


UNHCR

 United Nations High Commissioner for Refugees
 Haut Commissariat des Nations Unies pour les réfugiés

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

Article 1D of the 1951 Convention:

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 (hereinafter "the 1951 Convention") contains certain provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1A, are excluded from the benefits of this 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). In today's context, 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 automatic entitlement of such refugees to the protection of the 1951 Convention if, without their position being definitively settled in accordance with the relevant UN General Assembly resolutions, protection or assistance from UNRWA has ceased for any reason. The 1951 Convention hence avoids overlapping competencies between UNRWA and UNHCR, but also, in conjunction with UNHCR's Statute, ensures the continuity of protection and assistance of Palestinian refugees as necessary.¹

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

3. UNHCR considers that two groups of Palestinian refugees fall within the scope of Article 1D of the 1951 Convention:
 - (i) Palestinians who are "Palestine refugees" within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and other UN General Assembly Resolutions,² who were displaced from that part of Palestine which became Israel, and who have been unable to return there.³
 - (ii) Palestinians 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, and who have been unable to return to the Palestinian territories occupied by Israel since 1967.⁴

For the purposes of the application of the 1951 Convention, both of these groups include persons who were displaced at the time of hostilities, plus the descendants of such persons.⁵ On the other hand, those individuals to whom Articles 1C, 1E or 1F of the Convention apply do not fall within the scope of Article 1D, even if they remain "Palestine refugees" and/or "displaced persons" whose position is yet to be settled definitively in accordance with the relevant UN General Assembly resolutions.⁶

4. A third category of Palestinian refugees includes individuals who are neither "Palestine refugees" nor "displaced persons", but 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 territories occupied by Israel since 1967 and are unable or, owing to such fear, are unwilling to return there. Such Palestinians do not fall within the scope of Article 1D of the 1951 Convention but qualify as refugees under Article 1A(2) of the Convention, providing that they have neither ceased to be refugees under Article 1C nor are excluded from refugee status under Articles 1E or 1F.⁷

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

5. If it is determined that a Palestinian refugee falls within the scope of Article 1D of the 1951 Convention, it needs to be assessed whether he or she falls within paragraph 1 or paragraph 2 of that Article.
6. If the person concerned is inside UNRWA's area of operations and is registered, or is eligible to be registered, with UNRWA, he or she should be considered as receiving protection or assistance within the sense of paragraph 1 of Article 1D, and hence is excluded from the benefits of the 1951 Convention and from the protection and assistance of UNHCR.
7. If, however, the person is outside UNRWA's area of operations, he or she no longer enjoys the protection or assistance of UNRWA and therefore falls within paragraph 2 of Article 1D, providing of course that Articles 1C, 1E and 1F do not apply. Such a person is automatically entitled to the benefits of the 1951 Convention and falls within the competence of UNHCR. This would also be the case even if the person has never resided inside UNRWA's area of operations.⁸
8. The fact that such a person falls within paragraph 2 of Article 1D does not necessarily mean that he or she cannot be returned to UNRWA's area of operations, in which case, once returned, the person would fall within paragraph 1 of Article 1D and thereby cease to benefit from the 1951 Convention. There may, however, be reasons why the person cannot be returned to UNRWA's area of operations. In particular:
 - (i) He or she may be *unwilling* to return to that area because of threats to his or her physical safety or freedom, or other serious protection-related problems; or
 - (ii) He or she may be *unable* to return to that area because, for instance, the authorities of the country concerned refuse his or her re-admission or the renewal of his or her travel documents.
9. The rationale behind "returnability" to effective protection has been developed in the context of addressing irregular movements of refugees, including through Executive Committee Conclusion No. 15 (XXX) (1979) on Refugees Without an Asylum Country and Executive Committee Conclusion No. 58 (XL) (1989) on the Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection.

D. REGISTRATION WITH UNRWA

10. UNRWA was established pursuant to UN General Assembly Resolution 302 (IV) of 8 December 1949 to "carry out in collaboration with local governments [...] direct relief and works programmes" for Palestine refugees and to "consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available".⁹ Since 1967, UNRWA has also been authorized to assist certain other persons in addition to Palestine refugees. In particular, UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 endorsed the efforts of UNRWA to "provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities". Subsequent UN General Assembly Resolutions have endorsed on an annual basis UNRWA's efforts to continue to provide such assistance.¹⁰

11. UNRWA has decided, for its working purposes, that a "Palestine refugee" is any person "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".¹¹ This "working definition" has evolved over the years,¹² and is without prejudice to the implementation of relevant UN General Assembly Resolutions, in particular paragraph 11 of Resolution 194 (III) of 11 December 1948.¹³
12. Persons registered with UNRWA include: "Palestine refugees", as defined by the Agency for its working purposes; persons currently displaced and in serious need of continued assistance as a result of the June 1967 and subsequent hostilities; descendants by the male line of the aforementioned persons; and certain other persons.¹⁴ UNRWA's operations are currently limited to five areas, namely, Jordan, Syria, Lebanon, the West Bank and the Gaza Strip.¹⁵
13. The question whether a Palestinian is registered, or is eligible to be registered, with UNRWA will need to be determined individually. In cases where this is unclear, further information can be sought from UNRWA.¹⁶

E. CONCLUSION

14. UNHCR hopes that this Note clarifies some pertinent aspects of the position of Palestinian refugees under international refugee law, and that it serves as useful guidance for decision-makers in asylum proceedings.

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

¹ 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".

² The term "Palestine refugees", while never explicitly defined by the UN General Assembly, almost certainly also encompasses what would nowadays be called internally displaced persons. See, for example, UN Doc. A/JAC.25/W.45, *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948*, 15 May 1950, Part One, paragraph 1: "During the debate preceding the adoption of [UN General Assembly Resolution 194 (III) of 11 December 1948], the United Kingdom delegation, which had sponsored the draft resolution, stated in reply to a question that the term 'refugees' referred to all refugees, irrespective of race or nationality, provided they had been displaced from their homes in Palestine. That the General Assembly accepted this interpretation becomes almost certain if it is considered that the word 'Arab', which had preceded the word 'refugees' in the first two texts of the United Kingdom draft resolution [...] was omitted in the final text which was approved by the Assembly. [...] According to the above interpretation the term 'refugees' applies to all persons, Arabs, Jews and others who have been displaced from their homes in Palestine. This would include Arabs in Israel who have been shifted from their normal places of residence. It would also include Jews who had their homes in Arab Palestine, such as the inhabitants of the Jewish quarter of the Old City. It would not include Arabs who had lost their lands but not their houses, such as the inhabitants of Tulkam." For further analysis of the term "Palestine refugees", see, for example, 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/JAC.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.

³ 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 United Nations 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, General Assembly Resolution 56/52 of 10 December 2001, which notes that the situation of the Palestine refugees continues to be a matter of concern and requests UNCCP to exert continued efforts towards the implementation of that paragraph.

⁴ Essentially two groups of Palestinians have been displaced from the territories occupied by Israel in 1967: (i) Palestinians originating from East Jerusalem, the West Bank and the Gaza Strip; (ii) "Palestine refugees" who had taken refuge in East Jerusalem, the West Bank and Gaza Strip. UN General Assembly Resolution 2452 (XXIII) A of 19 December 1968 and subsequent General Assembly Resolutions have called for the return of these "displaced persons". Most recently, General Assembly Resolution 56/54 of 10 December 2001 reaffirms the "right 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 on the return of displaced persons has not been effected", and expresses the hope for "an accelerated return of displaced persons".

⁵ 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).

⁶ For example, a Palestinian referred to in paragraph 3 of this Note may be considered by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, in which case he or she 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 a refugee 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 be relevant to 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.

⁷ There is no consensus whether Palestinians who have not acquired the nationality of a third country are stateless, but many States consider that such Palestinians are stateless in the sense of Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons and assess their claims for refugee status under Article 1A(2) of the 1951 Convention accordingly. It should be noted that Article 1(2)(i) of the 1954 Statelessness Convention provides that the 1954 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 so long as they are receiving such protection or assistance".

⁸ 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.

⁹ UN General Assembly Resolution 302 (IV) of 8 December 1949 directs UNRWA to consult with the UNCCP "in the best interests of [UNRWA's and UNCCP's] respective tasks, with particular reference to paragraph 11 of General Assembly resolution 194 (III) of 11 December 1948". UN General Assembly Resolution 393 (V) of 2 December 1950 further instructed UNRWA to "establish a reintegration fund which shall be utilized for projects requested by any government in the Near East and approved by the Agency for the permanent re-establishment of refugees and their removal from relief". The same Resolution authorized UNRWA, as circumstances permit, to "transfer funds available for the current relief and works programmes [and for direct relief to Palestine refugees in need] to reintegration projects". Neither UN General Assembly Resolution 302 (IV) of 8 December 1949 nor any subsequent UN General Assembly Resolution has specifically limited the scope of UNRWA's mandate. Accordingly, UNRWA's mandate has evolved, over the years, with the endorsement of the UN General Assembly. For example, UN General Assembly Resolutions between 1982 and 1993 on the Protection of Palestine refugees called upon UNRWA to play a protection role in the territories occupied by Israel since 1967. The last such resolution was Resolution 48/40 H of 10 December 1993, which urged "the [UN] Secretary-General and the Commissioner-General [of UNRWA] to continue their efforts in support of the upholding of the safety and security and the legal and human rights of the Palestine refugees in all the territories under Israeli occupation since 1967". Subsequent resolutions, including most recently UN General Assembly Resolution 56/56 of 10 December 2001, refer to the "valuable work done by the refugee affairs officers [of UNRWA] in providing protection to the Palestinian people, in particular Palestine refugees".

¹⁰ Most recently, UN General Assembly Resolution 56/54 of 10 December 2001 endorses the efforts of UNRWA to "continue to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to persons in the area who are currently displaced and in serious need of continued assistance as a result of the June 1967 and subsequent hostilities".

¹¹ Information provided by UNRWA. As mentioned in endnote 2 above, the UN General Assembly has never explicitly defined the term "Palestine refugees".

¹² See, for example, UN Doc. A/1451/Rev.1, *Interim Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 6 October 1950, paragraph 15: "For working purposes, the Agency has decided that a refugee is a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood"; UN Doc. A/2717/Add.1, *Special Report of the Director of the Advisory Commission of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 30 June 1954, paragraph 19: "The definition of a person eligible for relief, as used by the Agency for some years, is one 'whose normal residence was Palestine for a minimum period of two years preceding the outbreak of the conflict in 1948 and who, as a result of this conflict, has lost both his home and means of livelihood'; UN Doc. A/8413, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 30 June 1971, footnote 1: "A Palestine refugee, by UNRWA's working definition, is a person whose normal residence was Palestine for a minimum of two years preceding the conflict in 1948 and who, as a result of this conflict, lost both his home and means of livelihood and took refuge, in 1948, in one of the countries where UNRWA provides relief".

¹³ In establishing UNRWA and in prolonging its mandate, the UN General Assembly has consistently specified that the Agency's activities are without prejudice to the provisions of paragraph 11 of Resolution 194 (III) of 11 December 1948. See, most recently, UN General Assembly Resolution 56/52 of 10 December 2001, extending the mandate of UNRWA until 30 June 2005.

¹⁴ Information provided by UNRWA.

¹⁵ Currently, UNRWA's operations are limited to the five areas listed in paragraph 12 of this Note. However, at times, UNRWA has provided assistance to Palestine refugees and other Palestinians registered with the Agency in additional areas of the Near East, including Kuwait, the Gulf States and Egypt.

¹⁶ It should be noted that not all "Palestine refugees" residing in UNRWA's area of operations are registered with UNRWA. It should also be noted that Palestinians satisfying UNRWA's eligibility criteria do not necessarily cease

to be eligible for UNRWA services if they acquire the nationality of a third country. In fact, many such persons continue to receive UNRWA services, particularly in Jordan.