

Flygtningenævnets baggrundsmateriale

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Responses to questions posed by the Swedish Migration Board

1) Does UNHCR (UN) consider Palestine a recognized State?

By Resolution 67/19 on the "Status of Palestine in the United Nations" of 29 November 2012, the UN General Assembly decided "to accord to Palestine non-member observer State status, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice."¹ From the perspective of the United Nations, including UNHCR, Palestine is therefore a State.

2) When a State is recognized, at what point should persons from that territory who have previously been regarded as stateless persons be considered to be citizens of the recognized State?

3) Is it necessary for a State to have a citizenship legislation in place in order for persons who originate from the State to be considered to be citizens of that State, or would recognition of citizenship by the competent authorities of the State by customary law suffice?

A permanent population is one of the elements of a State under international law (as set out for example in the 1933 Montevideo Convention on Rights and Duties of States). Therefore the recognition of Palestine as a State also implies that it has a population that qualifies as its nationals.

The emergence of a new State will require that the authorities establish who is included in the body of citizens of that State. Generally, residents in the territory of the new State acquire its nationality. As stated by the International Law Commission, "[h]abitual residence is the test that has most often been used in practice for defining the basic body of nationals of the successor State, even if it was not the only one".² Possession of nationality is typically established through constitutional provisions and/or the nationality law. As noted by the International Law Commission, though, this is not always the case and there have been instances of States which did not have nationality laws.

The 1954 Convention relating to the Status of Stateless Persons takes account of the divergence in State practice by defining a "stateless person" in broad terms, as someone who is "not considered as a national by any State under the operation of its law". UNHCR has established that the term "law" is to be read as encompassing "not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice".³

Palestine does not yet have a nationality law so other elements of State practice need to be examined. A closely related issue is the practice of the competent authorities with regard to issuance of documentation proving nationality. The possession of a passport ordinarily gives rise to a presumption that the bearer is a national of the country of issuance. The Palestinian State issues passports and ID cards, which suggests that the holders of such documents are considered to be nationals of the State of Palestine. However, there is insufficient information available concerning the practice and the basis for issuance of passports and ID cards. While this may be clarified in the near future, at present, possession of or absence of a Palestinian passport or ID cannot be regarded as proof of possession or lack of Palestinian nationality. More research and discussion with the Palestinian authorities are required in this area and UNHCR is currently seeking additional information.

¹ UNGA Resolution 67/19 (*Status of Palestine in the United Nations*) of 29 November 2012, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/19.

² International Law Commission, Articles on the Nationality of Natural Persons in Relation to Succession of States. The Commission's analysis of practice gave rise to the following rule: Article 5. *Presumption of nationality* Subject to the provisions of the present draft articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

³ UNHCR, Handbook on Protection of Stateless Persons, paragraph 22.

As a result of the foregoing, there is still uncertainty as to who is considered as a national of Palestine. For the moment, examination of each individual case is necessary, taking into consideration e.g. the person's previous residence in Palestine and any identity documents possessed. The guidance provided in the UNHCR *Handbook on the Protection of Stateless Persons* remains relevant.

4) What is the impact of being recognised as a national of the State of Palestine, or the existence of the State of Palestine, have on the interpretation of Article 1D?

Article 1D should continue to be interpreted and applied in the ordinary way. Whether an individual is considered a national of the State of Palestine or stateless, is not determinative to the applicability of Article 1D to their individual case. What is determinative is whether the protection or assistance of UNRWA has ceased such that they cannot be protected against the particular risk they face. This also involves consideration of the situation in the host State [including the State of Palestine] of UNRWA's operations, and the individual's particular circumstances. Where the protection or assistance of UNRWA has ceased owing to circumstances beyond an applicant's control and independent of their volition, including serious threats to life, physical security or freedom or other serious protection-related reason, or where they are prevented from re-availing themselves of the protection or assistance of UNRWA owing to physical, legal or practical barriers, they are refugees within the meaning of Article 1D, and entitled ipso facto the benefits of the 1951 Convention, unless Article 1C, E or F apply. See, UNHCR's written submissions in *El Kott*.

In respect of the application of Article 1C (in particular, Article 1C(3)), an assessment as to not only the possession of Palestine nationality [see above responses to Qs 1-3], the effectiveness of Palestine nationality also needs to be assessed extremely carefully before ceasing their Convention refugee status. Mere possession of a new nationality is insufficient to cease refugee status, even though it may end their situation of statelessness; the new nationality must be effective in general, and in particular, protect them against the reasons for their Convention refugee status such that they can be said to no longer be in need of international protection under the 1951 Convention.

In respect of applying the "ceased circumstances" clauses in Article 1C(5)-(6), in which refugee status is considered to end based on fundamental, stable and durable changes in the country of origin upon which the refugee status was based, it is UNHCR's view that the primary triggering circumstance for the cessation of Article 1D refugee status would be the final settlement of the Palestinian refugee problem in accordance with the relevant resolutions adopted by the UN General Assembly.⁴ It is far too premature to consider ceasing status on the basis of the recognition by the UN of Palestine as a State.

Regarding a possible return to Palestine, as it remains at least in part under occupation (West Bank), UNHCR would consider that it is premature to return Palestinian refugees there – who for example have never resided in Palestine. As a factual matter, entry to West Bank is also contingent on Israeli permits and this can be determinative of whether they are able to return. Further, given the current situation in Gaza, any return there would need to be assessed very carefully and based on the individual case.

**Protection Policy and Legal Advice Section
Statelessness Section
Division of International Protection
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⁴ UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 10 February 2003, HCR/GIP/03/03, available at: <http://www.refworld.org/docid/3e50de6b4.html>.