

# STUDI INTERNAZIONALI

## Refugee Realities: Palestinian Status and Legal Dynamics in the European Union

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### **Palestinian Victims: Challenges to Refugee Status and Legal Protections in the Shadow of UNRWA**

In 1949, the United Nations introduced a new legal category called the "Palestine refugee" for those who were displaced and suffered losses during the 1948 conflict that established Israel as a state. According to the UN, a Palestine refugee was defined as "someone who resided in Palestine between June 1, 1946, and May 15, 1948, and lost both their home and means of livelihood due to the conflict". The United Nations Conciliation Commission for Palestine (UNCCP) was tasked with the diplomatic and political negotiations to protect displaced Palestinians, including facilitating their "repatriation, resettlement, and economic and social rehabilitation," as well as providing compensation. The newly established United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was responsible for providing aid and assistance to displaced Palestinians. This was the first – and in the long run the only – international refugee agency specifically devoted to helping a single refugee nationality. The UNRWA was established by the UN General Assembly Resolution No 302 (IV) of 8 December 1949 to provide humanitarian assistance to Palestinian refugees and create conditions of peace and stability. However, it was prohibited from engaging in political advocacy or negotiation, a restriction that is still in place. Instead, its mandate was limited to practical measures such as providing food, shelter, water, medical assistance, and education. Over the years, UNRWA has evolved into a regional aid agency with partial governmental powers over the Palestinian refugees under its care.

With the cooperation of host countries, most of which were experiencing postcolonial disarray at the time, UNRWA constructed and managed refugee camps in the West Bank, Gaza, Jordan, Israel, Lebanon, Syria, Egypt, and Iraq. UNRWA also monitored and maintained the "rolls" of refugees, gradually arriving at its working definition of a Palestine refugee and seeking to limit assistance to those who could demonstrate their claims. However, its concept of protection remained limited to the physical well-being of the refugees under its purview. This situation emerged at the same time as a more general international conception of refugee protection and asylum, encompassed in the 1951 Geneva Convention on the Status of Refugees, which represented one of the early United Nations' signature accomplishments. Under the Convention, a refugee was someone who "as a result of events occurring before 1 January 1951 and owing to a well-founded fear of persecution 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]... return to it." The Convention had two options for defining "events" as either 'events in Europe before 1 January' or 'events occurring in Europe or elsewhere between 1 January 1951'. Although most signatories chose the latter, the Convention only applied to Europeans displaced by the Nazi regime and its collaborators during WWII due to its emphasis on "persecution" as the key qualification for refugee status.

The document also excluded refugees receiving assistance from other UN offices. "This Convention," Article 1D of its final text read, "shall not apply to persons who are at present receiving from organs or agencies of the UN other than the UN High Commissioner for Refugees [UNHCR] protection or assistance." With UNRWA as the only extant UN organization aiding the displaced, this rule served solely to exclude Palestinians from the protections of the Refugee Convention. As the UNCCP's advocacy work died a quiet death, Palestinian refugees found themselves outside the theoretical protections of the Refugee Convention, and facing the fact that there was "no other international legal regime actively ensuring their protection as human beings." Thus far, asylum for Palestinians was - at least at the international level - entirely missing.

#### **"CJEU Rulings on Palestinian Refugee Status: Implications and Legal Analysis in the EU"**

In 2012, the Court of Justice of the European Union (CJEU) made a ruling in favour of a Palestinian plaintiff who had lost the assistance of UNRWA upon his removal from Lebanon. As a result, the plaintiff qualified for the protections of the UNHCR under 'Article 1D' of the Refugee Convention and sued for the right to claim asylum in Hungary. The court declared that "the cessation of protection or assistance from organs or agencies of the United Nations other than the High Commission for Refugees (HCR) 'for any reason' includes the situation in which a person who, after availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition." In such a circumstance, the Court declared, "that person must automatically be granted refugee status." This ruling was aligned with the view of many legal scholars who had been saying for decades that 'Article 1D' should open the possibility for Palestinians, specifically those outside the reach of UNRWA, to be considered "refugees" under the protection and authority of the UNHCR. However, neither the UNHCR's clarification nor the CJEU ruling has had much practical effect. The CJEU has given a ruling (in C-364/11 – *Abed El Karem El Kott and Others*) stating that UNRWA's protection or assistance is considered ceased not only if the agency itself stops functioning, but also if

the person under its care is forced to leave the area of operation for reasons beyond their control. This applies if the individual's safety is at serious risk, and UNRWA is unable to ensure that the living conditions in its area of operation are in line with its mission of providing 'dignified' living conditions. In the recent case of C294/22, the Court has ruled that the second sentence of Article 12(1)(a) of Directive 2011/95/EU of the European Parliament and the Council is to be interpreted as follows: when the UNRWA can no longer guarantee that a stateless person of Palestinian origin receives access to healthcare and medical treatment, which is essential for their survival or well-being, the protection or assistance they offer is considered to have ended. In such situations, the affected person is at risk of imminent death, serious and irreversible health decline, or a significant reduction in life expectancy. The national court is responsible for determining whether such risks exist.

#### **"UNRWA Crisis in Gaza: Implications for Palestinian Refugees Seeking Asylum in the EU."**

The UNRWA is currently facing a dire situation in the Gaza Strip, with 146 workers killed since October 7, 2023, the highest toll among UN workers in any conflict. Of nearly 2 million internally displaced, 1.4 million overcrowded 155 UNRWA facilities converted to shelters, exceeding capacity fourfold, with over 12,000 in each. According to the latest UNRWA bulletin released by UN workers, this number has shrunk by about 150,000 "as families have been forced to move away from UNRWA facilities due to evacuation orders issued by Israeli authorities in the central area and Khan Younis". Stateless Palestinians seeking refugee status in the EU countries can claim that UNRWA protection has "ceased" considering living conditions in Gaza. The Court of Justice of the EU, in its first hearing on the potential ongoing genocide in Gaza by Israel, acknowledges UNRWA's plight and opens its doors to those fleeing Israeli bombardment. Advocate General Nicholas Emiliou delivered his Opinion in Case C563/22 SN and LN on 11th January 2024. The case dealt with the interpretation of the EU Refugee Status Directive. The Sofia Administrative Court submitted questions to the Court of Justice regarding two stateless persons of Palestinian origin,



SN and LN, who applied for asylum in Bulgaria for the second time after their first application was rejected. Bulgarian judges sought clarity on the matter because, under the EU directive, stateless persons of Palestinian origin registered with UNRWA are excluded from obtaining refugee status, unless UNRWA protection or assistance has "ceased." Based on the evaluation of the Luxembourg-based EU court, the authorities concerned should consider not only the reasons that led the applicants to leave the UNRWA operational area but also whether they can return at present. In the Gaza Strip, "where the level of insecurity and living conditions have been rapidly changing, particularly since the events that occurred on October 7, 2023", there is a

possibility that UNRWA assistance has "systemic deficiencies of such gravity that there is a substantial risk that any person sent back there would be unable to meet their most fundamental needs, such as access to food, personal hygiene, and a place to live". Such circumstances may undermine their physical or mental health or compromise their human dignity, which is contrary to the Charter of Fundamental Rights of the EU. In the situation in the Gaza Strip today, it is sufficient for an asylum seeker to "provide evidence of such general living conditions." That is, Palestinian refugees seeking refuge in Europe are not required to "prove that they are specifically targeted" on an individual basis due to factors particular to their situation.

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