When I was working at the BADIL Resource Center for Palestinian Residency and Refugee Rights in the summer of 2003, Elna Søndergaard, a Danish lawyer who had formerly been a Legal Officer with the Department of Legal Affairs at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Headquarters in the Gaza Strip, would pass by the offices in Bethlehem to assist with research. Elna proposed to write a handbook on the application of Article 1D of the 1951 Refugee Convention in third countries outside the Arab world in coordination with BADIL. In August 2005 the guide was published. At 456 pages it is a monumental work, though easy to read and navigable, providing a history of the circumstances which led to the Palestinian exodus in 1948 and 1967 and the institutional mechanisms set up to provide protection and assistance to them. It also explains why “protection gaps” have emerged through national practice over the differences of interpretation concerning the applicability of Article 1D of the Refugee Convention to Palestinian refugees.  

Chapter 1 focuses on today’s Palestinian refugee population examining their legal status in the Arab host countries and in the occupied Palestinian territories. Chapters 2 and 3 address the question of refugee protection and the controversy over the interpretation of Article 1D. As the authors note, the U.N. Conciliation Commission on Palestine (UNNCP), whose mandate included protection, is defunct. This effectively means that no U.N. agency is providing Palestinian refugees with protection (this means they are in the anomalous position of being the only refugee group in the world today that is

1 Article 1D of the 1951 UN Refugee Convention provides: “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 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.”
not offered protection by a U.N. agency). The mandate of the remaining agency, the UNRWA, is primarily concerned with providing relief rather than protection. Hence, some refugee experts have argued that Palestinian refugees should be entitled to benefit from the inclusion clause in the second paragraph of Article 1D under the mandate of the U.N. High Commissioner for Refugees (whose mandate includes protection). These authors argue that the drafters of the 1951 Convention intended the word “protection” in Article 1D to be a reference to the UNCCP and therefore the language “protection or assistance” in Article 1D refers both to the UNCCP as providing protection and UNRWA as providing assistance.2

Chapter 4 looks at the standards of international protection granted to refugees, stateless persons, and other persons in need of international protection. Chapter 5, “Survey of Protection Available on the National Level”, is the most interesting and novel aspect of the book based on primary research. This chapter describes the protection that is currently available for Palestinian refugees worldwide under the domestic law and jurisprudence of state’s signatories to the 1951 Refugee Convention and/or Statelessness Conventions. These country profiles (covering Europe, North America, Oceania and Africa) were compiled drawing from information gathered in a survey of 31 non-Arab countries signatories to the 1951 Convention. The survey was conducted during 2003-2004 by BADIL with the help of numerous lawyers and practitioners. Chapter 6 contains a summary of the findings in Chapter 5 on the protection gaps in national practice (again this mostly revolves around the interpretation of Article 1D, with some third countries assuming and stating without factual examination that UNRWA provides protection). As Guy Goodwin-Gill3 notes in his preface to the Handbook:

None of the participants in the drafting sessions ... would likely have predicted that, over 50 years later, Palestinians would still be without a solution, or that their entitlement to protection would continue to be disputed, or that a Handbook such as this on would need to be published.

It may be that the primary cause of this necessity is the manifest failure of the international community to reach a lasting political solution to the problem posed by the absence of a Palestinian state. But this is only part of the problem, and the status and protection of Palestinian refugees have also been commonly frustrated by drafting inconsistencies in relevant texts, misinterpretation (at times, seeming for political reasons), and even by abstruse academic readings. Indeed, a review of state practice today does not necessarily leave one with full confidence in the “good faith” interpretation and implementation of international obligations.4

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4 p. v.