IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 25 October 2001
Date Determination notified: 29/01/2002

Before

The Honourable Mr Justice Collins (President)
Mr C M G Ockelton (Deputy President)
Mr J Barnes

Between:

AMER MOHAMMED EL-ALI

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

I

1. This starred determination includes the Tribunal's judgement on the meaning and interpretation of Article 1D of the Convention relating to the Status of Refugees.

2. The Appellant appeals against the determination of an Adjudicator, Mr K Kimnell, dismissing his appeal against the decision of the Respondent on 9 July 2000 refusing him leave to enter the United Kingdom having refused him asylum. Before us he was represented by Mr A Salfiti of Salfiti & Co, Solicitors, and the Respondent was represented by Mr T Eicke, instructed by the Treasury Solicitor.
3. The Appellant was born in Kuwait, but had lived nearly all his life in Lebanon. He arrived in the United Kingdom in 1998. He was travelling on a Jordanian passport, which is said to have been obtained fraudulently. He destroyed it during the course of the journey and so it has not been possible to evaluate that claim. He is described as Palestinian and says that he is stateless. The Respondent, however, asserts that he may be entitled to Lebanese or Jordanian nationality. The Appellant has produced documents apparently showing that he is registered with the United Nations Relief and

Works Agency for Palestine Refugees (UNRWA) in the Lebanon field. For some reason he was not registered until December 1996, over two years after the other members of his family: and it is surprising that the UNRWA certificate includes the misspelling 'Palastine'. The documentation has not, however, been doubted. It indicates that the Appellant was registered as a 'Palestine Refugee' and that his residential centre was Ein El Hilweh Camp I.

4. Before the Adjudicator the Appellant claimed to have left Lebanon because he had suffered difficulties with the Lebanese authorities in the previous two years. He claimed that if returned he was at risk of similar treatment which, he argued, would amount to persecution for a Convention reason. He raised two further arguments. One was that the Lebanese government systematically discriminates against Palestinians to such a level as amounts to persecution. The other was that the Respondent erred in law in failing to follow, and to apply to the Appellant, his policy relating to mandate refugees.

5. The Adjudicator rejected all the Appellant's claims. He accepted that the Appellant had been detained and investigated by the Lebanese authorities, but not that this treatment was persecution for a Convention reason or that (if repeated) it would be. He found no evidence to substantiate the Appellant's claim that he risked discrimination amounting to persecution. He found that the Appellant had failed to establish a breach of any applicable policy.

6. The last two matters are raised again in the grounds of appeal to the Tribunal. We can deal with them briefly. So far as concerns discrimination the position is, as the Adjudicator said, that the evidence does not establish that the Lebanese authorities discriminate unlawfully against Palestinians in such a manner or to such an extent that returning a Palestinian to Lebanon would, for that reason, be a breach of the Refugee Convention. Nothing in the materials put before us by Mr Salfiti gives any proper basis for interfering with the Adjudicator's conclusion on this point.

7. The argument related to mandate refugees is more complex. The Adjudicator frankly indicated that he did not find the Respondent's submission on the issue easy to follow. The reason is that the situation of mandate refugees, and the Respondent's treatment of them, has little in common with the situation of the Appellant. The published guidelines on mandate refugees specifically relate to a particular situation <u>not</u> covered by the Immigration Rules. They envisage the possibility of a person who has already established refugee status, and is already under the protection of UNHCR, making an application, from abroad, to be admitted to the United Kingdom as a refugee. The guidelines show how such an application is to be treated. They specify that, in particular, an officer must evaluate the applicant's circumstances in the <u>present country of refuge</u>, and assess whether the United Kingdom is the most appropriate country for the applicant's resettlement. Another broader statement of Home Office policy indicates that a person who <u>receives</u> protection from UNRWA should be considered in accordance with the instruction on mandate refugees.

8. The Appellant did not make an application from abroad or from another country of refuge. He did not make it as a person receiving protection from

UNRWA – indeed, as will be seen, his case as it has been put to us is that he has ceased to receive such protection. His is not a situation that is not covered by the Immigration Rules. He claimed asylum in the United Kingdom on arrival here. His claim fell to be considered under the applicable Immigration Rules (paragraphs 330-336 of the HC395). The policy on mandate refugees has no relevance to him.

II

9. The Appellant does not challenge the Adjudicator's findings relating to his history, or his conclusion that if the authorities' treatment of him were repeated, that would not amount to persecution for a Convention reason. Instead, he bases his claim to asylum largely on Article ID of the Refugee Convention. That Article reads as follows:

> 'This Convention shall not apply to persons who are at present receiving from organisations 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 definitely 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.'

10. The Appellant submits that Article 1D is to be given its full literal meaning and that, as a result, he is entitled to enter and remain in the United Kingdom as a refugee. While he was in Lebanon he was able to claim protection or assistance from UNRWA, and so the Refugee Convention did not apply to him. Now that he has left Lebanon, that protection or assistance has ceased, and so '*ipso facto*' he has become, he says, entitled to the benefits of the Refugee Convention.

11. That claim is based on four assumptions. The first is that Article 1D is to be read literally. The second is that UNRWA is an organ or agency of the United Nations within the meaning of Article 1D. There is no difficulty about that: everybody agrees that it is and, indeed, as we shall show, Article 1D was drafted with the Palestinian situation, and UNRWA in particular, specifically in mind. But, if the Article is to be read literally, it is difficult to see why (say) UNICEF does not also fall within the description. It would seem impossible that any child who received assistance from UNICEF is to be excluded from the Refugee Convention.

12. The third assumption is that 'at present' means 'at any relevant time' – that is to say, the present time whenever the Article falls to be applied. This is not a fanciful assumption, although we shall say more on this issue below.

13. The fourth assumption is that this reading of Article 1D would benefit the Appellant. We have to say – although this was not fully argued before us – that we have considerable doubts whether it would. The Appellant is not

lawfully here: after leaving Lebanon he travelled unlawfully to Syria and Jordan before (he says) coming to the United Kingdom on a false passport. He cannot claim the benefit of Article 32 to resist expulsion. Article 33 would prohibit his refoulment to any country or territory where he is at risk of persecution for a Convention reason. But the Respondent proposes to remove him to Lebanon and, on the Adjudicator's findings, that is not a place where the Appellant is at risk of persecution for a Convention reason. As it appears to us, therefore, if the Appellant's reading of Article 1D were to be accepted, it would not avail him in this appeal against the refusal of leave to enter and the consequent removal directions. His appeal would therefore fall to be dismissed in any event.

III

14. In case we are wrong about that, however, and because the matter is of general interest and has been fully argued before us, we go on to consider the meaning of Article 1D.

15. Mr Eicke submitted that the literal interpretation proposed by Mr Salfiti should not be accepted. Instead, he suggested that the intention was that UNRWA was to be treated as a complement to the protection offered by the Refugee Convention. If UNRWA ceased to provide effective protection, the individuals concerned (no longer excluded by Article 1D) would be entitled to make their case for protection as refugees under the Convention. They would, however, not be entitled to status as refugees unless they showed that they came within the definition of Article 1A.

16. Mr Eicke suggested that such an interpretation of Article 1D was closer to the intentions of the High Contracting Parties than that proposed by Mr Salfiti. He offered a number of processes by which, in his submission we could adopt this narrower reading of Article 1D without doing undue violence to its language. He suggested that "the protection or assistance has ceased for any reason" is not an obvious form of words to use of a situation where a person has chosen to leave protection which (for all one knows) might have been available to him if he remained. The words might possibly be appropriate in a case where a claimant shows that sufficient protection is no longer available to him, so that he needs to leave; but in Mr Eicke's submission the sense intended was that the first sentence of Article 1D should cease to exclude Palestinians if UNRWA itself ceased to exist. He supported his argument by reference to the travaux préparatoires, usefully summarised by J.C. Hathaway, The Law of Refugee Status pp 205-208.

17. The history of the Article is of some interest in this context. On 29 November 1947 the United Nations General Assembly voted in favour of partitioning Palestine into an Arab state and a Jewish state. The two communities started hostile actions almost immediately. The British mandate in Palestine ceased on 14 May 1948. On 15 May the Jewish community in Palestine proclaimed the territory as the State of Israel. In the war that followed, many Arab Palestinians fled into neighbouring countries. Following numerous debates, the United Nations established UNRWA in December 1949. Its task was to provide assistance to any 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."

It is right to say that UNRWA's mandate has subsequently been enlarged to include the children of such persons, and others in the area, particularly those displaced by the war of 1967.

18. At the time of the negotiations leading to the Refugee Convention, it was thought necessary to prevent overlapping between protection that was being provided by UNRWA and protection that would be provided by UNHCR. Further, the Arab nations took the view that the United Nations should bear particular responsibility for the plight of Palestinian refugees. They argued that the need for such persons was repatriation and that they should not be submerged in the general class of refugees defined by Article 1A of the Convention. There was a further issue. If the Palestinians were given refugee status under the Convention they would in principle have mobility. This possibility was, it appears, unattractive both to Arab nations (because they sought repatriation) and other nations (because they did not see the displaced Palestinians as entitled to the same considerations as those fleeing from persecution in Europe). As a result, the first sentence of Article 1D was drafted, excluding (permanently) from the Refugee Convention all those "at present receiving from other organs or agencies of the United Nations protection or assistance."

19. It was then decided that this formulation might leave the Palestinians without any protection at all if UNRWA were to cease operating. The Arab states argued, strongly and persuasively, that a further clause should be added, giving the Palestinians deferred inclusion. As the Egyptian delegate, proposing the amendment, said,

> "It was only right and proper that, as soon as the Palestinian problem had been settled and the refugees no longer enjoyed United Nations assistance and protection, they should be entitled to the benefits of the Convention."

Referring to the amendment at a later date, he said

> "The object … was to make sure that the 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." (Hathaway, op. cit, p 208, notes 113-114).

Thus Article 1D in its present form was agreed.

20. That process, argued Mr Eicke, showed that the second sentence of Article 1D was not intended to take effect on an individual basis but only on the cessation of UNRWA operations. Until then, a person entitled to receive 'protection or assistance' from UNRWA could not qualify as a refugee under the Convention.

21. Further or alternatively, he argued that the word "shall *ipso facto* be entitled to the benefits of this Convention" were, despite the wording, apt not simply to give all the benefits of the Convention to the persons affected, but simply to bring them within the scope of the Convention. That was the word used by the Egyptian delegate (see above). The 'benefits' of the Convention were confined to protection if one was at risk of persecution (as defined). There was no reason for the Refugee Convention to give any benefit to a person who could not establish that he was at such risk.

IV

22. The Convention is a treaty and is to be interpreted in accordance with the 1969 Vienna Convention on the Law of Treaties. The process is that set out in Articles 31 and 32 of that Convention.

Article 31: General rule of interpretation.

1. 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.

2. The context for the purpose of the interpretation of a treaty shall comprise, 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 connection with the conclusion of the treaty;
    b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:
    a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision;
    b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

There is no need to set out the remainder of that article.

Article 32: Supplementary means of interpretation.

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

23. But, as Lord Lloyd of Berwick pointed out in Adan v SSHD [1999] 1 AC 293, 305, 'the starting point must be the language itself'.

24. Applying those principles, we find ourselves unable to accept the construction of Article 1D offered by either party. Mr Eicke's second argument – that "shall *ipso facto* be entitled to the benefits of this Convention" should be read as if the words were "shall then be persons to whom this Convention applies" - we regard as impossible in view of the language actually chosen – after debate – by the High Contracting Parties. If they had meant to say simply that the first sentence of Article 1D would cease to apply, they would surely have said so. The phrase "the benefits of this Convention" has a clear meaning which is obviously different from any phase imparting all the terms of the Convention as a whole.

25. Mr Eicke's first argument – that the second sentence of Article 1D comes into play only if and when UNRWA ceases operation – is superficially more attractive in view of the travaux préparatoires. Closer analysis shows, however, that it lacks coherence. If UNRWA ceased operations, the individuals formerly receiving assistance from UNRWA would be left in the countries in which UNRWA had operated. Some would have or would be entitled to the nationality of the country in which they had been residing. Others would be stateless but would have been habitually resident in that country. How could they be "entitled to the benefits of the Convention" while remaining in that country? The benefits of the Refugee Convention are entirely phrased in terms of the obligation of nations to aliens of a specific sort.

26. Further, why should such persons be '*ipso facto*' entitled to the benefits of the Convention? Those benefits are intended to protect persons who are at risk of persecution. If UNRWA ever did cease operation, the reason for the cessation might be that, in some new world order, Palestinians no longer needed any "protection or assistance". And "any reason" is sufficient to bring the second sentence of Article 1D into play. The benefits of the Convention cannot have been intended to be conferred on a whole class of persons who (in these circumstances) would have no need of them.

27. The interpretation offered by Mr Eicke is complicated further by the events which happened. UNRWA operates in countries that are not signatories of the Convention. If UNRWA ceased to operate, how could the Palestinians be '*ipso facto*' entitled to the benefits of the Convention? There would be no national authority which, as a party to the Convention, owed them those

benefits. They could only conceivably become 'entitled' to the benefits if UNRWA ceased operation and the persons in question moved to a country that is a party of the Convention. '*Ipso facto*' cannot mean that.

28. We find similarly unattractive the argument that 'has ceased for any reason' means 'has effectively ceased, so causing an individual to flee to another country'. (This was also suggested by Mr Eicke). Again, the problem is with the words '*ipso facto*': even if the cessation is interpreted in a sense implying necessity, the benefits could only apply following cessation and movement. We incline to the view that there is a further difficulty in that Article 1D is not obviously phrased in such a way as to allow an individual to claim that protection has ceased. Unlike the rest of the Convention, Article 1D refers throughout, to 'persons' in the plural. We mention this point again below.

29. Mr Salfiti's argument, on the other hand, carries the implication that any Palestinian who has at any time received UNRWA assistance and has then, by his own voluntary act, ceased to receive that assistance, is entitled to the benefits of the Refugee Convention. That argument does have the merit of adhering closely to the wording of the Article. Its effect, however, renders it unacceptable.

30. The purpose of the Refugee Convention was and is to provide assistance to those in need of it. At the time the Convention was drafted, there was little doubt about who those persons were: the Convention is therefore largely concerned with the obligation of states to refugees within their territories. Because the Convention does provide benefits to refugees, however, it runs the risk of being used, by persons who have no real need of protection, merely as a device to obtain those benefits. Thus it has happened that, all over the world, litigation on the Refugee Convention is almost entirely confined to Article 1, the definition section. Individuals who are able to travel to a country in which they wish to stay agrue that (for one reason or another) they fall within the definition of 'refugee' and that they are therefore entitled to remain in that country and receive the benefits provided to refuges. This is not to say that nobody needs the protection of the Refugee Convention. If anything, the need is greater that it was in 1951. Further, modern transport facilities make it easier for those who are genuinely in need of protection to reach a place of safety. But the Refugee Convention was never intended to offer any benefits at all to those who are not in need of protection. It is not to be used as a device to secure immigration. The Convention's function of protection cannot but be harmed if it is seen, or used, in any other way.

31. Thus the interpretation of the Convention, in the light of Article 31 of the Vienna Convention, which we have set out above, must always be such that the primary question is whether an individual is, in his present circumstances, one who is in need of protection. This principle has been clearly emphasised in decisions of the Court of Appeal and the House of Lords, notably Adan v SSHD [1999] 1 AC 293, Horvath v SSHD [2001] 1 AC 489 and Revenko v SSHD [2000] Imm AR 610. In each of those cases the individual claimed that a literal reading of Article 1A(2) entitled him to the benefits of the

Refugee Convention. In each case it was decided that the principal, underlying question was whether the individual had, at the time of status determination, any need of protection under the Convention. In each case the Convention was authoritatively interpreted in such a way as to give benefits to persons who were in need of protection, but not to those who were not able to demonstrate any present need of protection.

32. For these reasons, relating both to the purpose of the Convention and its current interpretation and application, we reject Mr Salfiti's argument.

V

33. As we said at the hearing, we consider that the key to the problem is the interpretation of the words 'at present' in the first sentence of Article 1D. In the submissions made to us it was assumed, as we have said above, that 'at present' has a continuative meaning: that is it to say, that the first sentence of Article 1D excludes anybody who, at the time of status determination, is receiving protection or assistance from UNRWA.

34. The meaning of 'at present' was the subject of argument in Dyli v SSHD [2000] Imm AR 652. The Tribunal did not need to reach a concluded view, but said this:

> "43. Most authorities appear to consider that "at present" in article 1D means at the time the Convention entered into force"; see Grahl-Madsen, *The status of refugees in international law* (1966) p 264, pointing out that when the Convention means another date it says so specifically; Hathaway, *The law of refugee status* (1991) p 208, referring to the view of the United Kingdom representative at the drafting of the Convention; Takkenberg, *The status of Palestinian refugees in international law* (1998) p 96. Professor Greenwood QC takes the same view, noting however that there is a respectable contrary argument, based on the terms and status of the 1967 Protocol, which entirely changed the temporal effect of article 1A of the Convention. The UNHCR *Handbook* indeed, at paragraphs 142-3, sets out a view that clearly implies that "at present" means "at the time of status determination". We have not been able to reach a conclusion on this point. On the one hand, the use of the words "at present" does suggest that there is intended to be a meaning different from that imported by the simple use of the present tense elsewhere in article 1. On the other hand, everybody seems to agree that article 1D does, and was always intended to, apply to the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): but everybody also seems to agree that article 1D applies not only to Palestinian refugees who were actually receiving assistance when the Convention came into effect, but also includes, for example, Palestinians

> born since that date (Grahl-Madson, *op cit* 1 p 265, Hathaway, *loc cit*; Takkenberg, *op cit* p 99: this interpretation was adopted by the German Federal Administrative Court in a decision of 4 June 1991 (*Bverwg* 1 C 42.88) and is described as suggested by common sense in Professor Greenwood's opinion). As a result, "at present" has to be interpreted so as to include an element of futurity; and the construction of the exact meaning of the words "at present" then becomes so complicated that a simple interpretation in line with that in the UNHCR *Handbook* may well be preferable."

35. It is only with the greatest circumspection that we should differ from the majority of expert opinion, the UNHCR, and the Bundesverwaltungsgericht. It does appear, however, that there are very substantial difficulties in adopting a continuative meaning for the phrase in question.

36. First, there is the matter to which Professor Greenwood made reference in his opinion in Dyli. As originally executed, Article 1A(2) – the principal definition of 'refugee' for the purposes of the Convention – was limited in time. Those who feared persecution as a result of events before 1951 could claim protection under it. The only others protected by the Convention were those who had been recognised as refugees under earlier international Conventions (Article 1A(1)). Under the 1967 Protocol, the references to time in Article 1A(2) were removed. Thus the Convention became an instrument capable of recognising the needs of, and protecting, victims of persecution whatever the date of the events giving rise to risk of persecution. That is what is meant by the statement in Dyli that the Protocol 'entirely changed the temporal effect of Article 1A of the Convention'.

37. What the Protocol did not do, however, was amend Article 1D. One reason – perhaps the most likely reason – for that was that the meaning of Article 1D was to remain unchanged. But before 1967, Article 1D could refer only to those persons who had a fear based on events before 1951. If the meaning of Article 1D is unchanged, then its first sentence continues to exclude only those persons. Palestinians whose fear is based on subsequent events would not be excluded by Article 1D and would need to establish their claim under the amended Article 1A(2).

38. Secondly, there is the difficulty in saying exactly what 'at present' does mean, if it does not mean 'at the time of the signature of this Convention', i.e. 28 July 1951. Some of the problems were referred to in Dyli, but there are others. Some authorities, in particular, Takkenberg (op.cit. 96-101) argue that the words 'at present' confine the ambit of Article 1D to organs or agencies of the United Nations in operation on that date (or their successors), but do not confine its ambits to individuals receiving protection or assistance on that date. These arguments are unpersuasive.

39. In Dyli the second sentence of Article 1D was not in issue. Here, however, it is: and the claim that that sentence gives the Appellant rights as a refugee raises a further difficulty about 'at present'. His claim is that he has ceased

to have the assistance of UNRWA. What is the basis of his claim to be covered by Article 1D at all? That Article only applies to those who are 'at present' receiving assistance. The suggestion in the UNHCR Handbook that 'at present' be interpreted as 'at the time of status determination' works for the first sentence of Article 1D but can only work if that sentence is taken in isolation. It renders the second sentence entirely without meaning or effect. At any particular time a person cannot be both 'at present' receiving assistance and yet able to say that the assistance has ceased. A person who is (at the time of status determination) receiving assistance from UNRWA is excluded by the first sentence. But a person who has been receiving such assistance would never be able to claim under the second sentence because, at the time of status determination, he would not be a person to whom the first sentence applied and so would not be one of 'these persons' who received the benefit of the second sentence.

40. Thirdly – and to our minds very persuasive – is the drafting history to which we have referred. Those who debated and agreed the wording of Article 1D could not have intended 'at present' to bear any continuative meaning. It will be remembered that the second sentence was proposed, and agreed, because it was seen that the first sentence, essentially excluding Palestinians from protection under the Convention, would gravely prejudice them if UNRWA ceased to operate. That is why the second sentence was added. But that reasoning is inconsistent with a view that 'at present' in the first sentence has any meaning related to the date of the claim or of status determination. If it did, the problem addressed by the second sentence would not arise. If UNRWA ceased to operate, no Palestinian could possibly (at that future time) be 'at present' receiving assistance from UNRWA: so the cessation of UNRWA would not exclude Palestinians from benefits, but would simply mean that there was no longer anybody excluded by Article 1D.

41. It follows clearly, in our view, that the words 'at present' cannot have been intended to carry any continuative meaning. The first sentence of Article 1D 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. (There is scope for a little argument about what date is meant, but we note, with Grahl-Madsen, op. cit p 264, that when a date other than the date of signing of the Convention is intended, it is specified). We therefore decide that 'at present' in Article 1D is a reference to 28 July 1951. Only persons receiving on that date protection or assistance from organisations 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.

VI

42. So far from producing a bizarre result, as has sometimes been argued, this interpretation would appear to operate fairly and efficiently. The crucial consideration is that those who were within UNRWA's mandate on 28 July 1951 were actually displaced persons. They had been compelled to leave their homes – or to remain away from them – by the Israel-Arab war of 1948-

9. To that extent it was right to treat them as a group, with a common, shared experience. Hence the plural 'persons' is used in Article 1D, in contrast to Article 1A, C, E and F, each of which regulates the circumstance of an individual person. The closest parallel to the Palestinians is perhaps the situation of the 'statutory refugees' that is, those already recognised as refugees under earlier Conventions. They are included as 'refugees' by the wording of Article 1A(1): they too are treated as a group, not as individuals; and they do not have to establish their claim according to the criteria of Article 1A(2). Palestinians who, on 28 July 1951, were receiving protection or assistance from UNRWA, were excluded from the Convention for that reason: but, if UNRWA ceased to operate, the understanding was that they should received the benefits of the Convention <u>without further enquiry</u>. They have the potential, in other words, to become a sort of deferred statutory refugee.

43. In our view it makes perfectly good sense to restrict this treatment to those who were already, in 1951, in the circumstances described. They were those who had been the subject of mass displacement, essentially for a Convention reason, at a time before the signing of the Convention. There was an issue relating to United Nations responsibility for the events of 1948-9, and an issue relating to the proper treatment of those who had been prevented from living in their homes. It was right, in 1951, to recognise the claims of those persons as a whole. But the principle of the 1951 Convention is one of individual status determination. There is no reason why the situation of those actually displaced before 1951 should be extended to a person who is displaced after 1951, simply because he is a Palestinian or because of the operations of UNRWA. A Palestinian leaving his home after 1951 should be subject to the same considerations under the Convention as any other asylum seeker.

44. There is even less reason why the situation of those actually displaced should be extended to Palestinians who have never been displaced at all. No doubt on 28 July 1951 there were babies who had been born since their parents' flight, but they would fall as minors to be considered as members of their parents' families in any event. An adult who has never lived in the area he regards as his ancestral homeland cannot claim to be regarded with the same sympathy as a person who has had to leave his home and take refuge elsewhere. He may be a refugee: but, if so, he should establish his claim as an individual in need of protection.

45. It may be said that UNRWA has not confined its attention to those who had been displaced by 28 July 1951. It has, particularly following United Nations Resolutions 2252 and 2341, in 1967, provided assistance for all those displaced as a result of conflicts in its geographical areas of operation. Within families, it does not distinguish between those born before and those born after 1951, and so far as we are aware, it does not distinguish between families that left Israeli territories before or after 1951. Neither these considerations, nor the fact that UNRWA calls those registered with it 'refugees', affect the proper interpretation of the Refugee Convention. The assistance and protection provided by UNRWA is quite different from the benefits of the Refugee Convention and we would not be inclined to accept

that UNRWA can, by extending its mandate or enlarging its activities for humanitarian reasons, exclude individuals from the benefits of the Refugee Convention. That would be the effect of taking the ambit of UNRWA's present work into account in interpreting Article 1D.

46. If 'at present' refers, as we decide, to 28 July 1951, it follows that no organ or agency of the United Nations beginning operations after that date can be the subject of Article 1D. In fact, as we have indicated, some authorities have taken that view in any event. Others have simply thought that there had not in fact been any body, other than UNRWA, that was capable of coming within the definition. The travaux clearly indicate that, despite its general wording, Article 1D was drafted and agreed with Palestinians only in mind. We consider that it is right that new or future organs or agencies of the United Nations should not be seen as excluding individuals from the possibility of seeking protection as refugees. The international obligation to refugees is now well established and there is no argument of principle capable of showing that a person should not have the benefits of refugee status, simply because he could have obtained other benefits or protection in a country of refuge near his home. The solution adopted for the Palestinians in 1951 should not be allowed to blight other claimants. (Where an organ or agency of the United Nations offers assistance to persons within their country of nationality, Article 1D is not engaged: see Dyli, paragraph 45.)

47. It is a consequence of our interpretation of Article 1D that 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. We repeat that that is as it ought to be. We emphasise that we do not see this consideration as likely to lead to an increase in claims to refugee status.

48. A claimant needs, in essence, to show that he has a well-founded fear of being persecuted in his country of nationality or (if he is stateless) in his country of former habitual residence. Without deciding the issue, we note that a person described only as 'Palestinian' is likely to be regarded for the purposes of the Convention as stateless. He will therefore be assessed by reference to the Arab country in which he has been living. (In this context it may be worth recording that UNRWA assists only those who are registered and actually residing in Lebanon, Syria, Jordan, the Gaza Strip and Egypt.) If the claimant is not only 'Palestinian', he may have, or be entitled to, nationality of the country where he has been resident. In order to establish his claim he will need to show a real risk of persecution for a Convention reason, in the Arab country in question. The position is slightly more complex in the case of persons from the Gaza Strip and some other disputed territories, for a stateless Palestinian might establish that Israel was his country of former habitual residence. He would nevertheless need to show a well-founded fear of persecution for a Convention reason (not merely war) in his home area – that is, in the Palestinian community in which he was living.

49. For these reasons it does not appear to us that the interpretation of Article 1D that we have adopted will have any untoward effect on claims to asylum by Palestinians. The situation for Palestinians, as for everybody else, is that

only a person who is able to show that he comes within the definition in Article 1A(2) is entitled to refugee status.

VII

50. We conclude as follows:

    1. Article 1D of the Refugee Convention applies only to persons who were receiving protection or assistance from UNRWA on 28 July 1951.

    2. The Appellant is not such a person. Although his nationality is not clear, he has failed to establish that he has a well-founded fear of persecution in any relevant place. He is not a refugee. His appeal is dismissed.

51. The Appellant's appeal is dismissed.

C M G OCKELTON
DEPUTY PRESIDENT