



Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees ¹

Article 1D of the 1951 Convention relating to the Status of Refugees:

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.

A. INTRODUCTION

1. The 1951 Convention relating to the Status of Refugees (“1951 Convention”) contains certain provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1A, are excluded from the benefits of the Convention. One such provision, paragraph 1 of Article 1D, applies to a special category of refugees for whom separate arrangements have been made to receive protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees (“UNHCR”). This excludes from the benefits of the 1951 Convention those Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who are receiving protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”).

2. While paragraph 1 of Article 1D is in effect an exclusion clause, this does not mean that certain groups of Palestinian refugees can never benefit from the protection of the 1951 Convention. Paragraph 2 of Article 1D contains an inclusion clause ensuring the *ipso facto* entitlement to the protection of the 1951 Convention of those refugees who, without having their position definitively settled in accordance with the relevant UN General Assembly resolutions, have ceased to receive protection or assistance from UNRWA for any reason. The 1951 Convention hence avoids overlapping competencies between UNRWA and UNHCR, and, in conjunction with UNHCR’s Statute, ensures the continuity of protection and assistance to Palestinian refugees as necessary.²

B. PALESTINIAN REFUGEES WITHIN THE SCOPE OF ARTICLE 1D OF THE 1951 CONVENTION

3. Given the wording, historical context and purpose of Article 1D of the 1951 Convention, certain Palestinian refugees fall within the scope of that Article because: (i) they have the characteristics of refugees as defined in Article 1A of the 1951 Convention; (ii) their position has not been definitively settled in accordance with relevant resolutions of the UN General Assembly; and (iii) alternative arrangements have been made for such refugees to receive assistance or protection from organs or agencies of the United Nations other than UNHCR.

4. The following groups of Palestinian refugees fall within the scope of Article 1D of the 1951 Convention:

a) Palestinians who are “Palestine refugees” within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions,³ 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;⁴

b) Palestinians not falling within paragraph (a) above 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,⁵ and who, as a result of the 1967 Arab-Israeli conflict, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there.⁶

Included within the above groups are not only persons displaced at the time of the 1948 and 1967 hostilities, but also the descendants of such persons.⁷ On the other hand, persons falling within Articles 1C, 1E or 1F of the 1951 Convention do not fall within the scope of Article 1D, even if they remain “Palestine refugees” or “displaced persons” whose position is yet to be definitively settled in accordance with the relevant UN General Assembly resolutions.⁸

5. Palestinians not falling within the scope of Article 1D who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the Palestinian territory occupied by Israel since 1967 and are unable or, owing to such fear, are unwilling to return there, qualify as refugees under Article 1A(2) of the 1951 Convention.

C. THE APPLICATION OF ARTICLE 1D OF THE 1951 CONVENTION

6. If it is determined that a Palestinian refugee falls within the scope of Article 1D of the 1951 Convention,⁹ it needs to be assessed whether he or she falls within paragraph 1 or paragraph 2 of that Article.

7. If the person concerned is inside UNRWA's area of operations,¹⁰ he or she should be considered as "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and hence is excluded from the benefits of the 1951 Convention.

8. If, however, the person is outside UNRWA's area of operations, he or she is not "at present receiving from organs or agencies other than [UNHCR] protection and assistance" within the meaning of paragraph 1 of Article 1D, and therefore "such protection or assistance has ceased" within the meaning of paragraph 2 of Article 1D.¹¹ The person is "*ipso facto* entitled to the benefits of the [1951] Convention", provided of course that Articles 1C, 1E and 1F of the 1951 Convention do not apply. This would be the case even if the person has never resided inside UNRWA's area of operations.¹²

9. The following should be noted:

a) The term "benefits of the 1951 Convention" refers to the standard of treatment that States Parties to the 1951 Convention are required to accord to refugees under Articles 2 to 34 of that Convention;

b) In the case of persons falling within paragraph 2 of Article 1D, no separate determination of well-founded fear under Article 1A(2) of the 1951 Convention is required to establish that such persons are entitled to the benefits of that Convention.

10. If the person returns to UNRWA's area of operations, he or she remains entitled to the benefits of the 1951 Convention until such return takes place. Upon return, he or she no longer falls within paragraph 2 of Article 1D but falls instead within paragraph 1 of that Article, meaning that he or she loses his or her entitlement to the benefits of the 1951 Convention even though he or she retains his or her refugee character. However, this is not the case if a person falling within paragraph 4(b) of this Note returns to the Palestinian territory occupied by Israel since 1967, since in that eventuality he or she would lose his or her refugee character and would not fall within the scope of Article 1D at all.

D. CONCLUSION

11. The position of Palestinian refugees under international refugee law is complex and continues to evolve. This Note clarifies some pertinent aspects of the position of such refugees and is intended to serve as guidance for use in refugee status determination.

Office of the United Nations High Commissioner for Refugees (UNHCR)
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Endnotes

¹ This Note seeks to clarify various points in UNHCR's *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees* of October 2002. It replaces that Note.

² A similar provision to Article 1D of the 1951 Convention is contained in UNHCR's Statute, paragraph 7(c) of which stipulates that the competence of the High Commissioner shall not extend to a person who "continues to receive from other organs or agencies of the United Nations protection or assistance". See UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, A/RES/428(V), 14 December 1950.

³ UNRWA's mandate for "Palestine refugees" was established pursuant to UN General Assembly Resolution 302 (IV) of 8 December 1949 and subsequent General Assembly resolutions. The term "Palestine refugees" has never explicitly been defined by the UN General Assembly. However, for early work on interpreting the term, see for example the following UNCCP documents: UN Doc. A/AC.25/W.45, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*, 15 May 1950, UN Doc. W/61/Add.1, *Addendum to Definition of a "Refugee" Under paragraph 11 of the General Assembly Resolution of 11 December 1948*, 29 May 1951; UN Doc. A/AC.25/W.81/Rev.2, *Historical Survey of Efforts of the United Nations Commission for Palestine to secure the implementation of paragraph 11 of General Assembly resolution 194 (III). Question of Compensation*, 2 October 1961, section III. UNRWA's operational definition of the term "Palestine refugees" has evolved over the years but since 1984 has been "persons whose normal place of residence was Palestine 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".

⁴ The UN General Assembly resolved in paragraph 11 of Resolution 194 (III) that "the refugees wishing to return to their homes and live at peace with their neighbours 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". In the same paragraph, the General Assembly instructed the UN Conciliation Commission for Palestine (UNCCP) to "facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation". The General Assembly has since noted on an annual basis that UNCCP has been unable to find a means of achieving progress in the implementation of paragraph 11 of Resolution 194 (III). See, most recently, Resolution 63/91 of 5 December 2008, in which the General Assembly notes with regret "that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly resolution 194 (III), has not yet been effected, and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern ..."; and that UNCCP "has been unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III); and reiterates its request to UNCCP "to continue exerting efforts towards the implementation of that paragraph ..."

⁵ UNRWA's mandate for "displaced persons" was established pursuant to UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent General Assembly resolutions. Essentially two groups of Palestinian "displaced persons" have been displaced from the Palestinian territory occupied by Israel since 1967: (i) Palestinians originating from that territory; and (ii) "Palestine refugees" who had taken refuge in that territory prior to 1967. The territory concerned comprises the West Bank, including East Jerusalem, and the Gaza Strip.

⁶ UN General Assembly Resolution 2452 (XXIII) A of 19 December 1968 called for the return of the "displaced persons", as reiterated by subsequent UN General Assembly resolutions on an annual basis. The most recent such resolution is Resolution 63/92 of 5 December 2008, which "[r]eaffirms the rights of all persons displaced as a result of the June 1967 and subsequent hostilities to return to their homes or former places of residence in the territories occupied by Israel since 1967"; expresses deep concern that "the mechanism agreed upon by the parties in Article XII of the Declaration of Principles on Interim Self-Government Arrangements of 13 September 1993 on the return of displaced persons has not been complied with"; and stresses the necessity for "an accelerated return of displaced persons".

⁷ The concern of the UN General Assembly with the descendants both of “Palestine refugees” and of “displaced persons” was expressed in UN General Assembly Resolution 37/120 I of 16 December 1982, which requested the UN Secretary-General, in cooperation with the Commissioner-General of UNRWA, to issue identity cards to “all Palestine refugees and their descendants [...] as well as to all displaced persons and to those who have been prevented from returning to their home as a result of the 1967 hostilities, and their descendants”. In 1983, the UN Secretary-General reported on the steps that he had taken to implement this resolution, but said that he was “unable, at this stage, to proceed further with the implementation of the resolution” without significant additional information [becoming] available through further replies from Governments” (paragraph 9, UN Doc. A/38/382, *Special Identification cards for all Palestine refugees. Report of the Secretary-General*, 12 September 1983). From 1983 to 1987 UN General Assembly resolutions dropped all reference to the issuance of identity cards, and then from 1988 onwards, starting with Resolution 43/57 of 6 December 1988, the General Assembly has annually urged issuance of identity cards only to Palestine refugees and their descendants in the Palestinian territory occupied by Israel since 1967. The most recent such resolution is Resolution 63/93 of 18 December 2008, paragraph 15 of which requests “the Commissioner-General to proceed with the issuance of identification cards for Palestine refugees and their descendants in the Occupied Palestinian Territory”.

⁸ For example, a person who is considered by the competent authorities of the country in which he or she has taken residence as having the rights and obligations attached to the possession of the nationality of that country, would be excluded from the benefits of the 1951 Convention in accordance with Article 1E. Moreover, many Palestinians have acquired the nationality of a third country and any claim they make for recognition as refugees should, therefore, be examined under Article 1A(2) of the 1951 Convention in relation to the country of their new nationality. In certain cases, the Palestinian origins of such persons may, nevertheless, be a relevant factor in the assessment of whether they are outside the country of their new nationality “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.

⁹ Persons who are “Palestine refugees” are eligible to “be registered in UNRWA’s Registration System and to receive UNRWA services”, whereas UNRWA “makes its services available to non-registered persons displaced as a result of the 1967 and subsequent hostilities” (UNRWA, “Consolidated Eligibility and Registration Instructions”, 2009). Verification that a person is a registered “Palestine refugee”, or is recorded as receiving UNRWA services, can be sought from UNRWA (www.unrwa.org). However, it should be noted that while having been registered and/or recorded by UNRWA may help an individual prove that he or she falls within the scope of Article 1D of the 1951 Convention, it is not conclusive as to whether he or she falls within that Article’s scope. This is for two reasons. First, as stated in paragraph 4 of this Note, persons falling within Articles 1C, 1E or 1F of the 1951 Convention do not fall within the scope of Article 1D, even if they remain “Palestine refugees” or “displaced persons” whose position is yet to be definitively settled in accordance with the relevant UN General Assembly resolutions. Second, UNRWA has not registered and does not provide services to all persons who are “Palestine refugees”, nor does it provide services to all persons who have been “displaced as a result of the 1967 and subsequent hostilities”.

¹⁰ UNRWA’s area of operations is currently limited to the West Bank, including East Jerusalem, the Gaza Strip, Jordan, Syria and Lebanon.

¹¹ The phrase “for any reason” in paragraph 2 of Article 1D should be interpreted in its context and in line with the object and purpose of that Article, which is to ensure continuity of protection and assistance to Palestinian refugees, be this geographical and/or temporal continuity.

¹² For example, a descendant of a “Palestine refugee” or of a Palestinian “displaced person” may never have resided in UNRWA’s area of operations, and also not fall under Articles 1C or 1E of the 1951 Convention.