



UNHCR Statement on Article 1D of the 1951 Convention

*Issued in the context of the preliminary ruling reference
to the Court of Justice of the European Communities
from the Budapest Municipal Court regarding
the interpretation of Article 12(1)(a) of the Qualification Directive*

Introduction

On 26 January 2009, the Fővárosi Bíróság (Budapest Municipal Court)¹ lodged a request to the Court of Justice of the European Communities² for a preliminary ruling concerning the interpretation of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted.³ That provision governs the application of the Qualification Directive to persons who fall “within the scope of Article 1D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the Office of the United Nations High Commissioner for Refugees” (“UNHCR”). Article 12(1)(a) of the Qualification Directive therefore has a decisive impact on Member States’ interpretation and implementation of Article 1D of the 1951 Convention relating to the Status of Refugees.⁴

¹ Hereafter the “referring court”.

² The referring court decided on a preliminary reference to the Court of Justice of the European Communities (hereafter “ECJ”) on 15 December 2008 in the case C-31/09 *Bolbol Nawras v. Bevándorlási és Állampolgársági Hivatal*, [OJ C 82/15, 04.04.2009], at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:082:0015:0015:en:pdf>.

³ Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* [OJ L 304/12, 30.09.2004], at: <http://www.unhcr.org/refworld/docid/4157e75e4.html> (hereafter: “Qualification Directive”).

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, at: <http://www.unhcr.org/refworld/docid/3be01b964.html> (hereafter: “1951 Convention”).

The questions posed by the referring court⁵ concern the criteria for exclusion from refugee status under Article 12(1)(a) of the Qualification Directive, as well as the conditions under which protection or assistance of a UN organ other than UNHCR are considered to have ceased, and the consequences for the entitlements of the concerned person under the Qualification Directive.

This is the third preliminary ruling reference regarding the interpretation of the Qualification Directive⁶ and the second case in which the ECJ is asked to clarify the application of a specific provision of the 1951 Convention in the framework of the EU asylum *acquis*. UNHCR has a direct interest in this matter, as the agency entrusted by the United Nations General Assembly with responsibility for providing international protection to refugees, and for seeking permanent solutions for the problem of refugees.⁷ According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto”.⁸ This supervisory responsibility is confirmed by Article 35 of the 1951 Convention⁹ and Article II of the 1967 Protocol relating to the Status of Refugees¹⁰ and extends to all EU Member States, as they are all States Parties to both instruments.

UNHCR’s supervisory responsibility has been reflected in European Community law, including by means of a general reference to the 1951 Convention in Article 63(1) of the Treaty establishing the European Community,¹¹ as well as in Declaration 17 to the Treaty of Amsterdam, which provides that “consultations shall be established with the United Nations High Commissioner for Refugees (...) on matters relating to asylum policy”.¹² EC secondary legislation also emphasizes the role of UNHCR. For instance, Recital 15 of the Qualification Directive states that consultations with the UNHCR “may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention”. The supervisory responsibility of UNHCR is also

⁵ The English translation of the questions is reproduced in Part 3 below.

⁶ Case-465/07 *Elgafaji*, Judgment of 17 February 2009, Official Journal of the European Union [OJ C 90/3, 18.04.2009] and joined cases: Case C-179/08 *Dier Jamal*; Case C-178/08 *Ahmed Adem and Hamrin Mosa Rashi*; Case C-177/08 *Khoshnaw Abdullah*; Case C-176/08 *Kamil Hasan*; Case C-175/08 *Aydin Salahadin Abdulla*, [OJ C 197/3, 02.08.2008], at: http://eur-lex.europa.eu/JOIndex.do?year=2008&serie=C&textfield2=197&Submit=Search&ihm_lang=en.

⁷ UN General Assembly, UNHCR, *Statute of the Office of the United Nations High Commissioner for Refugees*, A/RES/428 (V), Annex, UN Doc. A/1775, para. 1 (14 December 1950); at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

⁸ *Ibid.*, para. 8(a).

⁹ See above footnote 4. According to Article 35(1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of this Convention”.

¹⁰ UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations Treaty Series No. 8791, vol. 606, p. 267, at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

¹¹ *Consolidated version of the Treaty on European Union and of the Treaty establishing the European Community* [OJ C 321 E/65, 29.12.2006], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:en.pdf>.

¹² Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, 2 September 1997, *Declaration on Article 73k of the Treaty establishing the European Community* [OJ C 340, 10.11.1997], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>.

specifically articulated in Article 21 of Council Directive 2005/85/EC on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status.¹³ It is also reflected in the recent proposal of the European Commission for a Regulation establishing a European Asylum Support Office,¹⁴ which recognizes UNHCR's expertise in the field of asylum¹⁵ and foresees a non-voting seat for UNHCR on EASO's Management Board.¹⁶

Against this background, UNHCR in this Statement expresses its view on the issues arising in the preliminary ruling reference of 26 January 2009. Part 1 of this Statement addresses the need to interpret the Qualification Directive in accordance with the 1951 Convention and in the light of UNHCR's authoritative guidance. Part 2 provides UNHCR's interpretation of Article 1D of the 1951 Convention. Part 3 sets out UNHCR's views on the specific questions submitted to the ECJ.

1. The Qualification Directive and the 1951 Convention

The Treaty establishing the European Community clearly sets an obligation for EC secondary legislation on asylum to conform to the 1951 Convention and its 1967 Protocol.¹⁷ The primacy of the 1951 Convention is further recognized in European Council Conclusions and related Commission policy documents, which affirm that the Common European Asylum System is based on the "full and inclusive application" of the 1951 Convention.¹⁸ It follows that the transposition of the Qualification Directive into

¹³ Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status* [OJ L 326/13, 13.12.2005], at: <http://www.unhcr.org/refworld/docid/4394203c4.html>. Article 21(c) in particular obliges Member States to allow UNHCR "to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure".

¹⁴ European Commission, *Proposal For a Regulation of the European Parliament and of the Council Establishing A European Asylum Support Office*, COM(2009) 66 final, 18.02.2009, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0066:FIN:EN:PDF> (hereafter: "EASO").

¹⁵ Recital 9 of the EASO Proposal indicates that "the Office should act in close cooperation with the Office of the UN High Commissioner for Refugees (UNHCR) in order to benefit from its expertise and support".

¹⁶ Recital 14 of the EASO Proposal underlines that "given its expertise in the field of asylum, UNHCR should be a non-voting member of the Board so that it is fully involved in the work of the Office". UNHCR's membership on the EASO Management Boards is governed by Article 23(4).

¹⁷ See above footnote 11. Article 63(1) provides that measures on asylum shall be "in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees and other relevant treaties". The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community provides in its Article 63 that the common policy on asylum, subsidiary protection and temporary protection must be "in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties".

¹⁸ See para. 13 of the *Presidency Conclusions of the Tampere European Council* of 15-16.10.1999, at: <http://www.unhcr.org/refworld/docid/3ef2d2264.html>; para. 6 of *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union*, 13.12.2004, at: <http://www.unhcr.org/refworld/docid/41e6a854c.html>; para. 1 of the Green Paper of the Commission on the Future Common European Asylum System COM(2007) 301 final, 06.06.2006, at: <http://www.unhcr.org/refworld/docid/466e5a972.html>; part 1.1 of the European Commission's *Policy Plan on Asylum: an integrated*

national legislation of EU Member States, all of which are States Parties to the 1951 Convention, must also be in line with the 1951 Convention.¹⁹

The Qualification Directive recognizes the 1951 Convention as the “cornerstone of the international legal regime for the protection of refugees”²⁰ and stipulates that the Directive’s minimum standards are aimed at ensuring “full respect for [...] the right to asylum”²¹ as well as guiding Member States in the application of the 1951 Convention.²² Certain provisions of the Directive replicate the wording of the 1951 Convention almost exactly.²³ One of the purposes of the Directive is thus not only to ensure compliance with the 1951 Convention, but to contribute to its full implementation.

The above considerations and the requirement to interpret and apply the Qualification Directive in accordance with the 1951 Convention are particularly significant in the context of Article 12(1)(a) since this provision explicitly refers to Article 1D of the 1951 Convention to define its own scope of application *ratione personae* and *materiae*.²⁴

approach to protection across the EU, COM(2008) 360, 17.06. 2008, at: <http://www.unhcr.org/refworld/docid/4860eee72.html>. The Policy Plan recognizes the fundamental role played by the 1951 Convention in the existing Treaty provisions and those resulting from the Lisbon Treaty. See also p. 11 of the European Pact on Immigration and Asylum adopted on 16 October 2008, in which the European Council reiterates that “any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention [...]”, *European Pact on Immigration and Asylum*, 13440/08, 16.10.2008, p. 11, at: <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>.

¹⁹ For UNHCR’s remarks on the Qualification Directive, see: UNHCR, *Annotated Comments on the EC Council Directive 2004/83/EC of 29.04.2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection granted (OJ L 304/12 of 30.9.2004)*, 28 January 2005, at: <http://www.unhcr.org/refworld/docid/4200d8354.html>. See also: Maria-Teresa Gil-Bazo, “Refugee Status and Subsidiary Protection under EC Law. The EC Qualification Directive and the Right to be Granted Asylum”, in: A. Baldaccini, E. Guild and H. Toner (eds), *Whose freedom, security and justice? EU immigration and asylum law and policy*, Hart (2007), pp. 229-264.

²⁰ Recital 3 of the Qualification Directive.

²¹ Recital 10 of the Qualification Directive.

²² Recital 16 of the Qualification Directive.

²³ For instance, Article 2(c) of the Qualification Directive replicates almost exactly Article 1A of the 1951 Convention.

²⁴ This is one of the few provisions of the Qualification Directive which explicitly relies on a specific provision of the 1951 Convention to determine its scope of application. Other instances include Article 14(6) referring to certain rights provided to refugees by the 1951 Convention and Article 25 referring to the Travel Document Schedule contained in the 1951 Convention. Article 12(1) of the Qualification Directive reads as follows:

“1. A third country national or a stateless person is excluded from being a refugee, if:

(a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. 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 Directive.”

In general, the Conclusions of UNHCR's Executive Committee, as well as the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status²⁵ and subsequent Guidelines on International Protection²⁶ issued by UNHCR, should also be taken into account in interpreting the provisions of the EU asylum *acquis*. These provide guidance for the interpretation and application of the 1951 Convention, and influenced significantly the drafting of the Qualification Directive. The Explanatory Memorandum of the Commission's proposal²⁷ quotes the UNHCR Handbook and Executive Committee Conclusions as sources, along with the 1951 Convention itself.²⁸

2. UNHCR's interpretation of Article 1D

2.1. General considerations

UNHCR's interpretation of Article 1D of the 1951 Convention is set out in UNHCR Handbook²⁹ and a Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees³⁰ issued in October 2002.³¹ The present statement clarifies and complements these previous positions issued by UNHCR on Article 1D.

In particular, in relation to Article 1D of the 1951 Convention, UNHCR is also guided by subsequent legal developments, including relevant UN Resolutions on Palestine

²⁵ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1 January 1992, at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html> (hereafter: "UNHCR Handbook").

²⁶ UNHCR issues "Guidelines on International Protection" pursuant to its mandate, as contained in the Statute of the Office of the United Nations High Commissioner for Refugees, in conjunction with Article 35 of the 1951 Convention. The Guidelines, including UNHCR's forthcoming revised Note on Article 1D (see below footnote 31), complement the UNHCR Handbook (see above footnote 25) and are intended to provide guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff.

²⁷ European Commission, *Proposal for a Council Directive on minimum standards for the Qualification and Status of Third Country Nationals and Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection*, COM(2001) 510 final, 12.09.2001, at: <http://www.unhcr.org/refworld/docid/47fdfb1ad.html>.

²⁸ *Ibid*, part 3, p. 5. The 1996 Joint Position of the Council on the harmonized application of the definition of the term "refugee", which constituted the "starting point" of the Qualification Directive, recognized that the Handbook is a "valuable aid to Member States in determining refugee status"; see *Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term "refugee" in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees* [OJ L 63/2, 13.3.1996], at: <http://www.unhcr.org/refworld/docid/3ae6b37f44.html>.

²⁹ See above footnote 25, paras. 142-143.

³⁰ For the purpose of this Statement, the expression "Palestinian refugees" covers the groups of "Palestine refugees" and "displaced persons" and their descendants falling within the scope of Article 1D of the 1951 Convention and defined in Part 2.2 below.

³¹ UNHCR, *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian refugees*, October 2002, at: <http://www.unhcr.org/refworld/docid/3e4140994.html> (hereafter: "UNHCR Note on Article 1D"). An updated version of the UNHCR Note on Article 1D will be issued shortly.

refugees³² endorsing or extending UNRWA's mandate and activities with regard to such persons, UNRWA's evolving criteria to be eligible to register and/or receive services under its mandate,³³ and State practice.³⁴

Article 1D provides as follows:

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.³⁵

Article 1D thus excludes from the benefits of the 1951 Convention³⁶ a specific category of persons otherwise having the characteristics of refugees, for whom separate arrangements have been made for protection or assistance from organs or agencies of the United Nations other than UNHCR. However, Article 1D is not an exclusion clause in the same manner as, and should be distinguished from, Article 1F of the 1951 Convention which applies to persons undeserving of international protection,³⁷ or Article 1E which applies to those not in need of international protection.³⁸

Article 1D contains both inclusion and exclusion elements. While paragraph 1 excludes from the benefits of the 1951 Convention those persons for whom separate arrangements have been made to receive protection or assistance from organs or agencies of the United Nations other than UNHCR, paragraph 2 provides that once 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 the 1951 Convention, thus ensuring the continuity of protection and assistance.

³² The term "Palestine refugees", has never been explicitly defined by the United Nations General Assembly. For further details, see below Part 2.2.

³³ UNRWA was established in 1949 pursuant to the United Nations General Assembly Resolution 302 (IV) of 8 December 1949 to provide protection and assistance to Palestine refugees. For further details on the mandate of UNRWA, see below Part 2.3.

³⁴ BADIL Resource Centre, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, August 2005, pp. 142-239, at: <http://www.badil.org/Publications/Books/Handbook.pdf>.

³⁵ The Statute of UNHCR, paragraph 7(c), provides that UNHCR's competence shall not extend to a person "who continues to receive from other organs or agencies of the United Nations protection or assistance".

³⁶ UNHCR Handbook, see above footnote 25, para. 140.

³⁷ See UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, para. 4, at: <http://www.unhcr.org/refworld/docid/3f5857684.html>; and its accompanying *Background Note on Exclusion*, 4 September 2003, paras. 1- 9, at: <http://www.unhcr.org/refworld/docid/3f5857d24.html>.

³⁸ See UNHCR, *Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009, at: <http://www.unhcr.org/refworld/docid/49c3a3d12.html>.

Article 1D is subject to diverging interpretations among States Parties, including Member States of the EU.³⁹ However, as a general principle of international law, its interpretation needs to be consistent with the rules of interpretation codified in the 1969 Vienna Convention on the Law of the Treaties and recognized by the ECJ.⁴⁰ Thus, in addition to the text and the ordinary meaning of the terms included in this provision, the object and the purpose of the 1951 Convention, as well as its overall historical purpose and context in which it was drafted and developments subsequent to its conclusion will be relevant to define the personal and material scope of Article 1D.⁴¹

In today's context, UNHCR considers that Article 1D serves to exclude from the scope of the 1951 Convention those Palestinians and their descendants who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who are receiving or are eligible to receive protection or assistance from UNRWA.⁴²

Article 1D reflects the intention of the drafters and other States to maintain the special and separate status of Palestinian refugees,⁴³ and to ensure continuity of their protection and assistance,⁴⁴ should the protection or assistance provided by other relevant UN

³⁹ The practice of EU Member States is not homogeneous and has been evolving significantly over the last 20 years. See above footnote 34.

⁴⁰ Case C-344/04, *IATA*, 10 January 2006, para. 40.

⁴¹ Article 31(1) of the Vienna Convention provides that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to terms of the treaty in their context and in the light of its object and purpose”. The elucidation of the ordinary meaning of terms should therefore take into account those other interpretative elements and not be understood in abstract. This is supported by the International Court of Justice case law (See *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras)*, [1992] International Court of Justice Rep 351, 719) and the International Law Commission, which drafted this provision of the Vienna Convention (*Yearbook of the International Law Commission*, [1966], No. 2, paras. 219-220); See also Hathaway, J. C. *The rights of Refugees Under International Law*, 2005, pp. 49-50). Art. 32 of the Vienna Convention allows resort to “supplementary means of interpretation”, including the *travaux préparatoires*, in order to confirm the meaning resulting from the application of Art. 31, or to determine the meaning when the interpretation according to Art. 31 “(a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable”. In UNHCR's view, it should be noted that the object of the 1951 Convention, as set out in its Preamble, is to endeavour to assure refugees the widest possible exercise of the fundamental rights and freedoms enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

⁴² As stated in UNHCR Handbook, there could, however, be other situations in the future. See above footnote 25, para. 142.

⁴³ Observations of the Lebanese representative at the Fifth Session of the Third Committee of the General Assembly on 27 November 1950:

“[...] the Palestinian refugees [...] differed from all other refugees. In all other cases, persons had become refugees as a result of action taken contrary to the principles of the United Nations, and the obligation of the Organization toward them was a moral one only. The existence of the Palestine refugees, on the other hand, was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility.”

⁴⁴ See the statements of various delegates of the Third Committee of the UNGA: GAOR, Fifth Session, 344th Meeting, 11 December 1950, paras. 24-5 (Mr Baroody, Saudi Arabia); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 28 (Mr Lesage, Canada); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 29-30 (Mr Davin New Zealand); GAOR, Fifth Session, 344th Meeting, 11 December 1950, para. 39 (Mr Noriega Mexico); GAOR, Fifth Session, 344th Meeting, 11

agencies or organs (i.e. UNRWA)⁴⁵ cease, and until their situation is definitively settled in accordance with the relevant UN General Assembly Resolutions.⁴⁶

The *Travaux Préparatoires* of paragraph 7(c) of the UNHCR Statute and Article 1D already confirmed the agreement of participating States that Palestinian refugees were in need of international protection, and that there was no intention to exclude them from the regime of international protection.⁴⁷ As stated above, the refugee character of Palestinian refugees has been recognized over time by the United Nations and its Member States, which have considered Palestinian refugees a group of persons for whom they have special responsibility and for whom alternative arrangements have been made to receive protection or assistance from organs or agencies other than UNHCR. Nevertheless, in line with the need to ensure continuity of protection for such persons, Article 1D(2) functions as a contingent inclusion clause that regulates the moment at which full 1951 Refugee Convention benefits accrue to Palestinian refugees in the same manner as other refugees within the scope of the 1951 Convention.⁴⁸

The application of Article 1D(2) implies that there will be no further need to determine eligibility for refugee status under Article 1A(2) of the Convention, since Palestinian refugees are already considered in need of international protection, as long as settlement of their situation has not been found. The wording of this provision further indicates that Palestinian refugees falling within its scope shall not go through an individual asylum procedure as they shall automatically (*ipso facto*) benefit from the 1951 Convention.

Accordingly, in UNHCR's view, Article 1D(2) applies to Palestinian refugees as defined in Section 2.2 and their descendants, provided UNRWA's assistance or protection has ceased for any reason, including because they are outside UNRWA's areas of operation.

December 1950, para. 42 (Mr Raafat, Egypt) [Authorities Vol. 1, Tab 29/218-223 at 219-220]. See also the statements of the Egyptian, the British and the Iraqi representatives during the Conference of Plenipotentiaries regarding the Egyptian proposal to insert an inclusion clause in Art. 1D (1951 Conference of Plenipotentiaries, Summary Record of the 19th Meeting: UN doc. A/CONF.2/SR.19, pp. 16-17 (Egyptian delegate), p.18 (British delegate) and pp. 26-27 (Iraqi delegate). The 1951 Convention is therefore meant not only to provide protection to those who, having applied, are found to be in need of it, but also to ensure continuing protection for those who are already recognized as refugees. In addition to Article 1D, Article 1A(1) provides another relevant example of this logic. Article 1A(1) provides that the term "refugee" shall apply to any person who has been considered a refugee under previous international arrangements and instruments predating 1951.

⁴⁵ The mandate of UNRWA and the provision of assistance and protection to Palestine refugees under its mandate are further explained below in Part 2.3.

⁴⁶ UNHCR, *Skeleton Argument on Behalf of the Intervener (United Nations High Commissioner for Refugees), in the Court of Appeal (C/2002/0751) on Appeal from the Immigration Appeal Tribunal, between Amer Mohammed El-Ali (Appellant) v. Secretary of State for the Home Department (Respondent)*, 26 June 2002, para. 26, at: <http://www.unhcr.org/refworld/docid/3d1c73c04.html>.

⁴⁷ See above footnote 44. Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Oxford University Press (2007), pp. 153-159.

⁴⁸ Susan Akram and Guy Goodwin-Gill, *Brief Amicus Curiae* to the United States Department of Justice, Executive Office for Immigration review, Board of Immigration Appeals, 2000, p. 32, at: <http://www.badil.org/Publications/Other/amicus.pdf>.

2.2. *Palestinian Refugees falling within the scope of Article 1D*

UNHCR considers that for the purpose of applying Article 1D of the 1951 Convention, the following groups of Palestinian refugees fall within the scope of this article:

(i) Palestinians who are “Palestine refugees”⁴⁹ within the meaning of UN General Assembly Resolution 194 (III) of 11 December 1948 and other subsequent UN Resolutions,⁵⁰ who are displaced from Palestine and unable to return there, including categories of persons who are registered or eligible to register with UNRWA, or are receiving or eligible to receive UNRWA’s services.⁵¹

(ii) Palestinians who are “displaced persons” within the meaning of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN Resolutions, and who have been unable to return to their places of origin.⁵²

⁴⁹ For further details on 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/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.

⁵⁰ The UN General Assembly in paragraph 11 of Resolution 194 (III) stated 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 more recently, UN General Assembly Resolution 63/91 of 18 December 2008, para. 2.

⁵¹ UNHCR considers that the following categories fall within this group as Palestine Refugees: (1) Persons who meet the UNRWA’s Palestine refugee criteria (i.e., UNRWA’s Operational Definition of a “Palestine refugee”). This definition refers at present to persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict; persons belonging to this category are considered by UNRWA as “Registered Refugees”, and they are eligible to register and receive its services; and (2) other categories of persons who do not meet UNRWA’s Palestine Refugee criteria but who are registered for the purpose of receiving UNRWA’s services: this group consists of persons who at the time of original registration did not satisfy all of the UNRWA’s Palestine refugee criteria, but who were determined to have suffered significant loss and/or hardship for reasons related to the 1948 conflict. UNRWA Department of Relief and Social Services, *UNRWA Consolidated Eligibility and Registration Instructions (CERI)*, June 2006.

⁵² Two main 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.” Since 1967 the General Assembly has restated UNRWA’s mandate for the “1967 displaced” in much the same terms. For instance, 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”; see also UN General Assembly Resolution 59/118 of 10 December 2004, which repeated the terms of Resolution 2252 and UN General Assembly Resolution 63/92 of 5 December 2008, para. 3.

It should be noted that those individuals to whom Articles 1C, 1E or 1F of the 1951 Convention apply do not fall within the scope of Article 1D, even if they remain “Palestine refugees” or “displaced persons” whose position is yet to be settled definitively in accordance with the relevant UN General Assembly Resolutions.

In UNHCR’s view, Palestinian refugees under (i) and (ii) above satisfy the criteria required for Article 1D of the 1951 Convention in light of the wording and historical context and purpose of that provision, namely: (1) they have the characteristics of refugees; (2) the United Nations General Assembly has adopted specific Resolutions with regards to the situation of such refugees, and in particular has envisaged a definitive settlement to their position as per United Nations General Assembly Resolution 194 (III) of 11 December 1948, and Resolution 2452 (XXIII) A of 19 December 1968; and (3) alternative arrangements have been made for such refugees to receive assistance or protection from organs or agencies of the United Nations other than the UNHCR.⁵³

2.3. The application of Article 1D of the 1951 Convention

(a) Paragraph 1 of Article 1D

Meaning of persons “receiving protection or assistance”

According to Article 1D(1), the 1951 Convention shall not apply to the persons “who are at present receiving protection or assistance” from a UN agency other than UNHCR.

In UNHCR’s view, to interpret this provision strictly on the basis of the ordinary meaning of the language would be inconsistent with its object and purpose. For the application of Article 1D(1), the key issue is whether the person falls under the effective mandate of a UN agency or organ other than UNHCR which has been tasked to provide assistance or protection to such persons.⁵⁴

An interpretation restricted to the ordinary meaning of the term “receiving” would serve to exclude from the scope of Article 1D a large number of Palestinian refugees who were clearly intended to benefit from the special status established by the relevant UN General Assembly Resolutions. Although registration with UNRWA determines who is eligible to be assisted or protected by the Agency and to receive its services, it is not the decisive or sole factor to determine whether such persons fall within the scope of Article 1D(1).⁵⁵

⁵³ The United Nations General Assembly has mandated UNRWA to assist these Palestinian Refugees, as per its Resolution 302 (IV) of 8 December 1949 and 2252 (ES-V) of 4 July 1967, and subsequent Resolutions endorsing or extending UNRWA’s mandate and activities.

⁵⁴ The UNCCP originally tasked to provide protection to Palestinian refugees was unable to effectively fulfil its mandate (see above footnote 50). Therefore, in practice, the UN body caring for Palestinian refugees today is UNRWA.

⁵⁵ According to UNRWA’s “Consolidated Eligibility and Registration Instructions” (see above footnote 51), two main categories of persons fall within its mandate: (1) persons eligible to be registered with UNRWA and to receive UNRWA’s services; and (2) persons eligible to receive UNRWA’s services without registration. Persons eligible to be registered with UNRWA and to receive UNRWA’s services include: (a) persons who meet the UNRWA operational definition of “Palestine refugees”; and (b) other

UNHCR therefore recommends to interpret the term “receiving” in its context and in a manner that takes into account the object and purpose of Article 1D(1). This recognizes the widely accepted historical justification for the separate regime afforded to Palestinian refugees as a group of persons in need of protection and assistance, as well as the necessity to ensure the continuity of such protection and assistance.⁵⁶

Accordingly the term “receiving” should be interpreted as meaning Palestinian refugees who are receiving or are eligible to receive assistance or protection from UNRWA. In order to be in a position to receive assistance, the person concerned should be inside UNRWA’s areas of operation.⁵⁷

(b) Paragraph 2 of Article 1D

Article 1D(2) provides that persons falling within the scope of Article 1D shall be “*ipso facto*” entitled to the benefits of the 1951 Convention if the protection or assistance of the agency other than the UNHCR ceases “for any reason” and if the position of these persons has not been definitively settled in accordance with the relevant UN General Assembly Resolutions.

Meaning of the phrase “if such protection or assistance has ceased for any reason”

The phrase “for any reason” should be interpreted in its context and in line with the object and purpose of Article 1D, i.e. to ensure continuity of protection to Palestinian refugees.⁵⁸ UNHCR underlines the unambiguous wording of Article 1D(2). The use of

persons who do not meet UNRWA’s operational definition of “Palestine refugees”, that is, persons who, while registered for the purposes of receiving UNRWA’s services, are not counted as part of the official Registered Population of the Agency. Non-registered persons displaced as a result of the 1967 and subsequent hostilities and their descendants are included in the category of persons eligible to receive UNRWA’s services without being registered in the Agency’s Registration System.

As explained in footnote 51, persons who do not meet UNRWA’s operational definition of “Palestine refugees”, but who are registered for the purposes of receiving UNRWA’s services, although not counted as part of the official Registered Population of the Agency, are considered by UNHCR as falling within the scope of Article 1D as “Palestine Refugees”. It should be noted that not all persons eligible to be registered with UNRWA as “Palestine Refugees” residing in UNRWA’s areas of operation are actually registered. Some of those eligible to be registered as “Palestine Refugees” with UNRWA may have never approached UNRWA, or may not be able to register due to lack of documents. Similarly, persons displaced as a result of the 1967 and subsequent hostilities and their descendants are not registered by UNRWA, although they are eligible to receive their services and fall within the scope of Article 1D.

⁵⁶ This position has also been supported, among others, by Goodwin-Gill and McAdam, see above footnote 47, pp. 158-159; and James Hathaway, *The Law of Refugee Status*, Butterworths (1991), p. 208. See also above footnote 44 for relevant references to the *Travaux préparatoires*.

⁵⁷ UNRWA’s areas of operation and mandate are currently limited to Jordan, the West Bank, Syria, Lebanon and the Gaza Strip.

⁵⁸ Pursuant to Article 32 of the 1969 Vienna Convention, recourse to supplementary means of treaty interpretation is permitted only where the meaning of the treaty language is ambiguous or obscure; or where interpretation pursuant to the general rules set out in Article 31 of the 1969 Vienna Convention leads to a result which is manifestly absurd or unreasonable. It is a well-established principle that when the meaning of the treaty is clear from its text when viewed in light of its context, object and purpose,

the all-encompassing expression “for any reason” clearly suggests that reasons other than cessation of UNRWA’s operations are valid.⁵⁹ Accordingly, in line with the 1969 Vienna Convention, it is not necessary to resort to the drafting history. Nevertheless, UNHCR recalls that the *travaux préparatoires* confirm that other options were not explicitly excluded even if the drafters of the 1951 Convention envisaged primarily the application of Article 1D(2) in the event of the cessation of UNRWA’s activities.⁶⁰

Meaning of the term “*ipso facto*”

In UNHCR’s view, when protection or assistance has ceased for any reason, persons falling within the scope of Article 1D are automatically entitled to the benefits of the 1951 Convention, provided that Articles 1C, 1E or 1F of the 1951 Convention do not apply. This is confirmed by the wording of Article 1D(2), which provides for an *ipso facto* entitlement. This is evident as well in the French version, with the use of the expression “de plein droit”.

Therefore, no separate determination of well-founded fear in the sense of Article 1A(2) of the Convention is required. This is further confirmed given that the refugee character of Palestinians falling under Article 1D has already been clearly acknowledged in the *Travaux Préparatoires* and reaffirmed by the relevant UN General Assembly Resolutions.⁶¹

supplementary sources are unnecessary and inapplicable, and recourse to such sources is discouraged. See, for example, International Court of Justice, *Interpretation of the Treaty of Lausanne*, P.C.I.J., Ser. B, No. 12 (1925), at 22; *The Lotus Case*, P.C.I.J., Ser. A, No. 10 (1927), at 16; *Admission to the United Nations Case*, 1950 ICJ Reports 8.

⁵⁹ These could include, for example, military occupation of the territory or part of the territory in which UNRWA operates and the interruption of UNRWA’s programmes within this area, as well as the possibility that the person concerned might be outside UNRWA’s areas of operation. This position has been supported by Goodwin-Gill and Akram in their *Amicus Curiae Brief*, see above footnote 48, p. 37. See also a recent decision of the French National Court of Asylum in which the Court recognized that insofar as the applicant is outside UNRWA’s areas of operation, he does not enjoy its protection or assistance and should therefore be granted refugee status by the operation of Article 1D(2) of the 1951 Convention. It decided that refugee status should be granted automatically to Palestinian refugees registered with UNRWA who are outside its areas of operation. The Court did not find it necessary to examine the reasons why a Palestinian refugee would leave the UNRWA areas of operation and, therefore, the issue of voluntariness of such departure does not have to be raised. It should however be noted that an appeal against this ruling to the Council of State is pending as of the date of writing. Cour nationale du droit d’asile, *Mohammad Assfour*, Décision N° 49341214, 14 mai 2008, at: <http://www.unhcr.org/refworld/docid/482c59432.html>.

⁶⁰ See for example the statement of the Egyptian delegate at the Third Committee of the General Assembly (Fifth Session, 344th Meeting, 11 December 1950, para. 13) and at the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (20th meeting: UN doc. A/CONF.2/SR.20, pp. 8-9). See also the views of the French delegate at the Conference (Summary of the 2nd Meeting: UN doc. A/CONF.2/SR.2, p. 27). See also: Alex Takkenberg, *The Status of Palestinian Refugees in International Law*, Reeks Recht in Samenleving N° 13 (1997), para. 141.

⁶¹ See above Part 2.1. This position is supported by Atle Grahl-Madsen, *The Status of Refugees in International Law*, vol. I, Refugee Character, Leyden, Sijthoff (1966), p. 264; and Guy Goodwin-Gill and Jane McAdam, see above footnote 47, pp. 158-159.

Consequences “when the protection or assistance has ceased for any reason” within the meaning of paragraph 2 of Article 1D

UNHCR further submits that Article 1D(2) requires not only acknowledgement of the refugee status of Palestinian refugees no longer receiving UNRWA’s assistance or protection, but also the provision by the State concerned of the 1951 Convention benefits. In UNHCR’s view, the term “benefits” shall be understood as encompassing the rights, entitlements, and standards of treatment attributed to refugees under the 1951 Convention as provided for in Articles 2-34 of that Convention.

Providing access to the asylum procedure is not sufficient to meet the requirements of the 1951 Convention. To construe it as such would contradict the object and purpose of Article 1D, which are based on the presumption that the international protection needs of Palestinian refugees are already established. Restrictive State practices recognizing only the entitlement of Palestinian refugees to have access to an asylum procedure in order to submit a claim are not in accordance with Article 1D.

The fact that a Palestinian refugee is automatically entitled to the benefits of the 1951 Convention as indicated above does not necessarily mean that he or she may not be returned to a first country of asylum or to the Occupied Palestinian Territories. There may, however, be reasons why the Palestinian refugee cannot be returned, 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.

The assessment of returnability is a process separate from and subsequent to the determination of the application of Article 1D. It should be carried out as a distinct assessment in relation to people who are already found to satisfy the requirements of Article 1D(2). Based on the returnability assessment, Palestinian refugees falling under Article 1D(2), should be allowed to remain in the relevant countries of asylum and should not be returned if they are unable or unwilling to return under the conditions mentioned above in paragraphs (i) and (ii), to the Occupied Palestinian Territories or to a first country of asylum, be the latter country within or outside UNRWA’s areas of operation. In other words, the returnability assessment is a factual determination of whether the person has been receiving or could receive effective protection there. It should be noted that the fact that a Palestinian refugee falling within the scope of Article 1D(2) may be returned under the conditions mentioned above, does not lead to the loss of his or her refugee character, unless he or she falls under Articles 1C, 1E or 1F of the 1951 Convention. If such person is returned to a place within UNRWA’s areas of operation, Article 1D(2) ceases to apply, and she would fall within the scope of Article 1D(1), hence being excluded from the benefit of the 1951 Convention.

3. UNHCR's comments on the questions referred to the ECJ

3.1. *Conditions for being considered to be "receiving the protection or assistance" of UNRWA (Question 1)*

Must someone be regarded as a person receiving the protection and assistance of a United Nations agency merely by virtue of the fact s/he is entitled to assistance or protection or is it also necessary for him/her actually to avail himself of that protection or assistance?

As stated above, in the view of UNHCR, a person is not be required to have availed him/herself of the protection or assistance of a UN agency other than UNHCR in order to be considered as "receiving [such] protection or assistance" in the meaning of Article 1D(1).⁶² Entitlement to receive UNRWA's assistance or protection is sufficient to bring a Palestinian as defined in Part 2.2 of this Statement within the scope of application of Article 1D and therefore of Article 12(1)(a) of the Qualification Directive.

While Article 12(1)(a) of the Qualification Directive does not contain the term "receiving", it nevertheless serves to exclude persons falling "within the scope of Article 1D relating to protection or assistance from organs or agencies of the United Nations other than UNHCR" (emphasis added). Article 12(1)(a) thus relies entirely on the wording of that provision of the 1951 Convention to define its personal scope, and therefore requires an interpretation of the terms enshrined in Article 1D, including the term "receiving".

UNHCR considers that the term "receiving" should be construed in its context and in a manner consistent with its object and purpose as prescribed by the Vienna Convention and acknowledged by the ECJ.⁶³ The context of this provision, as well as its object and purpose, thus command a broad interpretation, which is not confined to its literal meaning. The scope of Article 1D(2) includes those Palestinian refugees who are entitled automatically to the benefits of the 1951 Convention if the assistance or protection they are receiving, or are eligible to receive, from United Nations organs other than UNHCR ceases. As outlined above, the purpose of Article 1D was to recognize and maintain the special status of Palestinian refugees as well to ensure the continuity of their protection.

Therefore UNHCR recommends that the words "persons at present receiving" should be understood as meaning persons who are receiving or are eligible to receive assistance or

⁶² The expression "at present" contained in Article 1D(1) has also been subject to diverging interpretations but is not included in the questions raised by the referring court and therefore is not addressed in the present Statement. For further details on this issue, see above footnote 46, UNHCR, *Skeleton Argument*, pp. 16-18.

⁶³ The ECJ indicated that "in interpreting a provision of the Community law, it is appropriate to consider its wording as well as the context in which it occurs and the objectives of the rules of which it forms part" (see Case C-223/98, *Adidas*, para. 23; Case-191/99, *Kvaerner*, para. 30; Case C-315/00, *Maierhofer*, para. 27).

protection from a UN organ or agency other than UNHCR, in light of the relevant UN General Assembly Resolutions.

On this basis, UNHCR submits that Palestinian refugees falling within the scope of Article 1D who are inside UNRWA's areas of operation are considered as receiving protection or assistance or eligible to receive the assistance or protection of UNRWA within the meaning of Article 1D(1) of the 1951 Convention. This also reflects the understanding of the European Commission set out in its initial proposal for the Qualification Directive.⁶⁴

3.2. *Conditions under which the protection or assistance of the responsible UN agency is considered to have ceased (Question 2)*

Does cessation of the agency's protection or assistance mean residence outside the agency's areas of operation, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an objective obstacle such that the person entitled thereto is unable to avail himself of that protection or assistance?

In UNHCR's view, Palestinian refugees falling within the scope of Article 1D of the 1951 Convention are considered to have lost the protection or assistance of UNRWA for any reason, including if they are outside UNRWA's areas of operation, without their position being definitively settled in accordance with the relevant UN General Assembly Resolutions.

As outlined above, the use of the all-encompassing expression "for any reason" clearly suggests that various reasons other than the cessation of UNRWA's activities can be envisaged. The same formulation is replicated in Article 12(1)(a), demonstrating that Member States did not intend to restrict the scope of this provision in the context of the EU asylum *acquis*. By contrast, in a different context, the drafters of the 1951 Convention and of the Qualification Directive set out, in a clearly limited fashion, the list of grounds based on which the status of refugee may be considered to have ceased under Article 1C of the 1951 Convention.⁶⁵

The assumption that the expression "for any reason" would relate only to the cessation of UNRWA's activities does not provide a sound basis for determining the scope of Article 1D and by extension, Article 12(2) of the Qualification Directive. Firstly, this would contradict the construction of Article 1D(2), which clearly relates the expression "for any reason" to the protection or assistance, and not to the organs or agencies providing such protection or assistance. Second, it should be noted that where the drafters of the 1951

⁶⁴ The Explanatory Memorandum of the Commission's proposal for the Qualification Directive stated that the exclusion clause shall not apply "if an individual is prevented by circumstances beyond his or her control from returning to the place in which he or she is *in principle entitled to benefit from United Nations protection or assistance*", see above footnote 27, p. 25.

⁶⁵ UNHCR, *Statement on the "Ceased Circumstances" Clause of the EC Qualification Directive*, August 2008, at: <http://www.unhcr.org/refworld/docid/48a2f0782.html>.

Convention intended to limit the scope of an all-encompassing formulation in other parts of the instrument, they did so explicitly and quoted the possible exception.⁶⁶ This suggests that the formulation in Article 1D should apply more broadly.

Neither the wording of the rest of Article 1D nor the context of this provision defeat the above interpretation based on the plain meaning of the term. It is sometimes argued, with reference to the term “persons”, that the cessation of UNRWA’s assistance cannot be triggered or applied individually as a result of the decision of one Palestinian refugee to remove him/herself from UNRWA’s areas of operation. An interpretation which is defined by reference to the possible acts or omissions of an individual would not be defensible. As stated above, the intentions of the refugee are irrelevant for the application of Article 1D.⁶⁷ Furthermore, the use of the plural does not prevent an individual application of the provision, as the plural is also used in Article 31 of the 1951 Convention and it has never been suggested that the non-penalization clause could not be applied individually.

3.3. *Content/scope of the benefits granted to the person and whether such benefits should be granted automatically (on Question 3)*

Do the benefits of this directive mean recognition as a refugee, or either of the two forms of protection covered by the Directive (recognition as a refugee and the grant of subsidiary protection), according to the choice made by the Member State, or, possibly, neither automatically but merely inclusion in the scope ratione personae of the directive?

In UNHCR’s view, a person falling under the scope of Article 1D(2) should be entitled automatically (“*ipso facto*”) to the benefits afforded to refugees by the Qualification Directive.

Article 12(1)(a) reproduces the expression “*ipso facto*” in most of the language versions of the Qualification Directive.⁶⁸ This indicates that the persons covered by this provision should be automatically entitled to the benefits of refugee status as enshrined in the Qualification Directive, i.e. without any need to further examine or determine their eligibility under this instrument. Given the reference made in Article 12(1)(a) to persons falling “within the scope of Article 1D of the Geneva Convention” to define its own scope of application, such persons have already been recognized as refugees within the sense of the 1951 Convention. Thus, no further assessment of their protection needs is required under the Qualification Directive.

⁶⁶ See Article 6 of the 1951 Convention which provides that “[...] any requirements [...] must be fulfilled [...] with the exception of requirements which by their nature a refugee is incapable of fulfilling”.

⁶⁷ See above Part 2.3.

⁶⁸ The few language versions not using this expression reflect the ordinary meaning of “*ipso facto*”, i.e. by the very fact that the protection or assistance have ceased.

The content and scope of the “benefits of this Directive” can be determined on the basis of the wording and the context of this provision. As stated above,⁶⁹ the term “benefits” should be understood as encompassing “rights, entitlements, and standards of treatment” attributed to refugees under the 1951 Convention as provided for in Articles 2-34 of that Convention. This is confirmed in particular with reference to Recital 6 and Article 6 of the Qualification Directive, which use this term in the same general fashion as in Article 12(1)(a) as regards the meaning of ‘rights’. Given that Article 12(1)(a) appears in the chapter concerning refugee status and that there is no other similar provision on exclusion in the chapter related to subsidiary protection, it is clear that the benefits in question are those relating to refugee status.

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⁶⁹ See above Part 2.3(b).