justice assumes a far-reaching duty of clarification on the part of the competent authorities and courts, from which a material burden of proof is read at the expense of the States Parties (Albanese & Takkenberg, 2021: 116):

> "It should be added that, where the competent authorities of the Member State in which the application for asylum has been made seek to determine whether, for reasons beyond his control and independent of his volition, it was in point of fact no longer possible for the person concerned to benefit from the assistance of which he had availed himself before leaving the UNRWA area of operations, those authorities must carry out an assessment, on an individual basis, of all the relevant factors, in which Article 4(3) of Directive 2004/83 may be applicable by analogy" (ECJ, Mostafa Abed El Karem El Kott, para. 64).

With regard to protection and assistance by the UNCCP, such a discontinuation can be

[9] Unspecifically regarding the requirements of protection respectively assistance and based on EU secondary law mixing elements of Art. 1 A para. 2 and Art. 1 D cl. 2 1951 Convention: European Court of Justice (ECJ), Judgement of 25/7/2018, Serin Alheto, No. C-585/16, para. 134 u. 140.

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assumed (Qafisheh & Azarov, 2011: MN 47, 50, depending on interpretation). Related to the assistance aspect, this can already be attributed to the fact that UNRWA's mandate has at least de facto been superseded. With reference to the protection aspect, it can also be assumed that it has ceased to exist, at least in view of the factual inactivity and insignificance that has occurred in the meantime (Albanese & Takkenberg, 2021, 183-244). UNHCR Guidelines No. 13 (2020: 245) explicitly address this by referring to the continued existence of the UNCCP on the one hand and to its annual report to the UN General Assembly on the other, in which UNCCP confesses that it is not in a position to exercise the mandate assigned to it.

Since UNCCP and UNRWA were responsible for protection and assistance, at least initially, on the basis of a division of labor, and UNRWA's protection mandate only developed over time, but on the other hand, inclusion once occurred due to discontinuation of protection and assistance cannot be reversed even upon acceptance of renewed granting of protection and by other UN organs and agencies, the Palestinian refugees were deprived of protection by the UNCCP and not simultaneously compensated by UNRWA, and therefore the inclusion of the entire group was triggered for this reason alone. Qafisheh (2015: 68) hints at this consequence, but ultimately does not defend it due to the assumption of a conceptual synonymity of protection and assistance (cf. also, by way of suggestion, Erakat, 2014: 615).

A qualitative examination of the UNCCP protection mandate leads to the same conclusion. It is limited to finding a final solution to the conflict, including the return, restitution and compensation of Palestinian refugees through negotiations. All other aspects of international protection, as characterized by the mandate of the UNHCR, especially at the operational level, are missing (cf. Albanese & Takkenberg, 2021: 403-404, for a comparison of the UNCCP and UNRWA mandates). Under such a minimalist protection mandate of the UNCCP, actual enjoyment of protection would have been highly dependent on voluntary state action from the outset. The enjoyment of a sufficient degree of protection would thus have been virtually impossible to guarantee internationally, even for a short period of time, and would have been illusory in view of a refugee situation that had dragged on for more than 70 years.

If, on the other hand, one was to assume that UNRWA, contrary to its original mandate, also offered sufficient protection in addition to assistance due to extensions of its mandate in the meantime, inclusion would be possible at least for those groups of people who were not also covered by its mandate.

At the same time, it should be asked whether and to what extent UNRWA itself can or does adequately fulfill its assistance mandate and a protection mandate that is only further assumed here for the sake of argument. Even if no conclusive analysis can be made at this point, this is extremely questionable or even can be ruled out with regard to certain areas of its mandate (Erakrat, 2014: 585-586). The dependence on the cooperation of the host States has meant that in the course of the decades of a protected refugee situation, temporary if not permanent defencelessness has arisen in every UNRWA field of operation. In addition, the provision of assistance, which is dependent on government and non-governmental donors, is only partially able to compensate for a lack of governmental assistance. This is also evident to varying degrees in the different fields (cf. Albanese & Takkenberg, 2021: 183-244, for a summary of developments in UNRWA's individual fields of operation). The situation of Palestinian refugees in the West Bank and

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Gaza Strip is characterized by the dependence and arbitrariness of the occupying forces (Albanese & Takkenberg, 2021: 227-244). In Lebanon, refugees are not only largely left to themselves and UNRWA, but have been subjected to military arbitrariness or targeted persecution several times over the decades and are permanently prevented from adequate participation by legal barriers (Albanese & Takkenberg, 2021: 207-219). The previously largely legally integrated Palestinian refugees in Syria have been caught between the fronts in the similarly protracted civil war since 2011 (Albanese & Takkenberg, 2021: 219-227). Only in the case of Jordan could it be debated whether, despite a partly chequered relationship with the State and in particular the events surrounding the "Black September," it can still be assumed that protection and assistance are being provided throughout (Albanese & Takkenberg, 2021: 198-207).

Finally, the wording of Article 1 D cl. 2 1951 Convention, which states that protection or assistance "shall have ceased for any reason", also permits an interpretation that considers individual lack of protection and assistance independently of mandate and institutional reasons (ECJ, Mostafa Abed El Karem El Kott, para. 58; Goodwin-Gill & McAdam, 2007: 158-159). This is also teleologically necessary to avoid protection gaps and to provide the necessary actual protection and assistance (ECJ, Mostafa Abed El Karem El Kott, para. 60). In this regard, the European Court of Justice states:

> "Mere absence from such an area or a voluntary decision to leave it cannot be regarded as cessation of assistance. On the other hand, if the person concerned has been forced to leave for reasons unconnected with that person's will, such a situation may lead to a finding that the assistance from which that person benefited has ceased […].
>
> As regards the examination, in an individual case, of the circumstances giving rise to the departure from the UNRWA area of operations, the national authorities must take account of the objective of Article 1D of the Geneva Convention […] namely to ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.
>
> In the light of that objective, a Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency" (ECJ, Mostafa Abed El Karem El Kott, paras. 59, 62-63; confirmed in Serin Alheto, para. 86).

However, the European Court of Justice has not yet specified further standards for the quality of the necessary protection and assistance (Albanese & Takkenberg, 2021: 111). In the literature, the minimum requirements are dignified living conditions and protection against refoulement or deportation (Funke-Kaiser, 2022: MN. 20). In view of what has already been said about the general situation in the fields, a correct interpretation of the inclusion clause would only make it all the more likely that, even if it were assumed for the sake of argument that UNRWA generally continues to provide sufficient protection and assistance, this lack of protection and assistance could at least be demonstrated in individual cases and the claim to inclusion could be substantiated.

4.3 Ipso-facto Inclusion

According to Art. 1 D cl. 2 1951 Convention, the legal consequence of cessation is that the persons concerned should "ipso facto!" fall under the provisions of the Convention (cf. Keßler, 2016: MN 16, on the insufficient transposition into German law). This legal

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formula is understood to mean that a legal consequence occurs of its own accord (Merriam-Webster, n.d.; Qafisheh & Azarov, 2011: MN 72), i.e., it does not require any further conditions (Hathaway & Foster, 2014: 519; see also Goodwin-Gill & McAdam, 2007: 159).

In particular, the persons concerned do not have to prove or even fulfill the criteria of a neo-refugee (Art. 1 A para. 2 1951 Convention) in order to qualify for refugee status (Qafisheh & Azarov, 2011: MN 75; Wittmann, 2021: MN 82) because otherwise the inclusion of the characteristic "ipso facto" in the inclusion criteria of Art. 1 D cl. 2 1951 Convention would be superfluous (ECJ, Mostafa Abed El Karem El Kott, para. 73; Kraft, 2016: MN 22). This corresponds to the special situation of the Palestinian refugees, which was recognized by the signatory states in the form of special treatment by Art. 1 D 1951 Convention (ECJ, Mostafa Abed El Karem El Kott, para. 80; Hathaway & Foster, 2014: 520).

Although refugee status as such is in this case, as in the case of Article 1 A para. 2 1951 Convention, only dependent on the fulfillment of the actual requirements, the real enjoyment of the legal status thus established is in many ways necessarily dependent on the prior determination of the same, which is why recognition is also preceded by an application procedure in this respect (somewhat simplifying ECJ, Mostafa Abed El Karem El Kott, para. 75-76).

The fact that Art. 1 D cl. 2 1951 Convention requires that a person be subject to the provisions of the Convention also means that the provisions of Art. 1 E and F as well as Art. 2-34 of the 1951 Convention and, via teleological interpretation, Art. 1 C 1951 Convention are directly applicable (Hathaway & Foster 2014: 518; Qafisheh & Azarov 2011: MN 79).

5 Conclusions

The above analysis demonstrates that and to what extent Palestinian refugees were originally excluded from general refugee protection under the 1951 Convention, but in the meantime must be considered included without further condition due to the removal of protection and assistance from the originally responsible UN institutions.

This in no way implies the automatic end also of UNRWA's protection system but of UNHCR's additional mandate for this group of people and - even more essential - the obligation to recognize the general refugee status by the States Parties.

The associated legal obligations of States Parties, especially outside the region, to one of the largest refugee groups in the world are not only explosive in terms of domestic politics with regard to discussions on receiving capacities. Rather, this is precisely the impetus for the realization that the Palestinian refugees should not be taken hostage and left to themselves in the framework of an inadequate and arbitrarily underfunded special system, but that their fate should actually be settled as quickly and definitively as possible; a step that could also contribute to the pacification of the wider Middle East conflict; – something all of a sudden again in the responsibility and (probably more decisive on the ground) the core interest of the international community.

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References

Akram, S. (2018). The search for protection for stateless refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan. *International Journal of Refugee Law 30*(3), 407-443.

Albanese, F. & Takkenberg, L. (2021). *Palestinian refugees in international law*. Oxford University Press.

Erakat, N. (2014). Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement. *International Journal of Refugee Law, 26*(4), 581-621.

Funke-Kaiser, M. (2022). § 3 AsylG. In M. Funke-Kaiser (Ed.), *Gemeinschaftskommentar zum Asylgesetz* (loose-leaf, status 2022). Luchterhand.

Goodwin-Gill, G. S. & McAdam, J. (2007). *The refugee in international law* (3rd ed.). Oxford University Press.

Hathaway, J. (2016). What is the meaning of state protection in refugee law? A debate: Response. *International Journal of Refugee Law, 28*(3), 484-488.

Hathaway, J. & Foster, M. (2014): *The law of refugee status* (2nd ed.). Cambridge University Press.

Keßler, S. (2016). § 3 AsylVfG/AsylG. In R. M. Hofmann (Ed.), *Ausländerrecht* (2nd ed., pp. 1873-1879). Nomos.

Kraft, I. (2016). Art. 11 QRL. In K. Hailbronner & D. Thym (Eds.), *EU immigration and asylum law: Commentary* (2nd ed., pp. 1191-1199), Beck.

Krämer, G. (2015). *Geschichte Palästinas* (6th ed.). Beck.

Lyons, G. M. (1958). American policy and the United Nations Program for Korean Reconstruction, *International Organization 12*(2), 180-192.

Marx, R. (2019). AsylG: *Kommentar zum Asylgesetz* (10th ed.). Luchterhand.

Merriam-Webster (n.d.). *Ipso facto.* In Merriam Webster Legal Dictionary. Retrieved February 26, 2020, from https://www.merriam-webster.com/dictionary/ipso%20facto#legalDictionary

Qafisheh, M. M. (2015): An ongoing anomaly. Pre- and post-second world war Palestinian refugees. *International Journal of Refugee Law 27*(1) 52-74.

Qafisheh, M. M. & Azarov, V. (2011). Art. 1 D. In A. Zimmermann (Ed.), *The 1951 convention relating to the status of refugees and its 1967 Protocol: A commentary* (pp. 537-569). Oxford University Press.

Robinson, N. (1997). *Convention relating to the status of refugees: Its history, contents and interpretation (Division of International Protection of the United Nations High Commissioner for Refugees, Ed.).* UNHCR. (Original work published 1953).

Roßkopf, R. (2021). Humanitäres Migrationsrecht. In S. Wollenschläger (Ed.), *Handbuch des Ausländerrechts der Bundesrepublik Deutschland* (loose-leaf, chapter 2B, pp. 1-404). Luchterhand.

Storey, H. (2016). What is the meaning of state protection in refugee law? A debate: Rebuttal. *International Journal of Refugee Law 28*(3) 488-490.

UNCCP (1949). *Final report of the United Nations Economic Survey Mission for the Middle East. An approach to economic development in the Middle East, Part I.* The final report and appendices (UN Doc. A/AC.25/628.12.1949). https://www.un.org/unispal/document/auto-insert-211397/

UNCCP (1950). *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948* (UN Doc. A/AC.25/W/45). Working Paper Compiles Secreteriat, 15/5/1950. https://unispal.un.org/DPA/DPR/unispal.nsf/0/94F1C2272194531985257 3CB00541447

UNNCP (1951a). *Addendum to definition of a "refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948.* Legal Advisor, 29/5/1951. https://unispal.un.org/DPA/DPR/unispal.nsf/0/C36917141A0A192A8525683A005DCE2D

UNCCP (1951b). Definition of a "refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948 (UN Doc. A/AC.25/W/61). Note by the Principal Secretary, 9/4/1951. https://unispal.un.org/DPA/DPR/unispal.nsf/0/418E7BC6931616B485256CAF00647CC7

UNCCP (1951c). *Progress report of the United Nations Conciliation Commission for Palestine, covering the period from 23 January to 19 November 1951* (Official Records: Sixth Session,

Roßkopf, R. (2022). Palestinian Refugees
Quarterly on Refugee Problems, 2022, Vol. 61, Issue 2, 189-212
ISSN 2750-7882, Section: Research Articles
Open Access Publication, https://doi.org/10.57947/qrp.v61i2.24

Supplement No. 18, A/1985). General Assembly. https://www.un.org/unispal/document/auto-insert-186738/

UNCCP (1961*). Historical survey of efforts of the United Nations Conciliation Commission for Palestine to secure the implementation of paragraph 11 of General Assembly Resolution 194 (III). The question of compensation* (UN Doc. A/AC.25/W/82/Rev.2). Working Paper, 2/10/1961. https://unispal.un.org/DPA/DPR/unispal.nsf/0/3E61557F8DE6781A052565910073E819

UNCCP (2020). *Seventy-fourth report of the United Nations Conciliation Commission for Palestine* (UN Doc. A/75/305). https://www.un.org/unispal/document/seventy-fourth-report-of-the-united-nations-conciliation-commission-for-palestine-a-75-305/

UN General Assembly (1950). *Assistance to Palestine refugees. Interim report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (Official Records, Fifth Session, Supplement No. 19, UN Doc. A/1451/Rev.1). General Assembly, 6/10/1950. https://unispal.un.org/UNISPAL.NSF/0/EC8DE7912121FCE5052565B1006B5152

UNHCR (1993). *Note on international protection* (UN Doc. A/AC.96/815). 31/8/1993. http://www.unhcr.org/refworld/docid/3ae68d5d10.html

UNHCR (2006) *The state of the world's refugees 2006. Human displacement in the new millenium.* https://www.unhcr.org/publications/sowr/4a4dc1a89/state-worlds-refugees-2006-human-displacement-new-millennium.html

UNHCR (2020). Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. New edition, February 2020. https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html

UNRWA (2009). *Consolidated eligibility and registration instructions (CERI).* 1/9/2009. https://www.unrwa.org/sites/default/files/2010011995652.pdf

UNRWA (2016). *Medium term strategy 2016-2021.* https://www.unrwa.org/sites/default/files/content/resources/mts_2016_2021.pdf

Wittmann, P. (2021). Art. 1 GFK. In A. Decker, J. Bader, & P. Kothe (Eds.), *BeckOK Migrations- und Integrationsrecht* (8th ed.). Beck. https://beck-online.beck.de/?vpath=bibdata%2fkomm%2fBeckOKMigR_10%2fcont%2fBECKOKMIGR%2ehtm