Interpreting Article 1F

Although the term ‘terrorism’ does not appear in the text of Article 1F, and the issue was not raised during the debates surrounding the drafting of the provision, those for whom there are ‘serious reasons for considering’ have committed or been complicit in the commission of terrorist acts may indeed fall to be excluded from refugee status under Article 1F where these acts constitute war crimes, crimes against humanity, serious non-political crimes and/or acts contrary to the purposes and principles of the United Nations. That acts of terrorism may potentially fall under any of the limbs of Article 1F is recognised in the UK Home Office's APG:

Acts of terrorism are widely considered contrary to the purposes and principles of the United Nations, and may potentially fall within Article 1F(c). But they may also fall within Article 1F(b) because acts of terrorism are not necessarily political crimes, or even within Article 1F(a).

However, it is equally clear that not every act classified as terrorism will necessarily fall within the scope of the provision, as not every terrorist act will automatically meet the definitions of the crimes or acts enumerated therein. For example, under Article 1F(a) an act of terrorism may only be considered a war crime where it is committed in the context of an armed conflict. To fall within the scope of Article 1F(b), a terrorist act must be considered to be a ‘serious’ crime. Courts and tribunals in the UK have stressed that adjudicators should ‘avoid equating Article 1F with a simple anti-terrorism provision’. Rather, it is necessary to ‘make findings about the serious crime or act committed by the claimant and then explain how that fits within a particular sub-category.

1 Article 1F(a) also refers to crime against peace. However, as considered in Chapter 3, it appears the commission of a crime against peace is limited to State action, rather than non-state irregular terrorist groups. In any case there very few UK cases where this ground of exclusion was considered.
2 Home Office Exclusion APG, s 2.5.
3 Indeed, the ECRE recommends that the focus on Article 1F be on the underlying offences rather than the question of whether or not they are ‘terrorist’, as ‘[t]his description is simply adjectival and adds no substantive value’. ECRE, ‘Position on Exclusion from Refugee Status’ (2004) 16(2) International Journal of Refugee Law paras 7 and 30.
(or particular sub-categories) of Article 1F–1F(a), 1F(b) or 1F(c)." Whether and in what way(s) terrorist acts may fall within the scope of Article 1F therefore depends on the interpretation given to the provision.

Unlike many international treaties of a human rights or humanitarian character, the 1951 Convention does not have a designated treaty body that is mandated to provide authoritative interpretation of its provisions. Whilst the UNHCR has a supervisory role in overseeing the implementation and application of the Convention, this mandate does not extend to providing authoritative rulings or opinions on the meaning of particular treaty terms. The absence of an international refugee court to act as final arbitrator on issues of interpretation means that there is no uniform international practice or single interpretation of the treaty. Interpretation of the 1951 Convention has therefore developed in a piecemeal, ad hoc manner, through the domestic jurisprudence of Member States, advice and guidance provided by the UNHCR and its Executive Committee, and the opinions of academics and experts.

An examination of the UK’s approach to interpreting Article 1F, and the 1951 Convention as a whole, is therefore of vital importance for understanding

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5 1951 Convention, Articles 35 and 36; Additional Protocol, Articles 2 and 3; UNHCR Statute, proverb 8. The UNHCR can therefore only issue guidance on the Convention’s interpretation through its Handbook, guidelines, and its notes on international protection. Similarly, the UNHCR Executive Committee’s Conclusions on International Protection may be instructive when interpreting and applying the Convention, but they are not binding on states. However, it has been suggested that in the absence of states’ use of the International Court of Justice to resolve their differences on the interpretation or application of the 1951 Convention (as provided under Article 38 of the 1951 Refugee Convention) or the existence of any other mechanism among states at an international level to resolve such differences, UNHCR necessarily assumes a crucial role with respect to international refugee law. Corinne Lewis, ‘UNHCR’s Contribution to the Development of International Refugee Law: Its Foundations and Evolution’ (2005) 17 International Journal of Refugee Law 69. However, it has been noted that the significance of UNHCR’s advice is diminished by the fact that the 1951 Convention must now be applied in a context of parallel human rights treaty protections that the UNHCR lacks the authority to interpret. Tom Clark, ‘Rights Based Refugee, the Potential of the 1951 Convention and the Need for Authoritative Interpretation’ (2004) 16 International Journal of Refugee Law 593.

6 Although the International Court of Justice is the relevant international dispute-resolving forum, the Court has never been called upon to interpret the Refugee Convention. Boccardi notes that this absence of international control has led to widely differing interpretations of the 1951 Convention, and as such, it is difficult to outline a real international refugee regime. Boccardi I, ‘Confronting a False Dilemma: EU Asylum Policy between “Protection” and “Securitisation”’ (n 24) 208–210.