



Telephone: 46 8 457 4880
Telefax: 46 8 457 4887

Diverse owner

Regional Office for the Baltic and
Nordic Countries

Ynglingagatan 14, 6th Floor
113 47 Stockholm
Sweden

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Note on the Application of Art. 1D of the 1951 Geneva Convention
Relating to the Status of Refugees and Considerations with Regard to
Return of Palestinians to Various Countries in the Middle East.

The 1951 Convention contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1A, are excluded from the benefits of this Convention. Article 1D applies to a special category of refugees already receiving United Nations protection and assistance. In today's context it only applies to Palestinian refugees. UNHCR's broad position is set out in paragraphs 142 and 143 of the UNHCR Handbook.

In general, in order to establish the conditions under which Palestinian refugees may qualify as refugees under the 1951 Convention, an assessment needs first of all to be made as to whether or not the individual is a Palestinian refugee falling under UNRWA's mandate.

To do so, the individual must come within UNRWA's area of operations, which only covers certain parts of the Middle East, and must be registered with UNRWA or otherwise eligible under UNRWA's criteria. These define a Palestinian refugee as "a person whose normal residence was Palestine for a minimum of two years immediately preceding the outbreak of conflict in 1948, and who, as a result of that conflict, lost both his home and his means of livelihood and who is in need". Based on established practice, this definition has been extended to the descendants of such Palestinians.

On the basis of these criteria, it may be that a Palestinian refugee does not fall under UNRWA's mandate because s/he is not registered with UNRWA or otherwise eligible and his/her usual place of residence is outside UNRWA's area of operations. Such an individual

is therefore not subject to the application of Article 1D. Like any other asylum seeker, s/he may qualify as a 1951 Convention refugee if s/he fulfils the inclusion criteria stipulated in Article 1A and does not come within the scope of any of the exclusion clauses of Article 1E or 1F.

The issue is more complex when a Palestinian refugee leaves a country in UNRWA's area of operations where s/he was registered or otherwise eligible for assistance from UNRWA. In such cases, Article 1D(2) needs to be examined.

As Article 1D stipulates, a person shall *ipso facto* be entitled to the benefits of the 1951 Convention, if the protection or assistance s/he enjoyed from UNRWA "has ceased for any reason". In UNHCR's understanding, the wording "for any reason" is

applicable in situations in which the asylum seeker is either unable to return to UNRWA's area of operation because s/he will not be readmitted by the country concerned to that UNRWA area or because s/he is unwilling to return for reasons other than personal convenience, that is, because s/he demonstrates that s/he will face persecution if returned to the UNRWA area.

In the case of such a Palestinian refugee, it is therefore necessary:

(a) to examine whether it is actually feasible for the person to return to UNRWA's area of operations in practical terms and to avail him/herself of UNRWA's assistance. If the person is unable, for instance, to return to UNRWA's area of operations in a legal manner, because the authorities of the country concerned refuse his/her re-admission or the renewal of his/her travel documents, then the second paragraph of Article 1D would be applicable and the person concerned would *ipso facto* qualify for the benefits of the 1951 Convention, that is, without any further examination of the grounds under Article 1A of the 1951 Convention.

(b) If it is feasible for the person to return, it is then necessary to examine the reasons why s/he left. If the individual is unwilling to return because of threats to her/his life or freedom, or other compelling protection-related reasons, s/he would again *ipso facto* benefit from the Convention's entitlements in accordance with Article 1D(2) of the 1951 Convention.

In both the above examples, UNHCR considers that UNRWA assistance has "ceased", which means that the 1951 Convention status applies *ipso facto* without the need to examine eligibility under Article 1.

However, if the person does not wish to return to UNRWA's area of operations for reasons of personal convenience (for example for lack of educational or employment opportunities), s/he cannot benefit from Article 1D(2). It is therefore left to the appreciation of the country where asylum was sought to decide whether it is appropriate to grant, in such cases, leave to stay on humanitarian grounds, or to pursue, where possible, return to the UNRWA area of operations.

Considerations regarding return of Palestinians to Syria, Lebanon, Jordan, Egypt, Saudi Arabia, the United Arab Emirates, Gaza and the West Bank.

Return of Palestinians to any country mentioned above should only be envisaged once it is established that the concerned Palestinian refugees does not encounter protection problems in this country of asylum. It should be noted that neither Saudi Arabia nor the Emirates -- with few exceptions dating back to 1948 -- are Palestinians' first countries of asylum. Return to these countries can be pursued if readmission is secured, which may be possible if the Palestinian refugees still possess a valid work visa. Palestinians have mostly moved to Saudi Arabia and the United Arab Emirates from Egypt, Jordan, Lebanon and Syria, which are their "first countries of asylum".

The Lebanese authorities recognise Lebanon-based Palestinians as such following a census carried out by UNRWA in 1948-50. The Department of Palestinian Refugees in the Lebanese Ministry of Interior does issue travel documents for Palestinians based on those lists. The UNRWA ration card is of limited relevance when assessing the identity of a Palestinian refugee in Lebanon. Lebanese Consular authorities

abroad refer requests for renewal of Lebanese Travel Documents to the Ministry of Interior in Beirut.

In Jordan, two categories of Palestinians are registered with UNRWA: that is, refugees who fled as a result of the 1948 war between Arab States and Israel; and persons internally displaced as a result of the war in 1967. In Jordan all '1948 refugees' registered with UNRWA have been granted Jordanian nationality and they would be entitled to hold Jordanian passports. Persons who became internally displaced in 1967 are not Jordanian nationals, but they would normally possess Jordanian passports valid for 5 years, which were issued to them by the Jordanian authorities so as to enable them to enjoy freedom of movement.

It should be noted that passports do not formally confer citizenship but are considered purely as travel documents. Palestinians who have left the West Bank after 1 June 1983 are holders of a green card that allows them to visit Jordan for only up to one month at a time. Most of the people on this category tend to become over-stayers.

Jordanian authorities, carry out, on a case-by-case basis, renewal of such passports after a thorough investigation. Documents may not be renewed if the holder is outside Jordan at the time of expiration of the passport. The above information is indicative of practices, as there is no formal written policy on these issues.

Nonetheless, new regulations had been issued in June 2001 practically barring Palestinians coming through King Hussein bridge from entry into Jordan. Regulations at other entry points remain unchanged (airport, northern crossing). This new policy affects persons coming from the Palestinian Authority's area and is aimed at preventing Israeli pressures to force Palestinians to leave.

Palestinians who are holders of a valid Syrian Travel Document and a residence permit in Syria can return to Syria. In general, such individuals will not find it difficult to return and continue their sojourn as previously. Palestinians who are holders of Lebanese Travel Documents, however, are required a prior authorization to be able to enter Syria. They are generally granted a 3 days' entry visa upon expiry of which the individual is required to leave the country. An extension of the visa can be obtained and this is done on a case by case basis.

Under the current circumstances of generalised violence in Gaza and the West Bank, no returns of Palestinian refugees to these areas should be conducted.

UNHCR
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